

1986

Bernie

Gerhard Casper

Follow this and additional works at: http://chicagounbound.uchicago.edu/journal_articles

 Part of the [Law Commons](#)

Recommended Citation

Gerhard Casper, "Bernie," 53 University of Chicago Law Review 1 (1986).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Bernie

Gerhard Casper†

Only eight years separated Bernard Meltzer, the law student, from Bernard Meltzer, the law teacher. In those eight years between 1938 and 1946, Bernie, *inter alia*, served at the Securities and Exchange Commission as Assistant to Jerome Frank, its Chairman; engaged in private law practice in Chicago; worked at the National Defense Commission on the system for procurement priorities; heeded Dean Acheson's request "to help out" at the State Department where he first handled lend-lease matters and, eventually, became Acting Chief of the Foreign Funds Control Division; was commissioned in the Navy and assigned to the Office of Strategic Services; and, finally, as a lawyer on Justice Jackson's staff at the Nuremberg Trials, interrogated Göring and Schacht, and presented the case against Schacht's successor as Minister of Economics and head of the Reichsbank, Walther Funk.

Last year Bernie appeared as an expert witness for a labor union in a federal court case. At the beginning of cross-examination, counsel suggested, in a manner not atypical for lawyers confronting "professors," that Bernie's experience in the "practice of law" had been limited to only a few years. Bernie responded: "If you can consider private practice the only form of legal practice, then your calculation is reasonably correct. If you con-

† William B. Graham Professor of Law and Dean, The University of Chicago Law School.

sider practice in government doing legal work, then we might have to add some years.”

Those among us who have been his students or his colleagues—a rather meaningless distinction in Bernie’s case—will find even this too narrow a view of the matter. The fact is that Bernie has practiced, and continues to practice, law in every forum: the classroom, his office, the Green Lounge, at the faculty lunch table, at faculty meetings, at Hyde Park dinner parties, and, last but not least, in the Dean’s office. Gently, but firmly—sometimes very firmly—Bernie’s questioning exposes the too theoretical, the insufficiently theoretical, the unprincipled, the thoughtless, the less than meticulous, the doctrinaire, the fashionable, the bureaucratic, the heartless. He is a master in the art of cross-examination of his colleagues and students. Indeed, I cheerfully concede that I have flunked many a lunch we had together.

After receiving his A.B. from the University of Chicago in 1935, Bernie graduated in 1937 from its law school, standing first in his class. In his words: “I didn’t have enough, so I went on for another year of graduate work at Harvard Law School.” At Harvard, much of his work was done with Justice, then Professor, Frankfurter, who in 1946 wrote Dean Katz: “I could write at length in answer to your inquiry about Bernard Meltzer. It would all add up however, to my judgment that any law school would be lucky to get him on its faculty. He is a lovely fellow, has to a rare degree the first requisite of any teacher—intellectual integrity—an acute intelligence, and a capacity for hard work.”

Chicago was so lucky as to get Bernie—and to keep him in the face of many efforts by outsiders to persuade him to go somewhere else or to do something else. His first appointment, in 1946, was at the rank of professorial lecturer. On January 1, 1985, Bernie became Distinguished Service Professor Emeritus. I do not, of course, mean to say that Bernie stayed exclusively at the classroom lectern or behind his desk. While a member of the Law School faculty, Bernie has served in numerous assignments of a public nature as arbitrator, mediator, and chairman of boards dealing with difficult disputes. He has performed these tasks on the local level and for the state and national governments.

Bernie’s main fields of teaching and scholarship are labor law and evidence. He brings to them a happy blend of the analytical and theoretical outlook of a scholar with the perspective and practical judgment of a lawyer. Fellow scholars in his fields of expertise have referred to him as a “trail blazer” and seen his articles as landmarks. His labor law casebook is a great accomplishment,

characterized by his sense of history and politics, his grasp of labor economics, and his mastery of the literature, of detail and inter-connections.* While I am not competent to speak about it with the confidence of an expert, my admiration is that of a fellow law teacher who is frequently worried about the lack of learnedness in his own work. Bernie has become an “authority” not because he has sought publicity but because he is a true scholar.

At the trial to which I referred earlier, Bernie was asked by counsel whether he had taught labor law at the University of Chicago. Bernie’s characteristically deprecating answer was: “At least I met classes.” Bernie and Jean Meltzer in their, so far, almost forty years of membership in the University community, have quietly met more than their obligations. They have helped countless individual students and faculty, often functioning as wise counselors. This too has been done out of the limelight, but all the more effectively and gracefully.

Bernie was born in Philadelphia. If you listen to him, the most important thing about Philadelphia in his youth was the Philadelphia Athletics. As he wrote a few years ago: “For a time—a very brief time—I had my personal dreams of baseball glory.” While those dreams were cut short by a “weak arm and bat,” Bernie was given an opportunity more than fifty years later to influence baseball by serving as a salary arbitrator for the 1981 season. I quote Bernie: “[F]or the first time in my professional life, I had been told to state only my conclusion and to skip any reasons. I smiled as I realized the position that I had somehow achieved. I had—for one golden moment—become an umpire.”

His students, colleagues and other friends must be glad that this was for a moment only, however golden it may have seemed to Bernie. Not all of us may agree with all of Bernie’s conclusions, but Bernie’s reasons we all want to hear.

* The third edition, co-authored by Stanley D. Henderson, was published last year. B. MELTZER & S. HENDERSON, *LABOR LAW: CASES, MATERIALS, AND PROBLEMS* (3d ed. 1985) (reviewed in this issue).