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## Tribute to Bernard Meltzer

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## **In Memoriam: Bernard D. Meltzer (1914–2007)**

*The editors of The University of Chicago Law Review dedicate this issue to the memory of Bernard D. Meltzer.*

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*Saul Levmore†*

Bernard Meltzer occupied this Law School for much more than half of our existence. The occupation began with his arrival, as a transfer student, in 1934. He then returned here to join the faculty in 1946. That is a period of about 63 years in a school that is almost 105 years old. It is tempting to marvel at Professor Meltzer's longevity. He knew people who were here at our founding more than a century ago. For that matter, he knew people who knew people (like Christopher Columbus Langdell, for instance) who shook hands with Abraham Lincoln. It is only a couple of degrees of separation more to Napoleon, and then, I suppose, but another several steps to Moses. But neither of these well-known lawmakers could match our Bernie's ability to think about law with cool objectivity, and with an eye on what law might or might not accomplish. And neither displayed half the wit that Bernie brought to the enterprise.

It is fun to think of how the Law School and the world appeared when young Meltzer arrived here in 1934. The Law School was not in its present location, and baseball was played right here on this spot where we are gathered. The Great Depression was a real event, as was the rise of Hitler. Ping-pong was played in the Law School, and was said to have been introduced in order to displace rampant gambling,

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† Dean and William B. Graham Professor of Law, The University of Chicago Law School. These observations were made at a memorial service in honor of Bernard D. Meltzer at the Law School on February 2, 2007.

though there was plenty of gambling on the ping-pong matches, as it turns out. One might wonder whether table tennis was actually around at that time, if only because those familiar balls seem so technologically sophisticated. But indeed, the game, more or less in its present form, was born some thirty years earlier, and was in something of a heyday. Students of that era needed to call faculty offices from the library telephone in order to ascend to the faculty offices for visits. And yes, phones had long been in existence, though it is doubtful that a single student had an automobile, and of course no one had a computer or cell phone. Ball point pens were unknown.

But longevity is a more appropriate topic for persons less accomplished than Bernard Meltzer. This was one accomplished person, and one life led to the fullest. He was remarkable. He was great with people, and great as a host, as a government officer, as a Socratically inclined instructor, as *the* leading labor law scholar, as a scholar of international law (he may well have taught the first law course in the country on international organizations), as a teacher of evidence, and as a stalwart of a great law school. When we celebrate and memorialize his life and career, we selfishly promote our own values: insight, inquiry, wit, biting wit, loyalty, charm, sharp edges with the best intentions, and intellectual intensity. Bernie and Jean Meltzer defined and define a way of life. It is a way that demands excellence of oneself, and encourages excellence in others through a mixture of questioning and wit, dignity, charm, and warmth. It is the demonstration that carrying oneself with these qualities is enjoyable and not oppressive. Theirs is a family that teaches us the value and attractiveness of personal dignity.

There are well known and less well known Bernie anecdotes. I begin with a chestnut. Bernie had served as a Major League Baseball salary arbitrator. He did so under the rules of final offer arbitration—a system that he had helped bring about. Following one of his rulings, the media called him ignorant and dumb. He quipped that he preferred the former, for it could be remedied.

Bernie consented to give the graduation address at our Hooding Ceremony a few years ago. The graduating class so appreciated his presence and remarks that they “adopted” him. In any event, a student’s parent came up after the ceremony and conversed with Professor Meltzer, complimenting the speech and so forth. The parent informed us that he had done some research on the notable speaker and that he had found a terrific quote by the great man. He had indeed memorized it, and I remember something like: “Use those talents you have. . . . The woods would be a very silent place if no birds sang except those who sang best.” I stood there thinking to myself that this quotation could not possibly have been uttered by Bernie. It was, after all, an ode to mediocrity. Bernie, meanwhile, gave a look of nonrecognition

and seemed disinclined to say a word. I thought it my role to lighten the moment, and so I said in as friendly a tone as possible that it was a lovely sentiment but that I was sure this had been misattributed because sweetness and mediocrity had no place here at the Law School. I am sorry to say that I may even have mumbled something about how we do not sing “Kumbaya” in the Green Lounge. We all moved on to another, more agreeable topic. A few days later Bernie was in my office, and he asked me to try and reconstruct the quote, though not the flattering of his speech, which really was terrific. I recollected as best I could and suggested we Google it, and sure enough the quote really was from Bernard Meltzer! Fortunately, we had a closer look and it was by that *other* Bernard Meltzer of radio talk show fame. Bernie said that I was amazingly well read, but should probably try to read better material. I do not think he believed my claim that I had never seen the quote, but just could not imagine his saying such a mushy thing.

Bernie and I began to have different conversational patterns after I moved into the Dean’s office. When Bernie walked into the office, I knew that a small complaint or suggestion would begin the conversation. It might have been about a grammatical error in a law school publication, the supposed decline of the Socratic method, or the failure of new faculty members to come to dinner parties with U.S. Constitutions in their suit pockets. I must say that I have never understood his failure to memorize the document. When I first came to Chicago, I recall how surprised I was at my first Meltzer dinner when, during a discussion, all the law professors at the table (except the two of us who had recently arrived in Hyde Park) referred to pocket Constitutions they carried about. When he complained about those of us who were not Constitution carriers, I asked him about the failure to memorize. He insisted that it was fun to pull out the Constitution and be surprised by its language.

As a young teacher, Bernie was known for simplifying a question in class in order to “help” a student on call. When a reasonably complicated question brought about fear and paralysis in one student, Bernie apparently resorted to a professorial, patient tone and said, “Let me rephrase the question, and you answer just yes or no.” The student thought hard and then said, “Yes.” Bernie proceeded dryly: “I was looking for a shorter answer.”

I know from my own father-in-law and his classmates who were graduated from the Law School in 1951 that Bernie was loved but held in awe and fear from the outset. My father-in-law still remembers the grade Bernie gave him some fifty-five years ago, and—though I assure you that it was a fine grade and that he and his classmates were terribly fond of their great teacher—he still complains about the grade. I had an idea once, and asked whether, in the interest of nostal-

gia and fun, I could look for that old exam in the archives and then ask Bernie to regrade the exam and present it with comments at the class's fiftieth reunion dinner. My father-in-law turned color and said, "Don't you dare; he will probably lower the grade."

Bernie asked me once what I had thought of his son Danny's colleagues at the Harvard Law School. I suggested that one or two members of the old guard there took themselves just a bit too seriously. I reported that when I had visited there, and was at lunch one day, the nomination of Justice Souter was announced. A senior faculty member, whom we might call Professor A, left the table and then returned a few minutes later to say that he had checked his old grade sheets, and that Souter was unimpressive, as he had received only an *X* grade in A's first year course. I thought I was communicating my amusement at the prospect of anyone taking a single old grade so seriously. But Bernie loved it, and said, "Well, you should know that I hear A is an easy grader."

We love Bernie in part because he represented our values and in part because he mellowed. He taught us how to age, and then in recent times he taught us about illness and death, and how to be a good sport about dying. We know from experience that some of us will harden as we age and others will mellow. Those of us who start out as curmudgeons can only hope that we will mellow, and we wonder whether to try and accelerate the process and become kinder and gentler sooner rather than later. If we could be sure of longevity, the right strategy might be toughness followed by kindness, for eventually it would be clear that our tough love was just a pedagogical strategy. But as we have learned from the passing of Chicago's old guard, none of us is assured of longevity. I suspect that Bernie's many kindnesses were especially meaningful because he had established his sincerity with all that rigor, wit, and critical thinking. And so, thank you, Bernie, for the tough love, for the vigor and rigor, and then for the mellow phase. Thank you for your amazing family; for connecting Jean to us; for Danny, Joan, and Susan; and for your remarkable nephews whom I have also come to admire. Thank you for the prominence you brought this Law School; for your sage advice; and for your criticisms, so perfectly delivered. It was okay that we knew we could never quite live up to your standards for us. You, at least, lived up to ours, and you improved us. If there is a pleasant afterlife, or at least a metaphoric one, we know you are there, starting all over again, relying on your wit and critical thinking, figuring that you can develop some mellowness after you get something of a reputation up there. Either way, we could not have a better representative at that Roundtable in the sky.