

MERT BERNSTEIN: THE GLASS IS ALWAYS HALF FULL

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This piece is not an easy one to write. Most law review articles comment on the law. They are long, they are organized, and they have footnotes and intellectual content. This piece, however, must be brief. It will not have footnotes.¹ And it may ramble because something about a colleague and friend must be from the heart.

This issue of the *Law Quarterly* is inspired by the formal retirement of Merton C. Bernstein, who has been the Walter D. Coles Professor of Law at the Washington University School of Law from 1975 until 1993. It celebrates his past and with it a record of very substantial accomplishments. In looking back, however, one misses the essence of Mert Bernstein. As long as I have known him, Mert is a person of the present and the future. More than anything, Mert has a sense of anticipation and enthusiasm that profoundly affects and excites his colleagues and all who know him. His interests and concerns are of today and tomorrow. Mert is a person of springtime, not autumn and certainly not winter. He is a messenger of hope and opportunity. All of this is reflected in countless ways.

Mert is retiring not out of choice but because he has reached age seventy. He is among the last class of teachers who must retire because of age. I have been told that Mert has reached retirement, but I cannot accept it. Quite simply, no one believes that Mert is seventy. I have never known anyone with Mert's vitality and zest for life. He neither looks nor acts his age.² To be sure, many people work at physical fitness just the same as Mert. Few, however, make a tough run for public office on the eve of retirement and find it energizing rather than enervating.³ Few actively participate in a candidate's victorious campaign for mayor of a major city

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1. Unfortunately, some promises are impossible to keep.

2. I have conducted an informal but very scientific survey among Mert's colleagues, students, and friends. Every person I know who discovers that Mert is about to retire is astonished. Many believe that he is in his early sixties, while others think that he is even younger.

3. In 1992, Mert entered the race for United States Senator from the state of Missouri. He lost in the Democratic Primary.

and then follow that up with a leading role on the new mayor's transition team.⁴

Those who have known Mert should not find this surprising. Most people begin to wind down as they reach retirement. They approach life with a sense of resignation because they believe that their time has passed. The problems of today and tomorrow must become the responsibilities of others. At the core, however, Mert is not passive; instead, he is a doer. He is not given to mere complaint and compliance. Problems must be addressed and resolved; he is an intervener and not a bystander. Often his issues are national in scope and sometimes they are global. As a result of speeches, books, law review articles, and op-ed pieces, Mert is well known for his views on social security, health care and campaign reform, and also international violence, ethnic cleansing and starvation. Yet Merton is also outspoken on matters with less public significance. He is concerned with the issues that the Washington University School of Law faces now and after the time of his retirement. He is involved in matters of new appointments, curricula, teaching loads, and a building. Little, however, is known about Mert's attention to issues that have no public importance. Indeed, the personal problems of colleagues do not escape Mert. If he can be of help, he will be there to try to guide the matter toward a positive solution.

I suppose that people who commit themselves to the challenges of a full life—especially at age seventy—must be optimists. And Mert is an optimist. There is additional evidence and it is overwhelming. Who undertakes a run for the Senate of the United States in his retirement year? An optimist. Who expects to unseat an incumbent senator when the idea is hatched at the time of Desert Storm? An optimist. Who expects to conduct a solvent campaign with contributions limited to \$100 per donor? An optimist. Who proposes and believes in solutions to the massive problems of national health care? An optimist. Who lays trust in the social security system because he believes it is a system that works?⁵ Only an optimist? Only Mert.

The benefits of Mert's optimism are many, and they are obvious. To begin with, Mert nearly always displays a cheerful presence. There is a

4. In 1992-1993, Mert was involved in Freeman Bosley, Jr.'s successful run for Mayor of the City of St. Louis. Following the election, Mert was appointed to co-chair the new Mayor's transition team.

5. See MERTON C. BERNSTEIN & JOAN B. BERNSTEIN, *SOCIAL SECURITY: THE SYSTEM THAT WORKS* (1988).

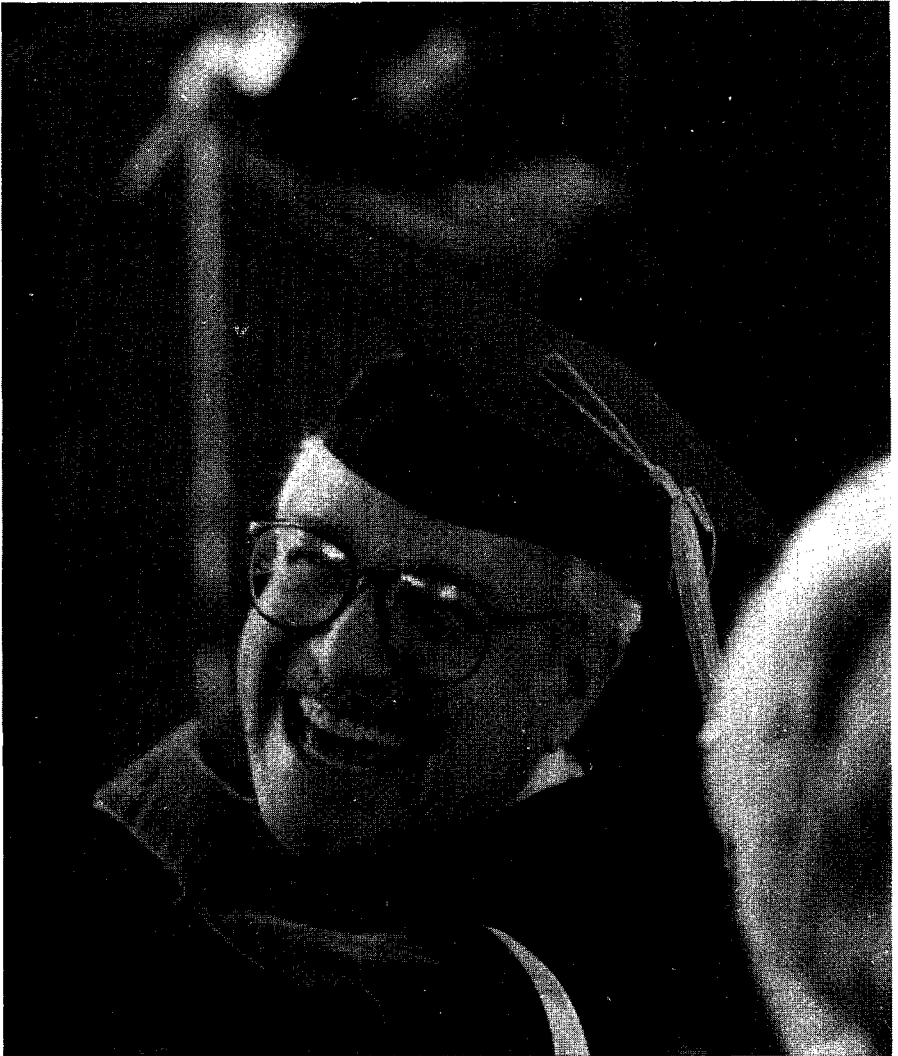
smile and often gentle laughter. Quite simply, his positive attitude rubs off easily and surely this is a very real benefit. Perhaps underneath it all is a belief in people; that they are fundamentally good and capable of choices that are good for them and others as well. This belief, rooted in Mert's optimism, reflects itself in his approach to problems. As previously stated, Mert is not a bystander. Problems must be addressed aggressively. This is not a fruitless exercise because, most importantly, problems have solutions! And they are within reach if one approaches them openly and progressively. His personal code of conduct and belief transcends an obligation to act. He is committed to doing because he believes that he can do—that he can accomplish. And there is one more thing. His solutions and his recommendations always take the high road. If there is a compromise that achieves the objective and appeases divergent interests, Mert will find it and propose it. He seeks fairness and harmony, while rejecting rancor and abuse. And in the end, he brings out the best in ourselves.

I do not know the source of Mert's character and optimism. But I have a theory. Mert and Joan Brodshaug Bernstein have had a long standing partnership—in marriage, books, and life. Joan's smile, laughter, courage, and exuberance are contagious.⁶ They deeply affect all who know her. I do not know whose uplifting character came first. Actually I believe that these two people bonded many years ago. What we see is the best of Mert and Joan and we are much the better for it.

Those who know Mert must now recognize his retirement.⁷ It is an inescapable fact. And so it is only natural that we record and applaud his many endeavors and accomplishments. But those who appreciate Merton C. Bernstein must rejoice in the opportunities life offers. We must celebrate Mert's future and ours as well.

6. After several distinguished careers, Joan entered law school in 1987 and received her J.D. from the Washington University School of Law in 1990. Having completed a judicial clerkship, Joan is now practicing law in St. Louis, Missouri.

7. Mert's retirement actually involves a mere change in status. He will still be an active teacher. In the Spring of 1994, Mert will continue teaching his Congressional Clinic, and he will be launching a new program, in Washington D.C. as well, that involves an Administrative Law Externship.



Professor Merton C. Bernstein enjoys the School of Law's 1992 graduation ceremony. (Photo: Richard R. Hewett, Los Angeles CA)