

MERTON C. BERNSTEIN: A FIRST-RATE SCHOLAR

WALTER GELLHORN*

Mert Bernstein—Oh, very well, if you insist, Professor Merton C. Bernstein—has had an exceptional career.

It has been exceptional in the overall measurement of Bernstein's repute as a legal scholar; in Bernstein's sharp perception of areas of law that needed far more attention than they had yet received; in Bernstein's blending of direct experience with fresh analysis of still dimly perceived public problems; in Bernstein's early recognition that the reach of law extends beyond the courtrooms upon which "legal studies" have mainly focussed; and in Bernstein's productively using clinical legal education (somewhat before that term had come into existence) to expose undergraduate law students to the realities of legislative processes by placing them as workers, not as passive observers, in congressional offices.

In much of this, Mert was the beneficiary of Joan Brodshaug Bernstein's intellectual support and very well equipped hands. But this is a piece about Mert, not about Joan—though separating them does not come easily.

Bernstein's career in the law and in public affairs began auspiciously; that is to say, he graduated in 1948 from Columbia Law School, which wishes it could claim credit (as, alas, it cannot) for Bernstein's later accomplishments.

After speedy admission to the New York Bar, this bright fellow became for three years a member of the National Labor Relations Board's legal staff. At that stage of the game the NLRB had not yet fallen into the condition of innocuous desuetude that later became its lot. So Bernstein's introduction to administrative processes exposed him to harsh discords, to governmental actions as often marked by further hostilities as by accomplishments.

Then came a succession of posts that gave Mert Bernstein mounting familiarity with legislative realities. He served initially as counsel to the Senate's Subcommittee on Labor, then chaired by Hubert Humphrey. During the next five years he was a close assistant of Senator Wayne Morse, an exceptionally qualified though not very emollient Oregonian who

* Walter Gellhorn, University Professor Emeritus, Columbia University School of Law.

reciprocated the considerable respect of the legal academic community. He also became counsel or special adviser to Senate subcommittees whose work bore mainly on statutory proposals related to retirement plans and other “social legislation” areas.

Bernstein was thus increasingly identified as a person knowledgeable far beyond the boundaries of “law in the books.” His work in the Senate had heightened his awareness of and interest in a wide range of societal problems and conflicts. Going well past the frictions related to the usual vying for legislative favors, these generated conflicting pressures—pressures still manifested in debates concerning the desirable scope of publicly mandated health care measures, the extent to which the range of employee benefits should be expanded or contracted, the adequacy of steps to care for the needy aged, the very young, the unemployed, the homeless. Bernstein’s legislative labors produced familiarity with the worlds of economists and political scientists, a familiarity most law professors wish they possessed, but are too busy to acquire.

During all the years since his service on Senate staffs, Mert Bernstein has been a leading exemplar of “practical scholarship.” He has at one time or another been directly involved in state or federal studies of pension problems; he has counselled the United States Treasury and the Social Security Administration concerning integration of pension benefits programs; he was principal consultant of the National Commission on Social Security Reform, created in the early 1980s to cope with threats to the financial soundness of the Social Security system as it then was; he served as chair of the Social Security Administration’s advisory committee on research; he has put his training to use as a member of local zoning and school boards; and he has been a prolific contributor of well informed writings—books as well as articles in periodicals and the daily newspapers—for the enlightenment of professional colleagues and, significantly, for consumption by the public at large. In short, he has not been an idle dreamer in an ivory tower—or, so far as I have observed, an idle dreamer at all, in or out of towers. He has, instead, been an active investigator, an explorer, a sharer of hard won information and insight.

Enough of this incomplete cataloguing. The basic facts about Mert Bernstein, in the present context, are that he is a first-rate scholar, widely and deservedly respected. When he spent a year at Columbia as a Visiting Professor some years ago, I saw him at first hand as a pedagogue and as a stirrer of students’ intellectual involvement in matters beyond the boundaries of their casebooks. As time has passed, my admiration of the man’s capabilities and of his commitments to society have grown.

Washington University is fortunate to be chief claimant to him.¹ I congratulate the University. As for Merton Bernstein, I applaud him, I wish him well, I appreciate all he has thus far accomplished. And I anticipate no slowing of his pace.

1. Washington University is also able to lay claim to several members of the Gellhorn family. Professor Gellhorn's father served on the faculty of Washington University's School of Medicine and his mother received an Honorary Doctor of Laws from Washington University in 1964. In addition, in 1968, Washington University paid tribute to Professor Gellhorn's mother, Edna Fischel Gellhorn, by naming a professorship in Public Affairs in her honor. [Footnote by the Editors.]

