

# MERTON C. BERNSTEIN: MORE THAN A TEACHER

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Every national law school attracts students by emphasizing its unique and prized attributes. For some institutions the attraction is a modern facility. Others point to their acclaimed law review publication. Still others point to renowned faculty. While Washington University's School of Law lacks none of these attributes, I believe its pre-eminent characteristic is its innovative offering of courses and programs which blend the learning of legal theory and principle with the reality of its application.

When I was applying to law schools I was attracted to Washington University because I was interested in its joint degree program on urban planning. Soon I discovered that the faculty included Professor Merton Bernstein, who taught a seminar on Congress and the legislative process. It was a course blending public policy development, law, and legislative process with a substantial dose of intense writing. It was a discovery which I, and many hundreds of other students before and after me, have cherished.

Merton Bernstein's contribution to the Washington University School of Law will not stop when he retires because it will live on for decades in the congressional offices, administrative agencies, and Washington D.C. law firms where his former students work. We remember him every day, not for his teachings of what our laws say and how they work, but how our laws are made and how they are changed.

More than a decade after graduating from law school I still have vivid memories of subject matters I have never used in my professional career. Property taught me that the law is dynamic—that some rules have long since been buried in the dump heap of the arcane and outdated. It also taught me that too many such rules still survive. Legal Process taught me the concept of stare decisis. Roscoe Pound's *Theory of Judicial Decision*<sup>1</sup> was probably one of the most difficult reading assignments I can recall—it

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1. Pound's second element of law describes how the law changes to adapt "to the exigencies of administration of justice." Roscoe Pound, *The Theory of Judicial Decision*, 36 HARV. L. REV. 641, 645 (1923).

reminded me of reading Thoreau and Emerson in high school. In addition to Pound we were drilled with Justice Brandeis' dissent in *Burnet v. Coronado Oil & Gas Co.*<sup>2</sup> and Justice Reed's decision in *Smith v. Allwright*.<sup>3</sup> But it was Merton Bernstein who taught me that Pound, Brandeis, and Reed represented only one way to change the law—a manner which was slow and cumbersome. Professor Bernstein taught me that the law can be changed much faster, with more precision, by the process of rewriting it.

To succeed in a Merton Bernstein class required strict adherence to the "Bernstein Rules of Writing." He would pass out a list of such rules, including the most misused words—which he would not tolerate. I remember a few of these rules, and today observe them, though frequently in the breach. One was never to begin a paragraph, making the last point in a long list, with "finally"—nothing was rarely so conclusive. Nor could one use the verb "to be" or any of its varied tenses—after all what did such a word convey? Many of us would struggle with our writing trying to find that alternative verb which expressed the active voice, when there was not much to express. Of course we also used to muse that Bernstein was no Shakespeare—a writer of true legendary fame. "To exist, or not to exist" would simply not have worked.<sup>4</sup> But in the end, there was no doubt that writing a paper for Professor Bernstein improved your writing skills, a benefit for which many former students owe him tremendous gratitude.

But Professor Bernstein has always been more than a teacher. Merton Bernstein has contributed much to the debate in many public policy areas such as labor law and retirement security. He represents the best in blending academia with the world around us. He authored scholarly works while writing arbitration decisions. He taught labor law in the classroom while he contributed to the work of the National Commission on Social Security. He watched his wife and his son complete their legal educations, while he helped many others earn their law degrees.

After he retires from the faculty of the School of Law, I have no doubt he will continue to write and to practice his own blend of law and policy. Washington University has been fortunate to have Merton Bernstein as a teacher, a scholar, and an ambassador. The School of Law will continue

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2. 285 U.S. 393, 405-13 (1932).

3. 321 U.S. 649 (1944).

4. Perhaps as an attorney Professor Bernstein prefers to distance himself from William Shakespeare who had very strong feelings about the legal profession. See W. SHAKESPEARE, HENRY VI, pt. II, art. 4, sc. 2, l. 68.

to reap the rewards of his contribution well after he retires from the classroom.

