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Abstract

A tribute to Bernie Becker, lawyer and proponent for the Legal Aid society.

Keywords

William Mitchell, Bernie Becker, Legal Aid Society

Disciplines

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A MEMORIAL TO BERNIE BECKER†

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On a grey, cold November day in 1972, I left the skyscraper offices of a large Minneapolis law firm. The prestigious firm had flown me from Boston for an employment interview. After a day's worth of precisely-timed interviews with associates and partners, I headed over to the outskirts of downtown for an interview with the Minneapolis Legal Aid Society, and my first contact with Bernie Becker.

The McGill Building did not compare well to the First National Bank Building, which I had just left. A dark, bare cement staircase led me past the mechanical pounding and sharp chemical smells of the print shops which shared the building with Legal Aid. Inside the offices of the Legal Aid Society I met with Bernie Becker and two other lawyers of the Legal Aid Society (Luther Granquist, who is still there, and Paul Marino, since 1974 a professor at William Mitchell). My hour and a half with them that evening showed me that the Legal Aid Society, though dressed externally rather shabbily, embodied precisely the values of lawyering I sought. Bernie Becker was a key to the development of those values at Legal Aid.

One of the best ways I can talk about Bernie is by talking about the values which he lived, which he helped the Legal Aid Society embody, and which I began to learn about that November evening. Bernie, whose large size, moustache, cigar and New York accent struck me as a welcoming, though somewhat out-of-place sight in this Minnesota environment, leaned back in his chair and puffed his cigar. Through their questions and our discussion, a picture of these lawyers and their organization emerged. They were looking for people committed to the work of serving poor people. They were looking to produce systemic change. They loved the work they were doing. They loved the law. But they were fiercely devoted to the individuals

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they represented as clients. They were good at what they did. They had high standards. They were proud to be doing this work. But, there was no arrogance, no hubris. This was not a place of big egos, but of committed, strong people.

Bernie inquired about my experience the previous summer clerking for the county attorney in Piscataquis County, Maine (roughly equivalent to working in Ely, Minnesota). "Tell us," he said, "about some of the cases you worked on." "I had been working on a criminal trespass case," I replied. "What were the issues?" The defendant had driven his all-terrain vehicle down a dirt road over private property to a pond. "But what," Bernie persisted, "were the legal theories and defenses raised?" "Oh," I replied, "a very interesting defense based on an old law guaranteeing access to public ponds (I doubt you would know which one)." "Aha!" exclaimed Bernie. "The Colonial Ordinance of 1642. A law which was passed by the Massachusetts Bay Colony guaranteeing public access to ponds. Maine was a part of Massachusetts at the time. The ordinance passed into the law of Maine when Maine became a state." I was impressed. He was exactly right. Bernie, it turned out, knew of this ordinance through his work on Indian rights litigation in Minnesota. Bernie, it turned out, knew a lot about many, many laws.

Paul Marino showed up at the interview late. He had just come from a negotiating session with the attorneys for some landlords. Legal Aid was engaged in litigation representing the Tenants' Union. Paul was wired. Pacing back and forth, he talked about the negotiations, his theories, the landlords' strategies. Bernie and Luther asked questions. They strategized, debated, analyzed. I had disappeared. I got a glimpse of them doing their work. To me, it was electrifying. It was clear they loved their work. They approached it with intellectual vigor and curiosity and energy.

Bernie's understanding of a lawyer's obligation to her client and its relationship to the mission of legal services was key to shaping the philosophy of the modern Legal Aid Society. Bernie was a leader in a profound transformation of the legal services program which took place in the mid-1960s. He saw legal aid not merely as a means for solving individual legal problems, but also as a tool for equalizing power and wealth.

But this newly defined mission brought an uneasy tension to

the legal aid lawyers' work. On the one hand, the prevailing ideology of lawyering held that the lawyer's primary duty was to her client. In significant ways, the new vision was consistent with this prevailing ideology. Bernie's brand of legal services work required the highest standards of lawyering. These high standards arose not simply from general notions of professionalism. For him, professionalism was supplemental to his conviction that legal representation was an entitlement of the poor. Bernie's high standards grew, as well, from the knowledge that the legal system was not, in general, a hospitable place for his clients. Thus, Bernie understood that a key to helping his clients as individuals was to provide them with legal representation which was aggressive, creative, careful, and of the highest quality. These values became part of the culture of the Minneapolis Legal Aid Society.

In some ways, however, the new vision was at odds with the traditional ideology. If the mission of legal services was to advance the interests of a class or group, as a whole, there was a danger that the individual client might become merely an instrument in the hands of the lawyer to accomplish that end. The fact that the lawyers themselves had a "mission" or a vision of their work challenged that part of the prevailing ideology which held that lawyers are "hired guns"—merely instruments for the accomplishment of the ends articulated by their individual clients.

Some lawyers in legal services, faced with this dissonance, saw a dichotomous choice: seeing no way to accommodate both loyalty to individual client and loyalty to mission, they sacrificed the individual to the greater good.

Bernie would have none of that. Luther Granquist tells a story about an employment interview which he and Bernie conducted at Legal Aid, probably sometime in the early 1970s. The candidate was a lawyer who had been practicing for a few years at a legal services office in another state. As usual, Bernie asked the candidate to talk about some legal work he had done. The candidate told about a challenge his office had mounted against the administrative hearing procedures used by his state in the revocation of drivers' licenses. Although the administrative procedure was allegedly defective, the state courts would provide a *de novo* hearing if the request for the hearing was made within thirty days of an adverse administrative decision. State law provided that a person could retain his

license pending the court hearing. The state supreme court had held that the intervening de novo court hearing cured any defect inherent in the administrative hearing procedure.

This placed the candidate and his colleagues in a dilemma: if they demanded court hearings for each individual client who sought their help, they would lose their opportunity to challenge the allegedly defective administrative procedure. So, the candidate proudly related, they allowed one of their client's right to a de novo hearing to lapse after an adverse administrative determination. The client's license, accordingly, was revoked. The lawyers were then able to mount a challenge to the administrative practice.

Bernie's response was immediate and certain: "You did WHAT?" demanded Bernie. The candidate explained it patiently again, as if Bernie had not appreciated the subtlety of their strategy: they had failed to take an available remedy for the client, in order to seek relief for the class. "That," shot back Bernie, "is malpractice." The interview was over.

Bernie left Legal Aid in 1973 to teach at William Mitchell. He continued his relationship with Legal Aid, returning frequently to consult. He was a lawyer's lawyer, consulting with us on difficult points of federal procedure and administrative law.

In 1984, I followed Bernie to William Mitchell and joined the faculty. He continued in a mentorship role for me, becoming for me a teacher's teacher. During my first years of teaching civil procedure, I was a frequent visitor to his office (still piled high with papers). Bernie always had time to talk about civil procedure. And, although the questions I had were generally the hard points, the gray areas, the points that I, as a new teacher, was afraid someone in my class would raise, Bernie always seemed to have thought about the questions I was raising.

In about 1987 I was working on the development of a new course, *The Work of the Lawyer*, which was designed to help students explore the values underlying the lawyer's work. I was particularly interested in the complexity of the lawyer-client relationship, with its inherent tension between the lawyer's loyalty to the client and the lawyer's loyalty to his or her own values. I shared the course plan and proposed syllabus with Bernie, asking for his feedback. Bernie's reaction to the course

was vintage Becker. The course looked “interesting,” he said, but was it really necessary to go through three weeks of class and several hundred pages of reading to discover the “essence” of the lawyer-client relationship? Wouldn’t it be more effective just to tell the students how it is: The lawyer and the client talk. The client tells the lawyer what he wants. The lawyer tells the client what she thinks they should do. They discuss; they dispute; they argue; they yell; they explore their values, their wants, their fears and goals. In the end, they often reach a mutually agreeable course of action. If they can’t, then they part company. “That’s how it works.”

For Bernie, the lawyer-client relationship was, like all relationships, an interaction between real, concrete people. It was to be a relationship in which people faced each other as equals, in which the wants and desires and values of both mattered. For Bernie, the lawyer was not a “hired gun.” Nor did the lawyer, as a high-status professional, control the relationship with the client. Both lawyer and client appeared in the relationship as whole people rather than as cardboard cutouts playing predetermined roles.

Bernie lived this philosophy, not only in his lawyering, but in his teaching and in his friendships. Without pretense, he was there, as a person. This was what made Bernie a “*mensch*”—Yiddish for “a real person.” Put this together with Bernie’s intellectual breadth and depth, his curiosity and creativity about the law, his deep caring and energetic advocacy for the disenfranchised and powerless, his loving relationship with his wife Carole and their three sons: he made a concrete difference in this world. He made it better.

