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A TRIBUTE TO BERNIE BECKER

WILLIAM E. HELLERSTEIN†

Bernie Becker was my dearest friend. We first met in our junior year at William Howard Taft High School in the Bronx. The meeting had a great "impact" on us both. It occurred during football practice in an exercise called "Bull in the Ring." Bernie (soon to become known as "Buffalo" due to his size) and I were battling each other for a starting tackle position on the Taft team. The exercise required that, ringed by our teammates, Bernie and I alternate carrying the ball and tackling one another. Despite Bernie's size advantage, I pounded him mercilessly and thus emerged higher on the team's depth chart. In our senior season, Bernie could do no better than serve as my backup. As our coach put it, "Bernie, you're just not a killer." (Bernie, I always believed, was happier playing his trombone with the school band.)

And this explains, at least partially, why Bernie Becker was the most civilized human being I have known, and why I grew to love him so much. That Bernie was no "killer" may not have served him well on the playing field, but the lack of such a trait did not disserve him in the slightest when he engaged in a far more significant struggle—the legal representation of the disadvantaged. On this field, few were Bernie's equal.

After Bernie and I graduated from Taft High School in 1955, our paths diverged. He went to the City College of New York, while I attended Brooklyn College. He then enrolled at the University of Minnesota, where he attained degrees in political science and law. During these years, I was at Harvard and then with the government in Washington, D.C., and we saw little of each other. However, in the mid-sixties, Bernie returned to New York where I was then an appellate attorney in the Legal Aid Society's Criminal Appeals Bureau. Now married to his beloved Carole, Bernie sought my assistance in getting a job. Immediately, I urged my superiors at the Society to

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hire him. Wisely, they did so, and Bernie became an attorney in our federal appellate defender unit.

During Bernie’s tenure as my colleague in the Appeals Bureau, he distinguished himself before the Second Circuit, the court before which he argued most of his cases. His work was characterized by an exceptional dedication to his clients’ causes and to the craft of appellate advocacy. Evidence of the high quality of Bernie’s advocacy was the respect with which he was greeted by the judges of that demanding court. For he was treated with a degree of deference that the judges stingily reserved for the most senior and eminent members of the court’s bar.

It was also during this period that Bernie and I renewed in depth our friendship. Needless to say, much of that renewal transpired in Chinatown’s great restaurants where Bernie was welcomed as royalty, and we, his colleagues, as his worthy retinue. Indeed, Bernie’s arrival for lunch or dinner (and sometimes breakfast) frequently triggered an immediate invitation from the restaurant’s proprietor for Bernie to enter the kitchen and offer his evaluation of the day’s fare. And when Bernie would rejoin us at our table, menus were superfluous; we deferred to him religiously.

That was also a time when the Warren Court was still shaping its constitutional jurisprudence, and lawyers such as ourselves felt constantly that we were at the cutting edge of the rights revolution which the Court had set in motion. This meant that every criminal appeal to which we were assigned had “possibilities,” our euphemism for a hoped-for trip to the Supreme Court. It was a time, when, as criminal appellate defenders, we were challenged to reach the heights of our creative abilities. Accordingly, Bernie and I spent many hours discussing the numerous “hot” issues in our cases and testing the soundness of our theories. Bernie was enormously creative, and he had a truly sharp analytical faculty. But, above all, he possessed a remarkable nose for the heart, or, as we say in the practice, the “jugular” of a case. Thus, I grew dependant on Bernie’s evaluation of my arguments; if he were persuaded, I felt that I had a winner. Of course, the judges did not always agree. But Bernie and I knew they were wrong.

During this time, I learned two additional things about Bernie. The first was his broad-based commitment to social
justice and his abiding faith in the Constitution. We had many conversations about issues beyond the criminal law, and we explored, with few differences, the capacity for social betterment contained in the Constitution itself. The second was Bernie’s yearning to return to Minnesota. Although Bernie and I shared the same South Bronx roots, with all their trappings, Bernie had developed a great love of things pastoral. My efforts to convince him that the search for true meaning could reach fruition only in the Big Apple came to no avail. Bernie and Carole returned to Minnesota.

Distance, however, did not dilute our friendship; it enhanced it. Our get-togethers, though much less frequent, were even richer than before. We covered more ground in less time. And, as is the case with any true friendship, it remained just one continuous conversation, irrespective of temporal intervals. It was a dialogue that was to last more than twenty years.

During these years, Bernie and I saw one another occasionally at National Legal Aid and Defender Association Conferences, and more frequently, on his visits to New York. Bernie was not one to speak of his own achievements, and it frequently challenged my deposition-taking skills to get him to talk about his accomplishments. They were generally hidden in his discussion of issues and descriptions of the people he was representing. Thus, for example, I would begin our conversations with broad inquiries about developments in juvenile rights law or in Native American rights law and succeed in learning derivatively about Bernie’s successes on behalf of children, or for the Minnesota Chippewa on whose behalf he labored so tirelessly. Indeed, it was in connection with one of his greatest victories on behalf of the Minnesota Chippewa that I have one of my fondest memories of Bernie.

In February or March of 1976, Bernie telephoned to seek my counsel. He explained that the Supreme Court had granted his petition for certiorari in *Bryan v. Itasca County, Minnesota*\(^1\) and, since I had argued several cases before the Court, he was calling to ask my advice. Aware of Bernie’s thoroughness in educating himself about the requirements of any court in which he appeared, I puzzled momentarily about what his inquiry would concern and fretted briefly about my inability to be of assistance. My fear abated when I heard Bernie’s ques-

\(^1\) 426 U.S. 373 (1976).
"Will," said he, "does the Supreme Court have a rule that requires you to button your jacket when arguing your case?" Greatly relieved, I replied, "To my knowledge there is no such rule." Joyfully, Bernie replied, "Great! I won't have to buy a new suit." Buttoned or unbuttoned, Bernie shredded the Minnesota Attorney General's case and won a unanimous reversal, in which the Court held that Public Law 280 did not grant states the authority to impose taxes on reservation Indians.

When I left the Legal Aid Society in 1985 to begin a new career as a full-time law professor, Bernie became for me an immediate role model. For many years, Bernie had described to me his love of the classroom and for his students. Although I never saw him teach, I had little difficulty imagining his manner and technique. I pictured him in the classroom as he had always been in other settings—a larger-than-life bear of a man in whose presence everyone came to life. When, at his memorial service, I listened to his students describe his manner both in and out of the classroom, I knew that the mental picture I had drawn of Bernie was entirely accurate. No teacher who did not love the law and love and respect his students could have earned from them such an outpouring of affection and gratitude.

I last saw Bernie a few weeks prior to his death. He was in New York and wanted to have dinner with my wife, Michael, and me. When he asked if we could dine in our apartment, rather than go out to a restaurant, I knew something was not right. When he arrived I could see that his energy was flagging. However, his spirit was as high as ever. He spoke with great enthusiasm about his work as a United States Magistrate. As always, his emphasis was on the complexities of the matters that were before him, not on what he was doing with them. He spoke lovingly of his court, his judicial colleagues and his law clerks. After dinner the "Bernie exception" to the house rules became operative, and Bernie lit his cigar. We talked football, opera, trains, friends, family, wildlife—all those things that were Bernie. But when he left that evening I felt, for the first time, that we would not do this again.

From that very first afternoon on the football practice field to our last dinner together, Bernie was a central figure in my life, as he was in the lives of so many others. For me, he was the embodiment of the best in human nature. I outplayed him
on the football field because he couldn’t get angry enough to use his superior size and strength against me. Little did I know it was this discrete manifestation of his civility that would become his greatest strength. I never knew him to have an unkind word for anyone. Even when fighting for all that he believed in, I never heard him denigrate an adversary or a judge or otherwise react in anger in an ad hominem fashion. He lived his life, as he played his trombone, on the high notes. And I am much the better for having known him.