

## Tributes to Professor Bernard Auerbach

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### Recommended Citation

William L. Reynolds, John Brumbaugh, & Melvin J. Sykes, *Tributes to Professor Bernard Auerbach*, 52 Md. L. Rev. 257 (1993)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol52/iss2/3>

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# MARYLAND LAW REVIEW

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VOLUME 52

1993

NUMBER 2

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## TRIBUTES TO PROFESSOR BERNARD AUERBACH

WILLIAM L. REYNOLDS\*

I first heard of Bernie Auerbach in the fall of 1970 when I ran across his article on Maryland's new long-arm statute.<sup>1</sup> Maryland had just adopted a variation of the Uniform Interstate and International Procedure Act,<sup>2</sup> and Bernie used the occasion not only to tell us what the statute meant but also to give us a good review of the state of the art in long-arm jurisprudence. The article was a godsend to a poor law clerk struggling with the arcana of personal jurisdictional issues. My own law school experience certainly had not cleared up the mysteries of long-arm for me, and the memoranda

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1. Bernard Auerbach, *The "Long Arm" Comes to Maryland*, 26 MD. L. REV. 13 (1966).

2. See Act of Apr. 7, 1964, 1964 Md. Laws ch. 95 (codified as amended at MD. CODE ANN., CTS. & JUD. PROC. §§ 6-101 to 6-104 (1987)).

that had been submitted by counsel were of little help. Then I read Bernie's article. I felt as Keats had when he first looked into Chapman's *Homer*. Suddenly, the murky waters of long-arm swirled and became clear—I finally understood *International Shoe*<sup>3</sup> and its children.<sup>4</sup> The careful explication of case-law doctrine and statutory command cleared up many mysteries and provided a firm basis for the development of the Maryland law of long-arm.

In a later article, Bernie applied the same lucid analysis to the problem of general jurisdiction.<sup>5</sup> Again, Bernie carefully examined statutory and case law to establish the theoretical and practical bases for asserting general jurisdiction over defendants.<sup>6</sup> Again, the reader leaves the article understanding the area as it stands, as well as seeing the outline of possible future problems—both doctrinal and practical.

Both articles are models of exposition. They are clear and easily understood, and yet they are detailed and thorough—they are accessible, in other words, to both the tyro and the pro. The article on long-arm is widely cited and relied on by state and federal courts, and may well be the most-cited article on Maryland law.<sup>7</sup> Perhaps the only fault I can find with them is their endorsement of the odd notion that the complex Maryland jurisdictional statutes generally have a reach as broad as the Constitution.<sup>8</sup> But that is a quibble; the articles teach law and explore doctrine splendidly.

Six months later, I met Bernie for the first time, while I was interviewing for a position at Maryland. It is very easy for a nervous

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3. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

4. I no longer understand this line of cases, but that is the fault of the Supreme Court, not Bernie. See *Burnham v. Superior Court*, 495 U.S. 604 (1990); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). Why the Supreme Court insists on obscuring that which had become comprehensible remains a mystery to me.

5. Bernard Auerbach, *General Jurisdiction of Courts—A Critique of the Maryland Law*, 40 MD. L. REV. 485 (1981).

6. I wish both lawyers and judges would finally appreciate the sharp distinction between general and specific jurisdiction. The Supreme Court has certainly made the distinction clear. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

7. It has been cited in 25 published opinions. See, e.g., *Margoles v. Johns*, 483 F.2d 1212, 1218 (D.C. Cir. 1973); *Beaty v. M.S. Steel Co.*, 401 F.2d 157, 160-61 (4th Cir. 1968); *Snyder v. Hampton Indus.*, 521 F. Supp. 130 (D. Md. 1981) (relying heavily on Professor Auerbach's insights); *Johnson v. G.D. Searle & Co.*, 314 Md. 521, 528, 552 A.2d 29, 32 (1989); *Vitro Elecs. v. Milgray Elecs., Inc.*, 255 Md. 498, 499, 504, 505, 528 A.2d 749, 750, 753 (1969).

8. See WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, *UNDERSTANDING CONFLICT OF LAWS* 87 (2d ed. 1993) (arguing that the Uniform Act should not be read to be as broad as the Constitution permits).

and extremely young candidate to feel out of place. Bernie quickly put me at ease. His smile and gentle manner welcomed me then and later. Over the two decades that Bernie and I were colleagues, I found his manner never changed. No matter how stressful the situation, no matter how silly the faculty debates, Bernie always supplied a friendly smile and common sense to defuse the situation. His warmth helped to make this a very nice place to work.

Perhaps a student should have the last word. One of Bernie's students in Bernie's final year told me how much she had enjoyed taking Civil Procedure from him. "Professor Auerbach didn't spoon-feed you, but he always made sure you understood the law," she said, "and he always made you feel good." That sums him up very nicely. Bernie made us all feel better. We miss him.

#### JOHN BRUMBAUGH\*

Bernard Auerbach graduated from Yeshiva University in 1945 and took his legal education in New York University and Yale, where he was later a Stirling Fellow. After private practice in New York, he taught at New York University and California Western and came to the University of Maryland as an assistant professor in 1962. He taught here for thirty years, retiring as Professor of Law last year. Bernie's presence here almost exactly spanned the tenures of two deans; he arrived the year that Bill Cunningham became dean, and he left a year after the end of Mike Kelly's term. Throughout this period, he taught Civil Procedure, and he served for many years as Assistant Reporter and consultant to the Court of Appeals Standing Committee on Rules of Practice and Procedure (the Rules Committee). He often taught Federal Jurisdiction, International Law, Conflict of Laws, and Comparative Jewish Law.

In his first year of teaching here he taught Pleading, Torts, and Corporations. First-year students in the Day Division met him for both Torts and Pleading. (Practice was taught by Fred Invernizzi, by then teaching part-time.) Their other teachers were Lew Asper for Contracts, Margaret Coonan, our Librarian, for Legal Bibliography, Larry Jones for Personal Property, Russell Reno for Real Property I, and myself for Criminal Law and Agency. The only other full-time teachers then on the faculty were Bridge Arnold (who had to leave teaching for reasons of health during the year), John Ester, Whitey

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Farinholt (on leave that year), and Ken Reiblich. Dean Cunningham taught one course. Of the Dean, the Librarian, and the eight other full-time teachers mentioned, only two of us were here before Bernie came and remained after he left.

He is thus one of the few faculty members to see the great changes in the law school over this thirty-year period. When he came, we were a school with no more than a local reputation of respect: beginning evening students usually outnumbered beginning day students; tuition for resident day students was \$100 a semester; our library had 45,000 volumes; and we offered fifteen elective courses and four seminars. We had one simulation offering (required) in Practice Court, a Legal Aid Clinic, and no in-house clinical offering. Our faculty, which was teaching an average of about nine credit-hours—and covering both day and evening classes—every semester, contributed little to administering the school and did not have much time for reflection, research, contributions to law reform, or other professional activities outside the school.

When Bernie retired, he left a school at the threshold of achieving an outstanding national reputation: most of our students are, at least in theory, full time; our full-time faculty has increased by a factor of five, our library volumes by a factor of six, our elective courses and seminars (not all, however, offered every year, and some which used to be required) by a factor of seven, and our tuition by a factor of thirty.<sup>1</sup> Contrary to all expectations of administrative proliferation, we had no more than five deans in 1992, where once there were two. Teaching loads have been cut by almost a third; time spent in faculty writing, in public service, and in administrative duties has increased considerably (and there still seems to be little time for reflection and research). Seminars and clinics are flourishing like the green bay tree. Xerography has replaced mimeography. Manual typewriters have given way to electric typewriters, which in

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1. This big increase is partly due to the proportional decline of the State contribution to legal education in recent years. Also, as noted in the previous paragraph, tuition in 1962-63 was quite low. Our recently retired dean, Roger Howell, had kept it at \$100 per semester throughout his tenure. This was only partly because he wanted legal education to be affordable for almost any prospective student. At one time, he had also been concerned about the possibility that President Byrd of the University of Maryland—who had devoted his attention to College Park and left the Baltimore schools pretty much to their own devices—might try to play a larger role in the operation of the School of Law. Dean Howell thought that if he pleased the Governor and legislature by asking for minimal budget increases and keeping tuition low, they would keep Byrd out of his hair. It seemed to work, but it also made for an inadequate library and a general lack for funds for new projects.

turn have given way to computers, now in their second generation. We have a new—actually now middle-aged—complex of buildings. Women are no longer rarities as students or teachers; our faculty and student body includes many more members of racial minorities; and we sponsor cultural events, lectures, and a host of student organizations.

These changes have been gradual, but when we “fast-forward” over thirty years, we find a school that is very different from the school of 1962. And yet, it is recognizably the same in the most important ways. Most of the faculty remain dedicated to trying to teach effectively. Our students continue to bring us talent, freshness, and enthusiasm. We remain a friendly and supportive place to be, for administration, students, and faculty. Our strong collegial spirit has hardly wavered over the years, despite strongly held and differing views on many educational matters.

In his quiet way, Bernie Auerbach contributed as much as anyone to the good things we have been able to accomplish. He worked conscientiously at his teaching. He knew how to get to the core of a problem, and his was a moderating voice of common sense at faculty meetings. He was unfailingly courteous and kind in his dealings with others. He was a good friend and a helpful colleague. We miss him, and we all wish him well in his continuing interests and research.

MELVIN J. SYKES\*

Bernie Auerbach's retirement is good news and bad news. It is good news for him. He is fulfilling a long-time ambition to live in Israel, the cradle and historic arena of the tradition that has helped to nurture and shape him. He is now free in the fullest sense—free *from* the relentless responsibility of a vocation (even a vocation as ultimately rewarding as teaching) and free *to* devote himself almost exclusively to pursuits prompted only by his own inclinations. His retirement is bad news, however, for me and his other friends, because he has moved far away and we know only too well what we are going to be missing.

I have known Bernie for more than thirty years as one of the closest and most congenial friends I have ever had. We have been neighbors since he first came to teach law at the University of Mary-

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land. He taught my wife and two of our sons at the law school. Our families have been members of the same religious congregation, and welcome guests in each other's homes.

My real opportunities to appreciate Bernie, however, resulted more from professional and scholarly collaboration than from social and personal contacts. We worked closely together for some fifteen years on the Court of Appeals Standing Committee on Rules of Practice and Procedure (the Rules Committee), for which he served as Assistant Reporter; and for the past several years we have worked together for days and even weeks at a time on a four-volume translation of a monumental work in Hebrew on Jewish law by Menachem Elon, formerly Professor of Jewish Law at the Hebrew University of Jerusalem and presently Deputy President of the Supreme Court of Israel.<sup>1</sup> The translation is scheduled for publication this year by the Jewish Publication Society.

Having one's own literary output rigorously edited by an uncompromising critic is well calculated to strain the best relationship. In the case of Bernie as editor and critic, however, the process actually strengthened our friendship. There are few scholars who can match his rare combination of exacting intellectual standards for himself and his colleagues on the one hand, and kindness, congeniality, and personableness, on the other.

Bernie's most salient characteristic as a scholar, teacher, counselor and colleague has been his clear-headedness. His expositions, in his writings and in the classroom, "lay out" his subject. Even if the subject is inherently confusing and the best answers are still lacking in clarity, his expositions are clear roadmaps of the inescapable confusion.

The other quality of Bernie that stands out is his depth—depth of learning and also of character. He has taught not only Civil Procedure—his principal assignment—but also Federal Jurisdiction, Conflict of Laws, International Law, and Jewish Law. He is exceptionally well-read—not just in the law, but generally. He is an ordained rabbi, an accomplished Bible student, a seasoned Talmudist proficient in Hebrew and Aramaic, and well-versed in both religious and legal philosophy.

Bernie is not, however, merely a "pointy-headed intellectual." His scholarly qualities and attainments are only part of a well-balanced persona. He is rich in life experience beyond the academy.

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1. MENACHEM ELON, *JEWISH LAW: HISTORY, PRINCIPLES, LITERATURE* (Bernard Auerbach & Melvin J. Sykes trans., forthcoming 1993).

He has not only taught but also practiced law; and he has performed pastoral duties, delivered sermons, and fulfilled administrative responsibilities of leadership in religious and civic as well as in professional activities.

Also, I have it on the authority not only of his wife, but also one of her female contemporaries (whom I shall not name) that Bernie was considered quite an eligible bachelor in his single days, and I can say on personal knowledge that he has never lost the playfulness, zest for fun and sense of humor that make him such pleasant company. One of Bernie's most notable accomplishments—which is unfortunately becoming more and more notable as time goes by—he achieved jointly with his wife Vivien: a long and rewarding marriage to the sweetheart of his youth, and fine, successful and independent children who walk in the ways of their parents. Bernie is one of Nature's gentlemen, *suaviter in modo, fortiter in re*.<sup>2</sup> It can be paraphrased of him what Sir Winston Churchill is reported to have said of Churchill's wife: "In all our time together I have never heard [Bernie] utter a single ignoble word." There have been strong, salty and earthy words, but nothing ever ignoble.

I think future students at the Law School will find Procedure more daunting now that Bernie has retired, although I hope for their sake that his successor or successors prove me wrong. Of one thing, however, I am certain: Although the gap left by his leaving will be large for his friends, for the Law School, for the profession, and for the community, Bernie will find pleasant and useful things to do, and will continue to give more than he receives. I hope he will continue to keep in touch and send us news of his future accomplishments and reprints of his future publications.

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2. Gentle in manner, strong in performance.