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In Memoriam: William B. Lockhart and Bernard E. Witkin

by
JESSE H. CHOPER*

Within a five-day period in late December, the Advisory Committee of the Hastings Law Journal lost two distinguished members—William B. Lockhart at age 89 and Bernard E. Witkin at age 91—two towering figures in the world of law and two dear friends of mine. There were impressive similarities between these two luminaries, not the least of which was their longevity. In many other ways, however, they were strikingly different.

Both Bernie and Bill established reputations as renowned legal scholars, but their focus was quiet dissimilar. Bernie's monumental 33-volume *Summary of California Law* was quintessentially practical—summarizing, condensing and codifying virtually all of the state's rules of law for the profession's lawyers and judges. "His genius," as described by Justice Norman Epstein, "was his ability to synthesize, analyze and state the law in clear, concise terms."¹ (Still, it should not be thought that Bernie simply reported the law. In fact, he periodically made it as well. A prominent California litigator once told me that no matter how clear the judicial opinions themselves may have been on a particular point, Witkin's pronouncement as to what the courts had held—and what the rule was—represented the higher authority.)

Bernie's incomparably valuable work was a reaction to his disaffection with law school. He strongly disagreed with the impracticality of what was taught and the "hide-the-ball" method of teaching. He boasted that he cut classes regularly (and his grades showed it). Scheduled to graduate in 1927 in one of Boalt Hall's most celebrated

* Earl Warren Professor of Public Law, University of California at Berkeley (Boalt Hall); Dean 1982–1992; coeditor of a series of casebooks on Constitutional Law with William B. Lockhart (and others) since 1964.

1. *Goodbye to a Giant*, THE RECORDER (S.F.), Dec. 27, 1995, at 1.

classes—including such giants of the bench and bar as Roger Traynor, Raymond Peters, Warren Olney and Martin Gang—Bernie skipped one class too many from Professor Barbara Armstrong, who refused to permit him to take the final exam in her course. As a consequence, although he passed the bar in 1927, his LL.B. was not granted until May 1928. He distanced himself from his legal education by creating the core of the law library of every California lawyer and judge—a treatise estimated to have been cited more than 100,000 times by state appellate courts. This earned him (both literally and figuratively) the title, bestowed by Seth Hufstедler, of “the most successful legal writer of all time.”² Fortunately for his alma mater, Bernie’s alienation from traditional law school pedagogy did not curb his generous support of Boalt Hall. When he good-naturedly used this defense to resist an early fundraising request when I was dean, I reminded him that he wrote his *Summary* precisely because of his belief that it filled the great void left by his law school training and that, therefore, he owed all his success and fortune to Boalt Hall. Bernie rubbed his chin, smiled, replied that “The Lord works in strange ways,” and made a handsome gift.

In contrast, Bill Lockhart’s seminal scholarly contributions—on the constitutionality of state taxation of interstate commerce and the regulation of obscenity—were normative rather than descriptive, firmly anchored in the policies underlying what the law should be. Bill’s series of articles on both issues strongly influenced the positions subsequently taken by the Justices of the United States Supreme Court and were often cited in their opinions, first in 1940,³ and most recently in 1995.⁴ Unlike Bernie’s unremarkable journey through law school, Bill followed a high achievement academic path. He was elected Book Review Editor of the Harvard Law Review—on whose editorial board he served with such prominent future professors and practitioners as Kenneth Davis, David Riesman and Charles Horsky—and earned a J.S.D. (as well as an LL.B.) from Harvard Law School.

Beyond their awesome reputations as scholars, both Bernie and Bill were dedicated educators. Once again, however, there was a clear difference with respect to their audiences and to the nature and breadth of their commitments, again reflecting their respective appraisals of legal education. Bernie lectured indefatigably to lawyers

2. *Humor is at Fore in Memorial to Scholar*, S.F. DAILY JOURNAL, Jan. 17, 1996, at 2.

3. *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 57 n.11 (1940).

4. *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 115 S. Ct. 1331 (1995).

and judges, receiving the highest awards for this endeavor granted by the American Bar Association and American Law Institute. In contrast, Bill taught several generations of law students—eight years at Stanford, twenty-eight years at Minnesota, and nineteen years at Hastings. Moreover, he coauthored eight editions of a Constitutional Law casebook—the first edition in 1964 and the eighth edition (for which Bill completed the manuscript of his chapters within weeks of his death) in 1996—that the Minneapolis Star-Tribune reported “at one time was used by more than half of the law schools in the United States.”⁵ Whereas Bernie’s standard response when he was mistakenly addressed as “Professor” was, “I’m not a professor; I make an honest living,” Bill was proud to be a professor. (In several conversations with me, Bill underlined the purity of his commitment to academia by making clear that he had rejected all offers for consulting with law firms.) Moreover, Bill’s dedication to law school education went far beyond the classroom, including his serving for sixteen years as Dean of the University of Minnesota Law School, paralleling the long and distinguished decanal tenures at the time of Erwin Griswold at Harvard, William Prosser at Berkeley, and Jefferson Fordham at Pennsylvania.

Although Bernie’s advice on how to write judicial opinions spanned the entire country through his frequent participation in the ABA Appellate Judges Seminar Series, he was, as Justice Epstein remarked at his memorial service, “the special treasure of California,” and had been designated by the California Judges Association as “Guru to the California Judiciary.” Bill Lockhart’s sphere, on the other hand, was more identifiably national in scope. His most widely-publicized appointment was to head President Johnson’s controversial National Commission on Obscenity and Pornography. (Is it ironic, as well as coincidental, that Bernie Witkin’s original thesis subject during his student days was: “The suppression of obscene literature”?) Less notorious, but more significant and prestigious, were Bill’s terms as president of the Association of American Law Schools and as a long-time member of the Council of the American Law Institute.

Both Bill and Bernie loved their profession, as evidenced by their uninterrupted commitment to it. Bernie’s comment that his “involvement with the law is emotional,” probably characterized Bill’s attitude as well. After he celebrated his 80th birthday, Bill completed 3 new editions of his casebook and discussed plans for the next one just

5. *William Lockhart Dies at 89; Giant in Legal, Education Circles*, MINNNEAPOLIS STAR-TRIB., Dec. 21, 1995, at 10B.

weeks before his death. Similarly, Bernie rewrote his entire compendium on California law during the last decade of his life and worked on supplements of the volumes to his last days.

Both men, however, enjoyed much of life beyond the law. Again, there were close similarities and sharp differences. Each treasured his style of living. Bernie loved his grand home in the North Berkeley Hills and was especially dedicated to personally maintaining his terraced vegetable garden as well as to using his tennis court and swimming pool. Bill was more the rugged outdoorsman, spending every summer for the past fifty years at the family retreat on his own island in Northern Minnesota—hiking, boating, repairing and maintaining, and occasionally fishing—with no direct telephone until recent cellular times and no direct mail service to this day. As for the rest of the year, Bill recently built a new home near Salt Lake City on his retirement from Hastings in May 1994. Soon after his arrival, he wrote me, “The architect caught our dream and designed a home that gives us a complete view of the [adjacent] rugged rocky mountains to their peaks from nearly anywhere in the house—even the hot tub in the bathroom.”

Their personalities, on the other hand, were markedly different. Bill, an ordained minister since his twenties who regularly spoke from the pulpit, was warm and friendly in social contexts, by no means shy, but still distinctly modest, reserved and private. In contrast Bernie was sharply irreverent (to put it mildly), a master jokester and raconteur, always the focus of adoring attention, and generally the life of the party.

Bernie Witkin and Bill Lockhart, each in his own special way, made our world a better place. We were privileged to have had them so long.