

Bernard D. Meltzer (1914-2007), Nuremberg prosecutor

*John Q. Barrett**

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Bernard David Meltzer, who was remembered at a University of Chicago Law School memorial service on February 2, 2007, was 92 years old when he died on January 4th at his home in Chicago. Sixty-one years ago, United States Navy Lieutenant (junior grade) Meltzer served on Justice Robert H. Jackson's staff in Nuremberg as Assistant Trial Counsel for the United States. Lt. Meltzer was the one of the youngest U.S. prosecutors to address the International Military Tribunal in the case against the principal Nazi war criminals.

Bernie Meltzer's path to Nuremberg was, like all of his highly accomplished life, varied and interesting. Born and raised in Philadelphia and not destined, to his great regret, for a career in professional baseball,¹ Bernie first attended Temple University and then transferred to the University of Chicago. He received his A.B. in 1935 and then enrolled at the University of Chicago Law School, graduating first in his class in 1937. During 1937-38, Bernie earned a LL.M. degree at Harvard Law School, where he studied under and became a favorite of Professor Felix Frankfurter.

In 1938, Meltzer began to practice law, both public and private. He worked for two years at the Securities and Exchange Commission, first in the general counsel's office and then as assistant to chairman Jerome N. Frank. After a private practice stint with Mayer, Meyer, Austrian & Platt back in Chicago, Bernie returned to Washington, where he worked at the National Defense Commission on procurement matters and then at the Department of State, first on Lend-Lease matters for assistant secretary Dean Acheson and then as acting chief of the foreign funds control division. After Pearl Harbor, Meltzer immediately sought to enlist in the

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). I posted an earlier version of this text, without the footnotes and documents images that have been added here, to my Jackson email list on January 31, 2007.

¹ See Bernard Meltzer, *The Observer—A baseball buff's brief memoir*, CHI. TRIB., Apr. 19, 1981, at A5.

military but was rejected for bad eyesight. (As he told the story years later, the doctor who examined Bernie said, “I’d like you to be a gunner in a Japanese boat.”²) Bernie eventually, through a friend, obtained a vision waiver, joined the Navy, became an officer and, in time, joined the Office of Strategic Services. In spring 1945, when Meltzer was back with the State Department and working in San Francisco on drafting the United Nations Charter, he was recruited to join the effort to prosecute German war criminals.

Bernie Meltzer arrived in London as part of Justice Jackson’s team on August 3, 1945. Within days, the four allied nations—the United States, the United Kingdom, France and the Soviet Union—signed the London Agreement to create an international tribunal to adjudicate Nazi crimes against peace, war crimes and crimes against humanity. Bernie then worked on evidence gathering, on analyzing evidence against prospective defendants and on draft charges. In September he moved to Nuremberg, where he worked on the draft indictment, on prisoner interrogation and on the evidence, particularly on the “economic case” against Nazi finance and banking officials. Bernie was present in court when the trial began on November 20th and the next day when Justice Jackson delivered his opening statement.³ In the next weeks, Meltzer led two colleagues in preparing the evidence regarding Nazi concentration camps. Fellow prosecutor Thomas J. Dodd presented this evidence to the International Military Tribunal on December 13, 1945.⁴

On January 11, 1946, Lt. Meltzer presented to the IMT the evidence against defendant Walther Funk, formerly Nazi Germany’s Minister of Economics and head of the Reichsbank. Funk was charged with conspiracy to seize power, establish a totalitarian regime and wage wars of aggression (Count One); with waging wars of aggression (Count Two); with war crimes (Count Three); and with crimes against humanity (Count Four). Meltzer’s presentation, which available in published transcript form⁵ and on

² Bernard D. Meltzer, Securities and Exchange Commission Historical Society interview, Sept. 24, 2005, at 24 (interview by Kurt Hohenstein), available in audio and transcript form at <http://www.sechistorical.org/museum/oralhistories/index.php#meltzer>.

³ A video clip of Bernie Meltzer in October 2001 discussing Jackson’s opening statement at Nuremberg is on the Jackson Center website, www.roberthjackson.org.

⁴ See III TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 (“The Blue Set”) at 494-518 (proceedings of Dec. 13, 1945).

⁵ V TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 at 152-67 (proceedings of Jan. 11, 1946).

line through Yale Law School's Avalon Project,⁶ was interrupted a number of times that morning by the impatient chief judge, Geoffrey Lawrence of the United Kingdom. Meltzer parried these interruptions quite well, at times explaining his purpose, at others adjusting his presentation to get to the point that interested Lawrence, and in one spot just pressing on, pretending not to understand Lawrence's gripe and getting back to the evidentiary point that Meltzer, the prosecutor, wished to make. In the afternoon, Lord Lawrence receded, permitting Meltzer to conclude his powerful presentation without substantive interruption. The IMT ultimately acquitted Funk of the conspiracy charge, convicted him of waging aggressive war, war crimes and crimes against humanity, and sentenced him to prison for life.⁷

Bernie Meltzer's presentation of the Funk case did not mark the end of his work at Nuremberg. During the defense case presentations during spring 1946, for example, Meltzer interrogated key witnesses to the Reichsbank's receipt of huge and horrific deposits of valuables, including jewelry, gold dental fillings and eye glasses, from Jewish prisoners in Nazi concentration, labor and extermination camps. When Funk's lawyer called one of these witnesses, Emil Puhl, and he testified evasively, Thomas Dodd, who had become Jackson's deputy in January 1946, cross-examined Puhl him effectively. Dodd then presented Puhl's former Reichsbank deputy Albert Thoms as a strong rebuttal witness. The Puhl and Thoms examinations were based on interrogations that Meltzer and colleagues had conducted.

Another interesting measure of Bernie Meltzer's contribution at Nuremberg is the fact that the lawyer for defendant Hans Fritzsche, who had been the leading Nazi radio propagandist, relied by name—and successfully, in terms of obtaining his client's acquittal—on an affidavit that "Lieutenant Meltzer" had presented earlier as evidence against Funk.

⁶ See <http://www.yale.edu/lawweb/avalon/imt/proc/01-11-46.htm#funk>.

⁷ Funk served twelve years of his life sentence. He was released from Berlin's Spandau prison for health reasons on May 15, 1957, and died in 1960. See NORMAN J.W. GODA, *TALES FROM SPANDAU: NAZI CRIMINALS AND THE COLD WAR* 193 (2007).

When Meltzer had to leave Nuremberg for personal reasons in May 1946 before the IMT trial had concluded, Justice Jackson wrote him a well-deserved letter of thanks:

My dear Bernie:

Now that the case has reached a stage where you can return to the United States, I want you to know how thoroughly I appreciate the able, conscientious, and continuous work you have done in its preparation and presentation. In whatever effort you engage my best wishes go with you.

Sincerely yours,

/s/ Robert H. Jackson⁸

The effort in which Bernie Meltzer next, and for the next six decades, engaged was law teaching and scholarship. In fall 1946, he was appointed to the University of Chicago law faculty as a Professorial Lecturer. He became a Professor of Law in 1947, the James Parker Hall Professor of Law in 1971 and the Edward H. Levi Distinguished Service Professor of Law in 1980. Professor Meltzer, who in 1985 became the Edward H. Levi Distinguished Service Professor Emeritus of Law, remained intensely active as a brilliant and beloved teacher, thinker, writer, mentor and friend until the end of his life. In addition to his “professing,” Bernie Meltzer served in numerous public assignments, including as arbitrator, mediator, board chairman and counselor, and he also engaged in some private law practice in affiliation with Sidley & Austin LLP. Additional details on his long, productive, balanced and happy life can be found in the CHICAGO DAILY LAW BULLETIN article that is reprinted below.

As a legal academic, Bernie became a giant in the fields of labor law and evidence law,⁹ but he also thought wisely and wrote important articles in other fields. In spring 1954, for example, he published an article criticizing a recent Supreme Court decision concerning police interrogation

⁸ Robert H. Jackson, Chief of Counsel, to Lt. (jg) Bernard Meltzer, May 21, 1946 (carbon copy of typed letter; image reproduced at the end of this text), National Archives & Records Administration, College Park, MD, Records Group 238, Entry 51, Box 16.

⁹ See Gerhard Casper, *Bernie*, 53 U. CHI. L. REV. 1 (1986); *Professor Meltzer*, 53 U. CHI. L. REV. 4 (1986); Theodore J. St. Antoine, *Integrity and Circumspection: The Labor Law Vision of Bernard D. Meltzer*, 53 U. CHI. L. REV. 78 (1986).

practices and involuntary confessions.¹⁰ With some trepidation, Bernie sent a reprint of his article to the author of the Court’s opinion, who responded by sending his own, handwritten comment:

Dear Bernie

I have just read your comment on Stein v New York[¹¹] for the writing of which it was my ill luck to be assigned. It seemed to me one of those that can have no fully satisfactory answer. I wish I had your comments before writing. But I think you have done a very fair, instructive and constructive job on the case

Thanks for the reprint. With my best wishes

Sincerely

Robert Jackson¹²

(Meltzer promptly wrote back to Jackson. He thanked him for his note, complimented Jackson’s Stein opinion—the one Meltzer had criticized in his article—for “pointing up procedural problems which had largely gone unnoticed,” and wished Jackson, who had just been released from the hospital after a serious heart attack, well in his recovery.¹³)

Among Bernie Meltzer’s fields of legal expertise was, of course, Nuremberg. In 1947, he published in the UNIVERSITY OF CHICAGO LAW REVIEW what he modestly called a *Comment: A Note on Some Aspects of the Nuremberg Debate*.¹⁴ This article actually is a trenchant, enduring analysis of some of the hardest legal questions about Nuremberg. Bernie returned to these issues, and he candidly reconsidered his views on some of them, in his later writings and interviews.¹⁵ His final published analysis of

¹⁰ See Bernard D. Meltzer, *Involuntary Confessions: The Allocation of Responsibility Between Judge and Jury—A Comment on Stein v. People of the State of New York*, 21 U. CHI. L. REV. 317-54 (Spring 1954).

¹¹ 346 U.S. 156 (1953).

¹² Robert Jackson to “Bernie” [Meltzer], undated (circa late May 1954) (courtesy of Bernard D. Meltzer; image reproduced at the end of this text).

¹³ “Bernie” [Meltzer] to Justice Jackson, June 2, 1954, in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 182, Folder 6 (image reproduced at the end of this text).

¹⁴ Bernard D. Meltzer, *Comment: A Note on Some Aspects of the Nuremberg Debate*, 14 U. CHI. L. REV. 455-69 (Apr. 1947).

¹⁵ See HILARY GASKIN, EYEWITNESSES AT NUREMBERG 160-65 & 180 (1990) (quoting Meltzer’s reflections on Nuremberg); Bernard D. Meltzer, Panelist, *Symposium on 1945-1995: Critical Perspectives on the Nuremberg Trials and State Accountability*, XII N.Y.L.S. J. OF HUM. RTS. Pt. III, 504-15 (1995); Bernard D. Meltzer, *Remembering Nuremberg*, OCCASIONAL PAPERS FROM THE LAW SCHOOL, THE UNIVERSITY OF CHICAGO No. 37 (1995), reprinted in WAR CRIMES: THE LEGACY OF

Nuremberg is his 2004 tribute essay in the ALBANY LAW REVIEW, *Robert H. Jackson: Nuremberg's Architect and Advocate*.¹⁶

Bernie Meltzer was a phenomenal teacher, a great person and a very kind, generous friend. In his fall 2004 ALBANY LAW REVIEW article, he closed by quoting, and endorsing, a passage from Justice Jackson's September 1, 1949, address in Banff, Alberta to the Canadian Bar Association. These words are, at least on the topic of Nuremberg, a well-deserved epitaph for both men:

It is possible that strife and suspicion will lead to new aggressions and that the nations are not yet ready to receive and abide by the Nuremberg law. But those who gave some of the best effort of their lives to this trial are sustained by a confidence that in place of what might have been mere acts of vengeance we wrote a civilized legal precedent and one that will lie close to the foundations of that body of international law that will prevail when the world becomes sufficiently civilized.¹⁷

* * *

NUREMBERG 20-31 (Belinda Cooper, ed., 1999); Bernard D. Meltzer, "War Crimes": *The Nuremberg Trial and the Tribunal for the Former Yugoslavia*, 30 VALPARAISO U. L. REV. 895-912 (1996) (publishing Meltzer's Seegers Lecture, delivered April 11, 1996); Bernard D. Meltzer, *The Nuremberg Trial: a prosecutor's perspective*, 4 J. OF GENOCIDE RES. 561-68 (2002); Bernard D. Meltzer, *Robert H. Jackson: Nuremberg's Architect and Advocate*, 68 ALBANY L. REV. 55-65 (2004).

¹⁶ *Id.* A PDF version of this article is available at [www.roberthjackson.org/documents/Meltzer%20\(final\).pdf](http://www.roberthjackson.org/documents/Meltzer%20(final).pdf).

¹⁷ Robert H. Jackson, *Nuremberg in Retrospect: Legal Answer to International Lawlessness*, 35 AM. BAR ASSN. J. 813, 887 (Oct. 1949), quoted in Meltzer, *Robert H. Jackson: Nuremberg's Architect and Advocate*, *supra* note 15, at 65.

Labor Law Expert Meltzer Dies; U of C Prof Prosecuted Nazis

By Pat Milhizer
Adapted from the
CHICAGO DAILY LAW BULLETIN
January 5, 2007, p. 3

Whether it was an attorney asking for advice during the McCarthy era, a law student struggling with writing or a handyman lamenting about a legal problem, Bernard D. Meltzer was there to help.

The labor law scholar, who prosecuted Nazis in the Nuremberg Trials after World War II and helped draft the United Nations Charter, died Thursday of prostate cancer at his Chicago home. He was 92.

Meltzer belonged to a group of professors in the 1950s credited with establishing the University of Chicago Law School as one of the country's elite. His death "marks the end of a major part of the law school's history," said Phil C. Neal, former law school dean.

"He was a very understanding and sympathetic human being and was always doing good things for people. He had a great sense of humor and was always engaged with whoever was around," said Neal, a founder of Neal, Gerber & Eisenberg LLP.

The son of Russian immigrants, Meltzer was born in Philadelphia and had five siblings. He attended Temple University before transferring to the University of Chicago in 1934. There, he earned an undergraduate degree and graduated first in his law school class in 1937.

He then left for Harvard Law School, receiving a master of laws degree in 1938.

Meltzer spent all but one of the following five years working for federal agencies such as the Securities and Exchange

Commission, the National Defense Advisory Commission and the State Department.

Poor eyesight prevented him from enlisting in the Navy the day after the attack on Pearl Harbor. Nonetheless, he was commissioned as a naval officer and was assigned to the Office of Strategic Services, the precursor of the Central Intelligence Agency.

After World War II, Meltzer worked on the UN Charter before joining the prosecution team at Nuremberg in 1945.

He coordinated a team of lawyers focused on assembling evidence related to the economic crimes of the Nazis. They targeted defendants who funded the German military, pillaged occupied territories and forced millions into slave labor.

Meltzer conducted a pretrial interrogation of Hermann Goering, who was Adolf Hitler's second-in-command. He presented the case against Walther Funk, economics minister and president of the Reichsbank, where the valuables of concentration camp victims were stored.

Meltzer also worked on the presentation of the concentration camp case, noting that the evidence was so strong that nobody could have foreseen the "so-called Auschwitz lie," he said in 1995. At one point, American team members debated whether they should cross-examine the defendants or simply rely on the documentary evidence.

Because the Germans kept such detailed records, the team relied on the documents.

"The evidence, of course, was a lawyer's dream and a humanist's nightmare," Meltzer said.

After returning from Nuremberg in 1946, Meltzer joined the faculty at the University of Chicago Law School.

He specialized in labor law and evidence but also developed the first course in the country on international organizations.

During the McCarthy era, Meltzer advised attorneys with clients and friends "who had McCarthy breathing down their neck," he told the Chicago Daily Law Bulletin in 2003.

Meltzer retired in 1985 and gained emeritus status, continuing to write, consult and practice law at Sidley, Austin LLP.

He has served as chairman of the Cook County Hospital Committee, a member of the Illinois Civil Service Commission, a salary arbitrator for Major League Baseball and a consultant to the U.S. Department of Labor and the U.S. Department of Defense.

A list of all his published works consumes at least four pages.

And sometimes, he brought his work home, so to speak. Meltzer's son, Daniel, recalled learning the Socratic method with his two sisters at the dinner table.

"We were held to the same high standards, lovingly, that he applied to his law students," said Daniel Meltzer, a professor at Harvard Law School.

"He was a very generous and selfless person. I think he really sort of felt he had lived the American dream," the son said. "He was a child of immigrants and sort of found his way to a career that he loved. He never lost an appreciation of how lucky he was and that there were other people who might be less fortunate."

In a 2003 commencement speech at the school, Meltzer told the graduates to think about "your professional lives, about the choices you make, about preserving time for those in need, for your families and friends, for a good book or an exhilarating concert or a seat in Wrigley Field when the Cubs finally make it to the World Series."

In addition to his son, survivors include his wife, Jean; daughters Joan FitzGibbon and Susan Yost; and six grandchildren. Funeral services will be private; a public memorial service will be held at a later date.

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Personal

21 May 1946

Lt. (jg) Bernard Meltzer
Nurnberg, Germany

My dear Bernie:

Now that the case has reached a stage where you can return to the United States, I want you to know how thoroughly I appreciate the able, conscientious, and continuous work you have done in its preparation and presentation. In whatever effort you engage my best wishes go with you.

Sincerely yours,

Robert H. Jackson
Chief of Counsel

Supreme Court of the United States
Washington D. C.

CHAMBERS OF
ROBERT H. JACKSON

Dear Bernie

I have just read your comment on Stein v New York for the writing of which it was my ill luck to be assigned. It seems to me one of those that can have no fully satisfactory answer. I wish I had your comments before writing. But I think you have done a very fair, instructive and constructive job on the case.

I have had the misfortune to be laid up a few weeks with a heart attack that now seems passed without permanent harm and can resume activity, though at a slower pace.

Thanks for the reprint. With my best wishes

Sincerely

Robert Jackson

THE UNIVERSITY OF CHICAGO
CHICAGO 37 · ILLINOIS
THE LAW SCHOOL

June 7, 1954

Dear Justice Jackson,

I do appreciate your generous note about my comment on the Stein case.

Whatever difficulties I had with the opinion, it seemed clear to me that it advanced our understanding by pointing up procedural problems which had largely gone unnoticed. Each dissenter can pin their hopes on Mansfield's promise that the common law works itself pure.

I hope that you will recognize the sovereignty of the doctors in their sphere and that they will relax their regulations soon.

Again, my warmest thanks and best wishes for your speedy and complete recovery.

Sincerely,
Bemis

(Methyzer)