

BERNARD E. WITKIN ON HIS 80TH BIRTHDAY

BY RAYMOND L. SULLIVAN*

It was only yesterday — just ten evanescent years ago — that we honored Bernie Witkin on his seventieth birthday. The tributes were thicker than advance sheets; the applause music sweeter than a plaintiff’s verdict; the laurels lavished on him a veritable halo transforming, if only for a moment, his puckish visage into a serene presence of uncommon quiescence and incredible demureness. Today he is with us again — as indefatigable and irrepressible as ever. Author and lecturer, critic and wit, doctrinaire and a man for all reasons, this chanticleer of the law — singing it clear, so to speak — now heralds a new decade of unabated vigor. What is this magic of his? What words can sum it all up? Shall we borrow those of the suave lyricist of his youth: “You’re the top! You’re the Coliseum! You’re the top! You’re the Louvre Museum,”¹ or shall we take them from his idol of an earlier era and his favorite librettist:

* Associate Justice, California Supreme Court, 1966–1977. Remarks delivered at the luncheon honoring Bernard E. Witkin on his 80th Birthday, May 22, 1984. [Editor’s note: These remarks appeared in the tribute book prepared for Justice Sullivan’s 80th birthday celebration by a group of his former clerks, headed by Ray E. McDevitt, now a past president of the California Supreme Court Historical Society, who graciously made them available for publication. — Selma Moidel Smith]

¹ Cole Porter, “You’re the Top,” *Anything Goes* (1934).

The law is the true embodiment
Of everything that's excellent.
It has no kind of fault or flaw,
And I, my lords, embody the law.²

It has long been our good fortune that our honoree in a large sense is the embodiment of the law. In a long love affair with it, he has composed his still unfinished symphony — *Summary of California Law*, with variations on sundry procedural themes, scored with sound harmonics and performed by him on countless lecture platforms with matchless wit, quip, paradox and interpretation. No cloying déjà vu for this artist; no abject submission to archaic rules which might become in Holmes' words: "The government of the living by the dead." His artistry exudes the tonic quality of fresh air with rolling arpeggios of raillery, staccato jabs at false idols, and with it all a melody line of ingenious subtlety, fine-tuning the mirthful mouthful of his message.

Daunted by no target too exalted, he has been known on occasion to direct his talents to this state's highest tribunal. In 1968, in the full flush of youth one might say, he was rhapsodic, suggesting that "perhaps round table would better describe this loose coalition of crusading knights errant and mildly disapproving squires. Here in this contemporaneous Camelot, under the wisdom and restraint of a latter-day King Arthur, a measure of unity is miraculously achieved." In 1974, in the serenity of senior citizenship, he was more jurisprudential: "This is a court," he said, "which is not synthesized or polarized; its collegiality is balanced by a rampant individuality and its blocs fall apart when they come up against irrefutable logic, irresistible social conscience, or individual prior conviction." How does he get away with this? What is his secret? How do we sum him up? I borrow some remarks I made ten years ago:

Few members of the California Bar have had such a pervasive influence on the profession as Bernie Witkin. Few lawyers can look back on such a record of total commitment to the scrutiny, dissection and careful crafting of legal principle. No legal writer and lecturer in our time has so captivated the admiration and respect

² W. S. Gilbert, "The law is the true embodiment," *Iolanthe; or, The Peer and the Peri* (1882).

of the profession with intelligence, sophistication and style. None has pursued with such constant ardor, a calling which, in Holmes' fine phrase, "gives such scope to realize the spontaneous energy of one's soul." Throughout all these years he never seems to change.

And so it is today, and so, we predict, it will be for many years to come. To you, Bernie, and to your lovely Alba, we offer our congratulations, our affection and our every wish for your continued happiness.

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