

Book Review

Michael Meltsner, *With Passion: An Activist Lawyer's Life*, Northport, N.Y.: Twelve Tables Press, 2017: pp. 446, \$38.95 (hardcover)

Reviewed by Dan Urman

If someone saw me reading Michael Meltsner's new memoir, *With Passion: An Activist Lawyer's Life*, and asked me to describe it, I could go in a few directions. First, it is about someone raised in Queens who moved to Manhattan and, after a getting a fancy education, went on to make America great again . . . through passionate lawyering, of course (Art of the Zeal?). If they stared at me in disbelief (which they should), I would probably say the book is a memoir by a lawyer raised in New York City whose professional experiences reminded me of Forrest Gump. This is far from a perfect analogy: I am not comparing Meltsner to Gump on an intellectual level. Instead, like Gump, Meltsner intersected with a staggering number of important twentieth-century figures (including, but not limited to, Muhammad Ali, Anthony Amsterdam, Derrick Bell, Alexander Bickel, Lenny Bruce, Robert Carter, Jack Greenberg, Thurgood Marshall, Constance Baker Motley, and Robert Moses). Meltsner was no passive observer sitting at a bus stop (last Forrest Gump reference, I promise). He shaped a great deal of history as a civil rights lawyer and entrepreneurial legal educator. This makes for a riveting and powerful set of personal and professional stories. *With Passion* is required reading for young lawyers (or aspiring lawyers) interested in a meaningful career. Nonlawyers will enjoy the modern account of an individual's ability to change the country for the better.

With Passion embodies at least two unique books, and some chapters read like stand-alone short stories. The first 200 pages reflect on Meltsner's life growing up as an only child in New York City. Meltsner's parents, Alice and Ira, were secular Jews, and Ira emphasized the need to fight for underdogs. The second half describes many of Meltsner's professional triumphs and setbacks, some of which relate to his upbringing (New York City looms large in both sections). *With Passion* incorporates several intersecting themes, including family secrets, the opportunities and burdens of only children, unintended consequences, serendipity, and the role determined individuals play in shaping history. The best parts weave many of these themes together. Unsurprisingly, Meltsner

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spent a year, after serving as Dean at Northeastern University School of Law, training to become a licensed family and couples therapist. He illuminates larger lessons the reader could easily miss and addresses the subconscious as can a seasoned practitioner or recipient of talk therapy (in Meltsner's case, both). Literary references abound; the young lawyer who considered a career as a full-time writer sprouts up throughout the book. Sometimes we are just passengers on the vivid journey through his memories. The detours often reinforce earlier points, even when they feel like unplanned (and informative) asides during a university lecture.

Meltsner uses a nonlinear narrative device effective in film and television: flash-forwards and flashbacks. His mother, Alice, as part of the American Women's Voluntary Service in New York, brought young Michael with her to deliver sandwiches to World War II soldiers sitting in gun emplacements. Alice reappeared in the book as she took her last breaths. After that, in a chapter called "A Most of the Time Only Child," Meltsner shared a heartbreaking story: Near the end of Alice's life (in the 1990s), a former housekeeper ("Janice") took advantage of Alice financially. Alice ultimately adopted Janice as a daughter, but did so in secret (this represents a pattern; Alice had kept Ira's fatal cancer a secret from everyone, including Ira, for over a decade). When Meltsner learned about Janice's shenanigans, Meltsner's attorney contacts helped Meltsner reverse the adoption. Ultimately, Meltsner became his mother's legal guardian. The story is both tragic and humorous (Meltsner is no longer an only child! Finally, a sister who could have helped him get dates!), like several others throughout the book.

Meltsner is in "The Silent Generation," given this name because so many members conformed to social norms and concentrated on their careers.¹ Another designation, "The Lucky Few," represents the first generation in U.S. history smaller than the preceding one (a product of the financial uncertainty of the Depression era). They were lucky because of the prosperous era in which they grew up—the 1950s and 1960s—and despite a draft, their military service was limited compared with the generations before ("Greatest Generation" or "G.I. Generation") and after ("Baby Boomers"). Meltsner was not drafted, but during a Selective Service exam, he told his physician he did not want to join the Army. The doctor obliged, deeming Meltsner "unfit for military service". Someone Meltsner's age could have been drafted but would likely have been too young for Korea and too old for Vietnam.

Meltsner grew up in a New York City grappling with the conflict, anxiety, and economic opportunities that caused most (white) families to leave the city and live in the (federally subsidized) suburbs. Readers interested in the government's central role in creating our housing segregation and wealth disparity should read a book Meltsner approvingly cited, Richard Rothstein's *The Color of Law*. Unlike so many city dwellers who, according to Rothstein,

1. A Yale Law professor called Meltsner and his classmates "young fogies." See MICHAEL MELTSNER, *THE MAKING OF A CIVIL RIGHTS LAWYER* 28 (2006) (referring to faculty member Leon Lipson's characterization of Yale Law School students in 1961).

fled to Levittown and other mass-produced housing, Meltsner's parents left Queens for the Upper West Side, as they abruptly told him at age twelve. His therapist colleagues, when they heard about how Meltsner's parents never provided any warning about the move, "were aghast" (55), but he did not feel bad then or many years later.

Meltsner was always connected to Manhattan and quickly adjusted to life on the Upper West Side. His entire family, including himself, was born there, and he spent a lot of time there as a child. Meltsner's paternal grandmother urged him to embrace the "New York values" (famously derided by Ted Cruz in the 2016 GOP primary) that others despised because "New York integrated others—internal migrants and foreigners, homosexuals, artists, radicals—imperfectly but regularly" (63). Meltsner's thrilling youthful adventures sound, in 2018, almost mythical (and would certainly make today's "helicopter" parents shudder). How many modern parents would let their twelve-year-old travel around the city alone? Or accept that their fourteen-year-old parked and drove cars around the city? These stories make for an entertaining journey through early 1950s Manhattan, replete with Meltsner donning a "Sharks" yellow gang jacket (how many civil rights lawyers and law school deans can claim that?) and some violent (and frightening) encounters with smoldering irons and lead pipes. The city makes you grow up quickly; self-reliance is essential.

Meltsner's decision to remain in public schools may have represented a subconscious awareness of his father's illness. The public school Meltsner ultimately attended had "one-third blacks, one-third Puerto Ricans, and one-third 'others'—meaning mostly Jews who could not afford private school and Irish and Italians that could not afford or chose not to attend Catholic school" (66). Meltsner's father offered to send him to an elite private school in Riverdale, but the only child feigned concerns about snobby classmates. Meltsner worried that the family could not afford it. To Meltsner, this represented his "arrival as a true parentified only child—a kid who often unaware of why he is doing so identifies with adult concerns long before the actual arrival of adulthood" (67). He admired his father, a successful salesman and sales manager, but after an unhappy stint working for him before college, Meltsner realized that he was not cut out for the difficult world of sales. Fortunately, he attended a liberal arts college that did not even offer a business major, and instead sought to "prepare graduates with the knowledge, skills, and perspectives essential to confront complex issues and to create change and value in the world."²

Meltsner made a wise college decision (aided by Harvard's rejection letter) in going to Oberlin: He would get away from "too much noise" in the city (149) and have "an experience farther away from the City and from New Yorkers" (153). Free of these distractions, and inspired by his teachers, Meltsner dove into his studies. His teachers stimulated his intellectual curiosity. One professor, a former speechwriter for Adlai Stevenson's 1952 presidential campaign, taught

2. *About Oberlin: Mission and Values*, OBERLIN COLLEGE, <https://www.oberlin.edu/about-oberlin/mission-and-values> (last visited May 17, 2018).

Meltsner that “good could be done, change was possible, and it might be accomplished by enlightened government policy” (154). This gave the future civil rights lawyer a promising path (hope and change?). While he enjoyed his classes, some city urgency must have remained; Meltsner graduated in only three years.

Meltsner seemed destined to attend Harvard Law School: He earned a full-tuition scholarship. (Oberlin had an award named after its graduate Erwin Griswold, the legendary Harvard Law School Dean and future solicitor general of the United States.) However, he chose Yale (along with two close friends), which had (then and now) a better reputation for producing public-service lawyers. His New York City smarts (*chutzpah?*) served him well when he successfully asked Yale to match Harvard’s scholarship. Meltsner’s intellectual journey at Oberlin, where “study of ideas for their own sake was a worthy endeavor,” left him underwhelmed by the ends-driven nature of law school. Even Yale, the most scholarly of law schools, was still just that: a professional school, where students learned to use ideas to advance the goals of their clients. This led Meltsner to (somewhat) check out during law school, choosing courses that met only a few days per week (165). Upon graduation, Meltsner wanted to work for the ACLU, but before that, he decided to “see more of the world, and try to earn some money by freelance writing” (168). An “organization man” from his generation would never have done this. Fortunately, his travels led him to a life partner and a once-in-a-lifetime civil rights job.

After completing law school and taking the New York bar, Meltsner traveled through Europe as an aspiring writer. While visiting a close friend in Israel, he volunteered on an archaeological dig near the Dead Sea and met Heli, who would become his wife of over fifty years. The Israel of 1960 is unrecognizable today. It was a young, progressive, and embattled country, full of hope (and secrets—until the Eichmann trial, only a year later, few Israeli Holocaust victims discussed “the war” openly). Meltsner did not seriously consider “making Aliyah” and immigrating there, as he already cared deeply about American social/racial justice issues. Israel before 1967 was a tiny David surrounded by angry Goliaths. While it may not look like Goliath on a world map, Palestinians certainly see Israel that way. Meltsner alludes to Israeli settlement activity in the wake of its Six-Day War, and he has not returned. This issue has disillusioned many American liberal Jews from the Jewish state.

Meltsner titles a later chapter about his efforts to help Muhammad Ali regain a boxing license “Serendipity,” but he could have used that title for his path to joining the NAACP Legal Defense Fund (“LDF”). Meltsner acknowledges this, saying “only serendipity can explain how I came to be hired by Marshall and (Jack) Greenberg” (206). If he had not traveled to Israel upon graduation, bucking the trend of his classmates (most of whom immediately joined law firms), he would not have met his wife, or his wife’s mother, who introduced him to some of her “well-placed friends.” Ed Lucas, who was a one of these friends, suggested that “the pay was lousy in good guy law,” but he mentioned

that Thurgood Marshall was hiring at the LDF. Meltsner admits that landing there was, like many other life experiences, contingent on several factors beyond his control. (Meltsner must have done better than he suggested in law school, or at least in certain classes, because a call from his constitutional law professor, Alexander Bickel, helped his chances.) The rest, as they say, is history.

Meltsner overlapped with Marshall (“TM”) for less than a year, but he still absorbed many lessons from the legendary lawyer. Meltsner witnessed clashes between some of the larger-than-life personalities (and egos) at LDF and beyond. Marshall chose Jack Greenberg, a white man, as his successor, instead of Robert Carter, a black man. Marshall and Carter had a tense relationship, a product of their self-images. Meltsner made an important observation about public-interest law: “[D]o not assume . . . that those doing good deeds are necessarily kinder and gentler human beings, more sensitive to others or less manipulative, than those in the business or political world” (213). We make heroes out of public-interest lawyers, but they are not immune to pettiness, jealousy, and other frailties of the human condition. If anything, because of the forces they oppose, being kind and gentle can hurt the cause.

Meltsner carefully describes some of his legal successes and failures, but readers seeking a comprehensive account should read his 2006 memoir, *The Making of a Civil Rights Lawyer*.³ Contrasting his inability to reform bail practices with his successful efforts to integrate hospitals, Meltsner highlights a point recently made by ACLU Legal Director and Georgetown Law Professor David Cole: Lawsuits succeed with a constituency willing to support and magnify their underlying message.⁴ Meltsner references the familiar path toward marriage equality, and he could also analyze the expansion of individual gun rights to illustrate how enduring change comes from the public, not judges. Meltsner has described his efforts to eliminate capital punishment elsewhere, but the failure to end the death penalty once and for all proves his point about litigation rarely succeeding on its own: Police, prosecutors, prison guards, and victims all exert pressure on politicians (and judges) to reserve the death penalty for “heinous” crimes.

Meltsner’s efforts in the courtroom and classroom often bore fruit years after trials concluded. For example, his efforts to restore Muhammad Ali’s boxing license sparked thought about challenges ex-offenders face, and he drafted a model law in New York to help ex-offenders seek employment opportunities. Written over forty years ago, it provides the broadest protections to ex-offenders in any state, and activists have cited it for adoption elsewhere (300). In recent years, “Ban the Box” campaigns by civil rights groups and ex-offender advocates have produced laws in twenty-three states and more

3. MELTSNER, *supra* note 1.

4. See DAVID COLE, *ENGINES OF LIBERTY: THE POWER OF CITIZEN ACTIVISTS TO MAKE CONSTITUTIONAL LAW* (2016).

than 100 cities helping ex-offenders entering the labor market.⁵ Another example involves bail reform. Meltsner unsuccessfully challenged the cash bail system in court, but by 2017, momentum for change was building on both the political left and right. Legislatures are not alone in the cash bail reform movement. In 2017, a federal judge in Houston ruled that detaining people arrested for minor crimes violated the Constitution.⁶ Finally, when Meltsner joined Columbia Law School's faculty as a clinical professor, most law schools scoffed at clinical legal education and made its instructors "second tier" members of the faculty, in stature and governance. Teaching students how to practice law threatened faculty members who lacked legal experience. Many "traditional" faculty mockingly asked the clinicians if they taught students how to find courthouses. Now, as Meltsner notes, "clinical legal education ultimately triumphed" (344). Nearly 1500 teachers across the country supervise and train law students pursuing experiential legal education.

The final chapters read like stand-alone (and pessimistic) essays on modern legal and political challenges. The book ends somewhat abruptly. I wonder if Meltsner had a different conclusion in mind before Donald Trump's shocking victory. In the penultimate chapter about using criminal law to solve social problems ("Violence and the Word," a nod to late Yale Law Professor Robert Cover's famous article), Meltsner reminds us that court orders "command . . . obedience that implicitly suppress(es) dissent" (351). He also reflects that "once the shooting begins and the bodies are being carried to the morgue, the lawyer has failed" (352). In a preview of the epilogue, Meltsner laments that police attempts to address public anxiety over crime and violence "diverts attention and resources from efforts to curb it by increasing economic opportunity and improving education" (367). In other words, we address symptoms, not causes, of underlying problems. There is no easy solution, but perhaps lawyers educate the public about the deep historical roots of injustice through reformed law school curriculum and high-profile, high-impact litigation.

Meltsner begins his final chapter, "Charleston," with a description of his efforts in 1963 to desegregate South Carolina schools alongside Constance Baker Motley after *Brown v. Board of Education*. He recounts her dazzling courtroom abilities in the face of racist (and surreal) pseudoscientific testimony by "experts" on white and black intellectual capability. Unsurprisingly, Meltsner and Motley squirmed as they listened to "the parade of pejorative testimony masquerading as science" (372). Ultimately, the courts did little to integrate schools, leaving many districts more segregated today than they were before *Brown*. Meltsner criticized the way courts (especially the Supreme Court) use tepid language and avoid confronting deeper issues like historical

5. Alexi McCammond, *How Effective is 'Ban the Box' in Helping Ex-Offenders Get A Job?* POLITICO, June 16, 2016, <https://www.politico.com/story/2016/06/how-effective-is-ban-the-box-in-helping-ex-offenders-get-a-job-224418>.
6. Eli Rosenberg, *Judge in Houston Strikes Down Harris County's Bail System*, N.Y. TIMES, Apr. 29, 2017, <https://www.nytimes.com/2017/04/29/us/judge-strikes-down-harris-county-bail-system.html>.

and structural racism, but this is partly because litigation alone cannot change society. White parents of schoolchildren, with greater resources, were more mobilized and powerful (and those with economic opportunities put their children in private school).

Had courts used stronger language and addressed underlying dynamics, as Meltsner suggests, it could have provoked backlash from a powerful and passionate constituency. Michael Klarman has described how backlash to *Brown v. Board of Education* set back integration efforts, so it is hard to imagine the Supreme Court using more direct and forceful language.⁷ Unpopular Supreme Court decisions on socially divisive subjects including the death penalty (*Furman v. Georgia*), criminal procedure (*Miranda v. Arizona*), and abortion (*Roe v. Wade*) provoked backlashes that endure today. Ultimately, Supreme Court rulings greatly out of step with public opinion can do more harm than good. Perhaps this explains Justice Arthur Goldberg's famous 1963 dissent calling for abolition of the death penalty (representing the first time a Supreme Court Justice suggested the death penalty violated the Constitution). Goldberg avoided mentioning that the death penalty was almost always applied to black men raping white women (steering clear of the accompanying history of white fear of black sexuality). Ultimately, social, political, and constitutional change endures with public support. Courts are at their best when they reinforce, rather than lead, social change. (This explains judicial invalidation of cash bail in 2017, once both political parties criticized cash bail and states took the lead in reform.)

Reflecting on President Trump's victory, Meltsner sees larger historical patterns at work instead of the "moral panic about identity politics" put forth by Columbia's Mark Lilla. He rightly asks whether Lilla listened to candidate Trump's rhetoric about President Obama's birthplace, Mexicans, Muslims, and the adoring crowds who attended his rallies. Put simply, it is "difficult to ignore your identity when your identity is the source of verbal and physical attacks!" (395). He critiques the wishful thinking that the past "was entombed, never to darken the present," especially with race. Here, Meltsner reaches the same conclusion as Ta-Nehisi Coates, whose recent essay, *The First White President*, covers similar ground.⁸ In short, Trump benefited from and exploited his own whiteness; several studies have demonstrated that support for him is closely correlated with racial resentment. One paper indicated that when white voters learned that nonwhite groups will outnumber white people within twenty-five years, they became more likely to support Trump. Another troubling study found that Trump supporters were likely to support housing assistance programs if shown a white face, but when shown a black face they were less supportive of these programs and expressed higher levels of anger that some

7. MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004).

8. Ta-Nehisi Coates, *The First White President*, ATLANTIC, Oct. 2017, <https://www.theatlantic.com/magazine/archive/2017/10/the-first-white-president-ta-nehisi-coates/537909/>.

people receive government assistance.⁹ Interestingly, responses to racial cues were tied to feelings about Donald Trump, not Hillary Clinton. Therefore, Lilla's criticism seems misplaced, at least on this front. Meltsner does not spare Clinton for her share of gaffes, including a poorly run campaign. But Trump's racist campaign and behavior while in office make our current president a better target for any criticism of "identity politics."

I cannot end this review on such a dark note. Therefore, I will glean some of Meltsner's helpful lessons for young lawyers and activists. First, law students should "get their hands dirty" and practice, practice, practice! Law schools now provide opportunities to represent clients and stand up in a courtroom, and they integrate these studies into classroom learning (though not as much as Meltsner wishes). That will help all lawyers, regardless of their background. Second, if you are a public-interest lawyer, do not rely on litigation as your sole strategy. Try to move the needle on public opinion too. Judges are human beings and, to paraphrase Paul Freund, they might not be affected by the weather of the day, but they are influenced by the climate of the era. Finally, and related to the first two points, individuals can make a huge difference in society. Meltsner's own career proves it.¹⁰

Meltsner concludes his book by noting that he kept a picture of a "Jewish" restaurant in German-occupied France to remind himself and students of the historical patterns of "othering" that takes place. Outside of his Northeastern University Law School office, Meltsner proudly displays a photograph of himself with students meeting Justice Ruth Bader Ginsburg. Here, I will borrow a message from the Notorious RBG herself: "A great man once said that the true symbol of the United States is not the bald eagle; it is the pendulum, and when the pendulum swings too far in one direction, it will go back Some terrible things have happened in the United States, but one can only hope that we learn from those bad things."¹¹ In Trump's first year of office, the pendulum has swung back: the Women's March drew half a million people, lawyers and other citizens flooded airports in the wake of Trump's travel ban, and courts have consistently struck down the follow-up bans, regardless of their sanitized language. Voters who stayed on the sidelines in 2016 came to the polls roughly one year later; African-American turnout surged in an Alabama special U.S. Senate election, helping elect a Democrat for the first time since 1992.¹² Millions of Americans are realizing that they cannot take core

9. German Lopez, *The Past Year of Research Has Made It Very Clear: Trump Won Because of Racial Resentment*, VOX (Dec. 15, 2017, 2:40 PM), <https://www.vox.com/identities/2017/12/15/16781222/trump-racism-economic-anxiety-study>.

10. See generally MELTSNER, *supra* note 1.

11. Kristine Phillips, *Ruth Bader Ginsburg on Trump's Presidency: 'We Are Not Experiencing the Best of Times.'* WASH. POST, Feb. 24, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/02/24/ruth-bader-ginsburg-on-trumps-presidency-we-are-not-experiencing-the-best-of-times/?utm_term=.foa0527fa3e9.

12. Richard Fausset & Campbell Robertson, *Black Voters in Alabama Pushed Back Against the Past*, N.Y. TIMES, Dec. 13, 2017, <https://www.nytimes.com/2017/12/13/us/doug-jones-alabama-black>.

American concepts like a free press, government ethics, judicial independence, and bipartisanship for granted. If young lawyers follow in Michael Meltzer's footsteps, they can help bend the long arc of the moral universe closer toward justice.