

Marvin A. Chirelstein was a preeminent scholar of federal taxation, corporate law, and contracts, as well as an inspiring and beloved teacher to countless students. He was the William Nelson Cromwell Professor at Yale Law School from 1965 to 1982 and, at the time of his death in February, 2015, Professor Emeritus at Columbia Law School.

# Remembering Marvin Chirelstein by Roberta Romano

Photos courtesy of Yale Law School

It is a privilege for me to contribute to this celebration of Marvin Chirelstein, for he changed the course of my life. I knew Marvin best as my teacher, and that perspective informs my remarks. To put it most directly, I would not be doing what I have been doing for the past thirty-plus years, if I had not taken Marvin's courses. I would also venture to say that this is true of innumerable lawyers and law teachers who were his students.

The first class I took with Marvin, the second semester of my first year in law school, was Federal Income Tax. And as it turned out I enjoyed Marvin's class immensely from the outset. What was there not to like? Marvin pulled you in with a wry sense of humor and nonchalance (there was nearly always something hilarious in what he said or in a little gesture he made that kept the class a bit off balance and everyone's interest and attention at a peak) and then he would amaze us with elegant clarity and tremendous insight—often using the apparent simplicity of a numerical example while mumbling something self-deprecating about the calculation—and with or without numbers always making a non-obvious connection or extracting a non-obvious interpretation. After the “aha” moment you would find yourself invariably saying, yes of course, it's exactly so. It was teaching as performance art, but with intellectual content of the highest order. And humane pedagogically, as he called on us alphabetically.

My experience in the Income Tax class was the start of an intellectual journey, and a relationship that I developed with Marvin, over the rest of my law school years and my professional life. I enrolled in every one of Marvin's courses: Federal Income Tax, Business Units II and Corporate Tax. When I exhausted the courses that Marvin taught by the end of my second year in law school, I then fulfilled a writing requirement under Marvin's supervision,

*In September, Columbia Law School hosted a service to honor Chirelstein's life. The following is an abridged and edited version of the remarks delivered by one of his former students, Robert Romano '80, Sterling Professor of Law and Director, Yale Law School Center for the Study of Corporate Law. The complete remarks will be published as an essay in the Columbia Law Review, volume 116, issue 2 (March 2016) and are reprinted here by permission.*

which became a co-authored paper with my classmate, Mark Campisano. Writing that paper suggested to me that it might be fun to use economics to analyze legal rules, and pursue an academic career; Mark followed more substantively in Marvin's footsteps and is a distinguished tax lawyer. And he had this to say in remembrance:

**“For me, Marvin was more than a wonderful teacher—he introduced me to the intellectual love of my life. He presented tax law as a marvelous and massive conceptual jungle gym, where you could climb from one idea to another, and then to another, and so on—until you found yourself in a place you’d never foreseen. So, for example, the question of ‘what is income?’ led Marvin to talk about the timing of taxation, and then to benefits in kind, and then to inside buildup, and then to the convenience of the employer, and finally to whether a family should be taxed on ‘the housewife’s uncompensated labor as a homemaker.’ How did we get there?”**

I think Mark captures a feeling shared by all of Marvin's tax students. Mark and I not only wrote the paper together for Marvin, but he asked the two of us to review a note on tax preferences that he was thinking of adding to the first edition of his marvelous little book, *Federal Income Taxation: A Law Student's Guide to the Leading Cases and Concepts* (1977), which had been published shortly before we took his course in Spring 1978. The book is a veritable objet d'art from a student perspective. Meeting the test of time, it has gone through a dozen editions, but from the outset it was evident that it was the rare book that would impact, indeed transform, the content of classroom teaching. It so lucidly conveys and synthesizes the key tax concepts that students armed with the text no longer are like deer in the headlights in the income tax class; indeed with Marvin's text as a teaching tool, students could emerge unharmed by a less compelling teacher while the more ambitious teacher could spend more class time on broader policy issues. And, most importantly law students all over the country were able to obtain a glimpse of the wondrous experience of discovery, one “aha” moment after another, that those of us privileged to attend Marvin's classes experienced.

Although writing a paper on net operating losses under Marvin's supervision was the impetus for my following in



his footsteps as a teacher, the course that, in retrospect, had the greatest impact on me was Business Units II. It was a pioneering, innovative course for the law school curriculum at the time, and despite what might seem to be an arcane subject, was heavily subscribed because Marvin was such a celebrated teacher. Years later, Marvin wrote to me describing how he was dragooned to teach the course. It is quintessential Marvin—dry, self-effacing wit yet with a serious edge:

**“When I arrived at Yale as a visitor in 1965, the outgoing dean..., author of some of the longest unread books ever published, told me that I was scheduled to teach a course called Business Units II. ‘What is that?’ I asked timidly. ‘That is our finance course,’ he answered, obviously impatient to get back to his writing. ‘But I don’t know anything about...’ I started to say when he closed and locked his office door. Anyway, the next morning (!!), I found myself teaching a course that consisted entirely of case-annotations for commonly used bond indentures and other boilerplate documents...**

**At all events, I staggered through the semester, aware that BU II was surely the most boring and insignificant course ever offered anywhere at any time in any language. When it was over, fearing**

that I might have to teach it again, I approached the faculty person whose responsibility it was to assign teachers to courses... and begged to be relieved. 'Nonsense, Timothy,' he said, 'we hired you on the basis of your reputation as a leading Finance specialist. So don't be modest. Go to it!'

Well, the choice then was to find somebody named Timothy to take my place or do something with the course itself. Result: I spent the summer reading such fascinating magazines as the *Journal of Finance*, half-understanding or misunderstanding what the articles therein were talking about, and next time around attempted to smuggle a truncated B-School finance course into BU II. In the end, together with Brudney, we put together a dreadful casebook—the one you used, I believe—of which the only virtue was that it so irritated teachers at other law schools that within a few years a small army of casebooks, much better than ours but also including a lot of B-School stuff, made their welcome appearance.

**The whole thing was nothing more or less than an act of desperation. And you were its victims."**

Well if we were victims, we were willing ones, and indeed, we were delighted to be them. More seriously, no one could possibly use the adjectives "boring and insignificant" to describe what the course became. For Marvin's Business Units II was a sophisticated interdisciplinary intellectual adventure in which corporate law rules and modern finance theory were intertwined, along with a dose of social choice theory. Having taken Marvin's course, it did not require a fertile imagination to figure out the direction in which corporate law was going to move; the intellectual payoff was self-evident.

**For me, each B.U. II class was mesmerizing,** as Marvin would make my head spin as he characterized and re-characterized transactions, just as he had in tax, or unpacked the multiple layers of proceedings buried within the explicit proceeding in a case, while making you laugh with pithy characterizations of cases, often a phrase from the decision—the preferred stock cases were "sailors, idiots or infants" cases, the district court opinion in Atlas Pipeline was the "Men of large means" case; these phrases, which



reverberate in my memory, had the pedagogic benefit of providing indelible markers for what we had learned, as they turned into subtle stand-ins for his introduction to the uses of finance theory, such as the importance of finding a market value test as the benchmark for judicial determination of a valuation dispute.

Marvin's insights into cases, of course, originated in his singular gift of seeing the isomorphic structures of diverse transactions, a prime reason why he was a superb tax lawyer. But there was another factor for why he was a master teacher: He truly enjoyed engaging with students—a trait not as prevalent among law teachers as one would wish. Marvin once told me how he particularly disliked New Haven in the summer—which I found startling, for it is green, peaceful, and, I think, quite pleasant in the summer; but he disliked it because the students were not there. Marvin thought that things were dull without students, and he looked with anticipation to their return, the buzz in the hallways at the start of the school year, which he found exhilarating. I think that Marvin's genuine affection for students is a key to understanding his tremendous classroom success and formative impact on his students, as it would be difficult to not have

burned out over the years from the emotional energy expended in class, if there had not been joy in the work.

I would like to close with a further word on Marvin's character. Marvin was inspirational not just as a teacher: he had a keen sense of fair play. He employed female research assistants at a time when that was a rarity. One should keep in mind that in the late 1970s when I was a law student, although the situation was rapidly changing, women constituted less than thirty percent of the class and my Contracts teacher, of whom I thought and still think the world, did not call on female students. I was fortunate to be involved in several of Marvin's research projects and thereby had a front seat observing this aspect of who he was. And I would be

remiss if I did not also share an instance of Marvin's sense of right and wrong that I observed from that perch. Marvin was concerned that the issuance of cable TV licenses in New Haven might involve corrupt influence peddling. We drove to Hartford together thinking that we would get state regulators to, at the least, investigate the granting of the licenses. The Connecticut regulators were simply not interested. With the benefit of hindsight, we expected too much, as over the succeeding years a large number of state elected officials, of both political parties, have been convicted of corruption. Although our trip to Hartford was disappointing, that experience will always stay with me, for it conveyed so clearly to me Marvin's integrity and decency. Y



Marvin A. Chirelstein (second from right) in 2006, at the celebration marking the start of the colloquium series named in his honor, with (from left) Harold Hongju Koh (dean at the time), Sterling Professor Roberta Romano '80, and Mark Campisano '80, who with his wife Kim endowed the colloquium.

## An Enduring Influence: The Chirelstein Colloquium

Since 2006, the Law School's Marvin A. Chirelstein Colloquium on Contemporary Issues in Law and Business has brought leading members of the corporate bar, business and investment communities, judges, and regulators to Yale Law School to discuss emerging practice and regulatory issues.

Supported by an endowment funded by Mark '80 and Kim Campisano, the colloquium provides students with an invaluable experience. The 2015 colloquium schedule, reprinted at right, indicates the rich variety of career opportunities to which students are exposed.

### Marvin A. Chirelstein Colloquium on Contemporary Issues in Law and Business, Spring 2015

**February 16** Charles J. Ditkoff '86, Counsel, McDermott Will & Emery LLP, "The LBO of HCA: Practical Applications of a Supervised Analytic Writing."

**February 23** Raben/Sullivan & Cromwell Lecture: Sendhil Mullainathan, Professor of Economics, Harvard University, "Against Against Prediction: How Machine Learning Can Improve the Legal System."

**March 2** Alvaro Barriga, General Counsel, Corp Group; Lynn K. Neuner '92, Partner and David Williams, Partner, Simpson Thacher & Barlett LLP, "The CorpBanca Deal: Fighting Off Challenges in New York and Santiago to a Chilean Bank Merger."

**March 9** Steven Lofchie '89, Partner and Co-Chair, Financial Services Group, and Tom Baldwin, Chief Information Officer, Cadwalader, Wickersham & Taft LLP, "Looking Three Years Forward."

**March 23** Vice Chancellor Donald F. Parsons, Jr., Delaware Court of Chancery, "Two Current, Important, But Unrelated, Topics in Delaware Law: (1) Alternative Entities and (2) Activist Shareholders."

**March 30** Donald Toumey '81, Partner, Sullivan & Cromwell LLP, "Representing Financial Institutions During and After the Financial Crisis."

**April 6** John A. Levin '63, Chief Executive Officer, Levin Capital Strategies, LP, "Issues in Fair Disclosure and Shareholder Activism."

**April 13** Winter Lecture: Jeremy Stein, Moise Y. Safra Professor of Economics, Harvard University, "The Federal Reserve's Balance Sheet and its Financial Stability Objectives."

**April 16** Kimberley D. Harris '96, Executive Vice President and General Counsel, NBCUniversal, "ABC v. Aereo: Legal and Regulatory Challenges Facing the TV Business in a Digital Age."

**April 20** Andrew J. Ceresney '96, Director, U.S. Securities and Exchange Commission Division of Enforcement, "The SEC's Enforcement of Insider Trading Law: Opportunities and Challenges."

**April 27** Linda C. Goldstein '85, Partner and Co-Leader, White Collar and Securities Litigation Practice, Dechert LLP, "How to Litigate a Corporate Governance Dispute: A Case Study."

**April 28** Gregg Engles '82, Chairman and Chief Executive Officer, The WhiteWave Foods Company, "Law and Entrepreneurship: The Evolution of a Business Strategy."