

## MARVIN A. CHIRELSTEIN

*Michael J. Graetz\**

The Surgeon General of the United States was not Marvin Chirelstein's general. Marvin did not doubt the Surgeon General's warnings that smoking cigarettes was harmful to one's health; he just didn't care, and he refused to quit. Marvin enjoyed gambling, and this was no doubt the most important bet he ever won. Nor was Marvin willing to accept fully Michael Bloomberg's insistence that all smoking take place outdoors. Most of the time, I would catch up with Marvin on 116th Street, leaning against the law school, puffing away. But now and then I would drop into his office where the lingering odor made clear that Marvin wasn't following all the rules. For a man so dedicated to the law, Marvin Chirelstein was a maverick.

Unfortunately, although I saw quite a bit of Marvin in the past few years, I cannot say that we were close friends. Marvin had disembarked for New York nearly two years before I arrived at the Yale Law School. His reputation, however, like the smoke in his office, lingered. Before arriving at Yale, I had, of course, heard often of Yale's two tax law giants "Bittker and Chirelstein." They were, in fact, very close friends. Boris Bittker and Marvin Chirelstein walked together to the law school nearly every morning while they were both at Yale, and they occupied offices adjacent to each other there for nearly twenty years. But despite their shared immense intellects, their mutual admiration, and their abiding friendship, Marvin and Boris were very different. Mostly, this was due to tastes. To take just one example: Boris knew nothing and cared less about sports. Marvin was avid about sports, especially boxing and baseball, and he loved placing a wager on a horse. He sometimes said he wanted to be buried at the seventh furlong pole at Belmont. Boris thought Belmont was a city, but he wasn't sure whether it was in Massachusetts or California or why it might have such a pole. Marvin loved music and was an accomplished violinist; Boris couldn't distinguish one note from another. Marvin himself, in a tribute to Boris in the *Yale Law Journal*, describes what it was like working next door:

It was a harrowing experience. My own scholarly life, to call it that, consisted chiefly of an agonizing, daily effort to think up a writing project that I could regard as respectable, and there were weeks and months, never mind years, when absolutely nothing worthwhile entered my head. On the other side of my office wall, too thin to be entirely soundproof, I heard the steady and relentless tap-tap-tap of Boris's typewriter as he began, finished, and then went on to another brilliant research

---

\* Columbia Alumni Professor of Tax Law, Columbia Law School; Justus S. Hotchkiss Professor Emeritus, Yale Law School.

project in what appeared to me to be an endless succession of scholarly triumphs. He never ran out of ideas, he never ran out of energy, and he behaved at all times with a calm, unflinching self-assurance that exactly mirrored the reverse of my own fevered mental state. The fine portrait of Boris that hangs in the student lounge at Yale Law School misses only one thing, and that is a tiny cartoon of me in the lower right-hand corner in the attitude of *The Scream*.<sup>1</sup>

Looking beyond his self-deprecating wit, Marvin was again expressing a difference of taste. Marvin had amply demonstrated his capacity for pathbreaking scholarship in articles on corporate taxation and corporate finance published in the *Harvard Law Review* and *Yale Law Journal* in the 1960s and 1970s,<sup>2</sup> but truth be told, Marvin Chirelstein didn't have high regard for the scholarly enterprise. He said that legal scholarship "at best offers other writers an opportunity to bring their own ideas into focus and advance the issues in some useful direction."<sup>3</sup> Legal writing, he said, "has a painfully short after-life"; over time it "sink[s] back into the shadows."<sup>4</sup> Marvin Chirelstein did not love the shadows. His view of legal scholarship more gently echoed my former University of Virginia colleague Tom Bergin, who long ago described the *Index to Legal Periodicals* as the "Forest Lawn of catalogues."<sup>5</sup>

So it is hardly surprising that Marvin spent little of his time on traditional legal scholarship. Perhaps more surprising is that Marvin—who by his own admission, often failed to make it to class as a student<sup>6</sup>—was a dedicated and enormously successful teacher, loved and admired by generations of law students. Teaching, Marvin frequently said, is "easy"—not something we all agree with, but Marvin was a "natural."<sup>7</sup>

Not everyone, of course, was captivated by Marvin's teaching. His most famous student, Bill Clinton, confessed to reading *One Hundred Years of Solitude* during Marvin's federal income tax class, but he, of course, was not about to become a tax lawyer. Even well into his eighties, students would describe Marvin as "the best professor I ever had," "a tremendous educator." Nearly everyone he taught remarked on his sense of humor. He was indeed a very funny man. But tax isn't for everyone: As

---

1. Marvin A. Chirelstein, Boris I. Bittker, 115 Yale L.J. 737, 737 (2006).

2. E.g., Marvin A. Chirelstein, Optional Redemptions and Optional Dividends: Taxing the Repurchase of Common Shares, 78 Yale L.J. 739 (1969); Marvin A. Chirelstein, Tax Pooling and Tax Postponement—the Capital Exchange Funds, 75 Yale L.J. 183 (1965).

3. Marvin A. Chirelstein, Walter J. Blum and My Brilliant Career, 55 U. Chi. L. Rev. 725, 725 (1988) [hereinafter Chirelstein, *Brilliant Career*].

4. *Id.*

5. Thomas F. Bergin, The Law Teacher: A Man Divided Against Himself, 54 Va. L. Rev. 637, 646 (1968). For those who do not know, Forest Lawn is a well-known Los Angeles mortuary and cemetery.

6. Chirelstein, *Brilliant Career*, supra note 3, at 729.

7. For the sense of the word, see generally Bernard Malamud, *The Natural* (1st ed. 1952); *The Natural* (Tristar Pictures 1984) (starring Robert Redford).

one student summarized it, “Chirelstein is everything positive, and tax is everything negative, which the Chirelstein positives greatly outweigh.”<sup>8</sup>

But the classroom could not contain Marvin’s appetite for teaching. Early in the 1990s, Marvin published his *Federal Income Taxation (Concepts and Insights)*, an indispensable guide for law students struggling to understand taxation. Thirteen editions later and now co-authored by Larry Zelenak, it remains one of Foundation Press’s very best sellers. Like virtually all other tax professors, I urge my students to read it, but I ask them to wait until I have first covered the relevant material in class. I tell myself that this is sound pedagogically, but sometimes I wonder whether it is just so they will think I have something original to add in the classroom to Marvin’s insights. Through that marvelous volume, Marvin has taught taxation to an enormous number of law students—far more than any of us could hope to reach. And he inspired many law students to choose tax law as a career. Fortunately, that teaching will continue long after his death.

Marvin not only taught tax classes; he also taught contracts, and again he found the classroom too small a stage. So early this century, he followed his wonderful tax book with a second best seller: *Concepts and Case Analysis in the Law of Contracts*. Through this effort, Marvin provided the kind of insights for generations of first-year contracts students that he had long accorded their upper-class colleagues struggling to learn taxation.

In addition to teaching, Marvin loved lawyering. His office was stacked high with transcripts of testimony from arbitration hearings in contests between tax shelter investors and the promoters of shelter deals that had collapsed or even backfired. When I asked Marvin which side he was testifying for, after acknowledging that he had testified over a dozen times, he replied, “It doesn’t matter, they are all scoundrels.” He reserved his greatest scorn for “the supporting legal opinions from some of the best known firms in the country.” But he insisted, his expert testimony was highly valued and produced fear and lucre, both of which Marvin appreciated. Perhaps as an outgrowth of this endeavor, Marvin created and taught a very successful seminar on the implications of the codification of the economic substance doctrine<sup>9</sup> for the “proper scope of Tax Planning, that foul disease.”<sup>10</sup> Having mastered something new, Marvin was anxious to share his expertise and experience with his students.

---

8. These quotes stem from anonymous student surveys from classes Marvin taught in 2008 and 2013.

9. See generally I.R.C. § 7701(o) (2012).

10. Email from Marvin Chirelstein, Professor Emeritus, Columbia Law Sch., to Michael Graetz, Columbia Alumni Professor of Tax Law, Columbia Law Sch. (June 12, 2010, 2:50 PM) (on file with the *Columbia Law Review*).

Marvin's taste and energy for teaching did not end when his students graduated law school. Steve Cohen and Roberta Romano, in articles adjacent to this one, offer compelling testimony to Marvin's talents and efforts as a mentor. Yale Law Professor Anne Alstott, who embarked on her teaching career at Columbia, echoes their sentiments:

I met Marvin when I began teaching in Columbia in 1992, and I could not have asked for a better mentor and friend. Marvin's office was next to mine, and so we would wander into each other's office several times a day. He read every word of my articles and commented sharply but always gently. Once I (unwittingly) titled a section of an article "What is To Be Done?" and he wrote, "Lenin?" Marvin was hilarious and always original. He never repeated a quip but had an endless font of dry humor. One of my regrets in leaving Columbia was leaving Marvin's company. I miss him.<sup>11</sup>

Marvin lamented that he couldn't teach taxation to all of America. He expressed "abiding" frustration at the "extent to which ordinary people can be misled and misinformed about our tax system—even lied to—by political candidates, news commentators and others having access to a public audience."<sup>12</sup> He remained "moderately proud" of the income tax, despite its many shortcomings, which he knew well, and was firmly committed to progressivity in distributing its burdens among the populace.<sup>13</sup>

As Bob Scott relates in detail, Marvin was famous around Columbia Law School for his email correspondence. He brought many a smile to the faces of everyone on his mailing list. Once in correspondence about "a director of transnational studies" at the law school, Marvin suggested that, if I were to refuse the position (which was a question I never faced), we should turn to Rodion Romanovich.<sup>14</sup>

Bill Clinton described Marvin Chirelstein as a "gifted teach[er]" with "endless curiosity," and a "generous spirit."<sup>15</sup> The former president got that exactly right. More compelling than all of Marvin's many accomplishments were his great humanity, his unparalleled sense of humor, and always, the twinkle in his eye.

---

11. Email from Anne Alstott, Jacquin D. Bierman Professor in Taxation, Yale Law Sch., to Michael Graetz, Columbia Alumni Professor of Tax Law, Columbia Law Sch. (Sept. 15, 2015, 10:29 AM) (on file with the *Columbia Law Review*).

12. Marvin A. Chirelstein, *Taxes and Public Understanding*, 29 *Conn. L. Rev.* 9 (1997).

13. *Id.* at 26.

14. Email from Marvin Chirelstein, Professor Emeritus, Columbia Law Sch., to Michael Graetz, Columbia Alumni Professor of Tax Law, Columbia Law Sch. (Jan. 20, 2013, 10:28 AM) (on file with the *Columbia Law Review*).

15. Columbia Law Sch., Sincerely, Marvin Chirelstein (Oct. 12, 2015), [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2015/october2015/chirelstein-memorial](http://www.law.columbia.edu/media_inquiries/news_events/2015/october2015/chirelstein-memorial) [perma.cc/3YWW-6C4L].

Not long after my mother died, my daughter Sydney, then age six, caught me in a moment of profound sadness. “Dad, why are you sad?” she asked.

“I was just thinking about your grandmother,” I said.

“Oh,” she said, “I’ve been thinking about her too.”

“What are you thinking?” I asked.

“I am thinking of her in heaven having tea with Louie Armstrong,” she said.

This, I realized instantly, is the best way to think about people who have passed. So now when I think of Marvin Chirelstein, I see him in heaven, taking advantage of his new heights to cash a winning ticket on a longshot at Belmont, watching a boxing match or baseball game now and then, convincing Isaac Stern to play a duet or at least give him some violin lessons, amusing the “B-list” actors from old movies he loved, and teaching anyone who will listen about taxation and the law of contracts.