COLUMBIA LAW REVIEW

VOL. 109 | OCTOBER 2009 | NO. 6

IN MEMORIAM—LOUIS LOWENSTEIN

LOUIS LOWENSTEIN—A SPLENDID ACADEMIC CAREER

*Harvey J. Goldschmid**

Lou Lowenstein began teaching at Columbia Law School in 1980; he started relatively late in life by law faculty standards. Lou was then fifty-five, and some members of the faculty worried that his past achievements—and advanced age—might be tempting him to seek what a non-academic could assume was a quieter, less demanding existence.

Lou was indeed coming from a most demanding, highly successful professional career. He graduated from Columbia Law School as Editor-in-Chief of this Law Review, clerked for Judge Stanley H. Fuld (of the New York Court of Appeals), practiced at a major New York law firm, and became a founding partner of another major law firm, Kramer, Levin, Naftalis & Frankel. For roughly twenty years at Kramer Levin, Lou was widely recognized as a superb corporate technician and, more importantly, as a counselor with uncommon breadth and extraordinarily good judgment. Just before coming back to Columbia, Lou served as president of Supermarkets General Corporation, a large, diversified retailer.

From just about Lou's first days of teaching, all doubts about his drive and scholarly ambitions were dispelled. He took on the most contentious and complex issues of corporate law and securities regulation of the day; his early writing dealt with hostile corporate takeovers, management buyouts, junk bonds, and efficient market theory. No academic can produce important scholarship without thinking broadly and theoretically about the subject at hand. Lou did that, but what made his work truly outstanding was his pragmatic understanding of the gaps and imperfections in legal and finance theory, his willingness to question widely held assumptions, and his unyielding intellectual integrity.

In the early 1980s, for example, most economists and law professors thought hostile corporate takeovers were almost always beneficial because, among other things, they "pruned deadwood" (replaced or disciplined weak managements) and rewarded shareholders with premium payments for their shares. On the other side, much of the business community and most commentators from practice saw only unmitigated harm. But Lou kept insistently pointing out the "myths" on both sides of

---

* Dwight Professor of Law, Columbia Law School.

the debate. Market imperfections (e.g., the difference between the value of a whole public corporation and the secondary market for its shares), the coercive effect that fast timing and information asymmetries could have on shareholders, and crude and self-interested offensive and defensive tactics required a more nuanced and sophisticated response.[1] In 1985, Lou concluded in Senate testimony:

> The newly discovered market for corporate control—takeover bids—may have some utility, but it has been greatly exaggerated. . . . Wall Street exists to serve Main Street and not the other way around. The effects of this takeover bid process have been to frighten and distract well-run companies fully as much as others. There is no evidence that bidders look only for undermanaged or underutilized assets. And the process is taking its toll.[2]

Lou's skepticism about the value of hostile takeovers did not blind him to their affirmative effects. He devoted a large portion of his late 1980s and 1990s scholarship to proposals for "pruning management deadwood" by proxy reform, new corporate governance mechanisms, and the invigoration of institutional investors.

Lou was also an excellent classroom teacher. He prepared meticulously. He opened and engaged the minds of students with incisive questioning, illuminating illustrations from his broad experience, clear-eyed skepticism and insight, gentle wit, and abundant charm.

When Lou formally retired from Columbia in 1995, the Faculty of Law recognized his "splendid academic accomplishments" and resolved as follows:

> In the early and middle 1980s, Lou wrote articles on hostile corporate takeovers and management buyouts that combined a realistic, insightful grasp of legal and economic issues with a sound policy sense and a felicity of style. These same characteristics were evident in his books, Sense and Nonsense in Corporate Finance (1991) and What's Wrong With Wall Street: Short-Term Gain and the Absentee Shareholders (1988), and in his pieces on junk bonds, mergers and acquisitions, corporate governance, efficient market theory, and a host of other legal and financial subjects. Lou, often rejecting conventional wisdom, . . . became a scholar with the highest international ranking.

The Faculty urged Lou, even in emeritus status, "to remain one of us," although it was prepared to "concede him more time with his three children and seven grandchildren and with his wonderful wife Helen."

---

1. See, e.g., Impact of Corporate Takeovers: Hearing Before the Subcomm. on Securities of the S. Comm. on Banking, Housing and Urban Affairs, 99th Cong. 108 (1985) (statement of Louis Lowenstein, Professor of Law, Columbia Law School); Louis Lowenstein, Pruning Deadwood in Hostile Takeovers: A Proposal for Legislation, 83 Colum. L. Rev. 249 (1983).

2. Impact of Corporate Takeovers, supra note 1, at 120–22.

Lou, until his death in April, remained one of the most productive people at the Law School. He continued to write, and his last book, in 2008, on mutual fund reform was truly important. His title set the theme: The Investor's Dilemma: How Mutual Funds Are Betraying Your Trust and What to Do About It.

Lou's civility and generosity of spirit also led him to tirelessly support and chair the Board of Directors of the Coalition for the Homeless. He continued to chair the Board of Directors of the Columbia Law Review Association, where he not only provided wise guidance over many years but also investment advice that did much to secure the Review's financial future.

On a personal level, I miss Lou immensely. He was a wonderful friend and an enormously good and decent man. He was always there to listen, to advise, to wrap you in his great warmth, and to counsel you with his wisdom. The saving grace for us, his colleagues at Columbia, is that after his retirement from practice, we had Lou with us for twenty-nine years.

REMEMBERING LOU LOWENSTEIN

*Kenneth P. Kopelman**

Lou Lowenstein entered the practice of law in the 1950s with a stellar record, including an undergraduate business degree from the Columbia University School of Business, a Master's degree, and a law degree; selection as Editor-in-Chief of the Columbia Law Review; and service as law clerk to the legendary Judge Stanley Fuld of the New York Court of Appeals, another Columbia Law graduate who later became Chief Judge of that Court.

Academically and intellectually, Lou was truly gifted. In 1954, Lou joined the established New York City firm of Hays, Sklar & Herzberg. And as they say in the real estate game: location, location, location. On Lou's first day, he was shown to his assigned office and given the second desk—the desk by the door—in a two associate room. The senior associate in that room—who had already put in a year at the firm, and therefore had claim to the desk by the window—was a young tax lawyer named Sherwin Kamin. More about that later.

Lou's interest in the world of commerce, his financial acumen, and his sharp, creative, and agile mind, combined to make him a natural in business law. Lou grew into a superb negotiator and strategist, with a reputation for problem solving. He soon had the makings of a strong practice. As referrals from law school classmates and others started to come in, Lou built his own following, including new and established businesses as clients.

Lou's approach to the practice was direct, confidence inspiring, and successful. His seemingly mild, easy manner belied a toughness that was always there, and always at the ready if the situation called for it. Lou focused on the big picture, not by ignoring or minimizing the details, but rather by having a masterful command of them: a command of the law, of the dynamics of business situations, and of human nature. His quiet confidence in his own judgment freed him from focusing on the trees, and allowed him to see the entire forest at a glance.

Lou was also a pragmatist. He knew the law, but he also knew its limits. When business considerations were paramount, Lou's pragmatism, and his fluency in business and accounting, were often the keys to a successful outcome.

As one of his early partners remarked, "When clients met Lou, they felt like they were in the hands of the best lawyer in America."

One might think that such a powerhouse lawyer would be impossible to work with, or for. But Lou was not one to lord his intellect, his experience, or his judgment, over an adversary or a client. There was no flash, no showy talk. His demeanor was always quiet and low key. He put peo-

* Partner at Kramer, Levin, Naftalis & Frankel LLP (co-founded by Lou Lowenstein in 1968); Columbia Law School, '76.

ple at ease and made them feel comfortable. I don't know—maybe it was those bow ties. But when Lou spoke, people listened. In short, Lou had become the model of the complete business lawyer.

By the late 1960s, however, Lou started to grow restless with life at Hayes Sklar. His ambition to establish an important law firm in his own right—long a topic of conversation with Sherwin—started to take on new dimensions.

In the spring of 1968, Lou, then forty-three, and his friend Arthur Kramer—a Yale lawyer who had a distinguished career in the U.S. Attorney's Office—walked around Fountain Square in Larchmont, talking about the law, and life. They soon settled on a common goal: to join forces to build a new law firm. But not just any firm would do.

Arthur and Lou would commit themselves to building a top-tier firm with a first-class group of lawyers who would compete with the major firms of the day—all within an egalitarian, democratic partnership model, and also with a respect for a balance between work and lifestyle. A tall order, but they were determined.

Soon after, Lou, Sherwin, and associate Geoff Kalmus, who had been President of the Harvard Law Review, departed Hays Sklar with a handful of other associates to join forces with Arthur Kramer's boutique litigation firm, Kramer, Nessen & Hochman. The result was a new twelve-person firm called Kramer, Lowenstein, Nessen & Kamin.

Lou led the start-up firm's corporate department. Arthur Kramer's firm had been focused primarily on litigation, and was subject to the ebbs and flows that can accompany that kind of practice. Lou's established corporate client base—which by then included Supermarkets General Corporation, a multi-billion dollar retail chain, and soon after, an upstart phone company called MCI Communications—provided some measure of ballast, allowing the new Kramer Lowenstein to grow into a full service firm, with separate departments for tax and real estate.

The firm focused on bringing in top graduates from elite law schools and clerkships to support a growing and broad-based practice. Lou's personality, force of intellect, and vision for the firm made him an especially effective recruiter—and, I might add, one with a singular appetite for Columbia Law School talent.

Looking back recently on those early years, Lou characterized his relationship with Arthur as "harmonious, rewarding, and joyful."

The rest, as they say, is history.

Lou left the partnership in 1978 when the CEO of Supermarkets General unexpectedly passed away, and the Board turned to Lou—their lawyer, a fellow member of the Board of Directors, and their trusted counselor, who, by the way, knew all about their business—to succeed him. A few years later, Lou left SGC to join the faculty at Columbia Law. During this period, Lou remained on as counsel to the firm, and I was fortunate as a young associate to start my work with him.

I'd like to talk about the qualities that Lou brought to the practice, and how Lou's character and ideals continue to inspire our firm.

First, it's about standards. Lou embodied professional excellence. There was never any place for second best. He demanded rigorous intellectual analysis and honesty both from himself and those around him. He also demanded adherence to the highest ethical and professional values.

Second, Lou understood that building a firm meant teaching and mentoring younger attorneys, and being a team player. He always was a natural teacher, willing to invest the time critiquing and improving others, and was unstinting in sharing successes generously with everyone on the team.

Next, Lou understood that business law was about business. He knew and cared about business, and clients appreciated his knowledge, experience, and enthusiasm. He made sure he knew and understood all aspects of his clients' businesses intimately. He was their lawyer, yes, but was also an informed, trusted and perceptive counselor, who made important contributions on all manner of strategic and operational issues. In recognition of Lou's talents, he was invited to serve on numerous Boards, both public and private.

The firm itself also benefited from Lou's business savvy. He introduced the firm, and much to benefit of their pension accounts, the firm's partners, to Berkshire Hathaway and value investing.

Next, for all of this excellence, hard work, and service, Lou also always stood for the notion that the law—the practice of law, the business of law, the rewards that a legal career might bring—was not in itself sufficient to a full and complete life. The example Lou set in his charitable, philanthropic, community and pro bono work is an integral part of what Kramer Levin remains today. Lou's devotion to the Coalition for the Homeless—of doing good deeds for those who could never return the favor—is legendary. He committed his time, his energy, and his checkbook, and rolled up his sleeves. The Coalition occupied such a special place in Lou's heart and his life.

And lastly, Lou understood and embodied true friendship. He was until the end always interested and involved, always a selfless, gracious, and generous friend.

As I review Lou's remarkable life, his extraordinary accomplishments, I am dumbstruck. A life that included even a single one of Lou's accomplishments would be noteworthy, be it his rise to the pinnacle of the New York legal profession; his entrepreneurial founding of a law firm that continues to prosper forty years later; his accomplishments as a businessman and investor; his law school teaching and research, and the passion he brought to the important legal, business, and social issues of the day; his numerous books and countless articles; and his dedication to the important work of the Coalition.

If a life contained just one of these accomplishments, it would be a life that any of us would be proud to claim.

That Lou combined all of these in his lifetime leaves us in awe of a great man. He was an inspirational figure, of noble character. We shall not look upon his like again.

In closing, I want to express my great admiration and love for Helen Lowenstein, for her courage throughout the recent trying times. One could always sense the closeness between Helen and Lou, the special strength the two of them conveyed together.

Lou was a class act and a distinguished, extraordinarily accomplished man—a true mensch—who happened also to be my teacher, mentor, colleague, client, ballgame buddy, and friend, and who had such a major, positive impact on me, our law firm, and, I'll bet, on most everyone he touched.

LOU LOWENSTEIN: PERSONAL REFLECTIONS

*Arthur W. Murphy**

Other Tributes in this issue detail Lou's scholarly attainments. My account is more personal. We were destined to meet. The sister of Lou's wife Helen and my first wife were high school classmates; Lou's brother's wife was a contemporary at law school and his brother a nuclear regulator when I became radioactive.[1]

I suspect that anyone who ever met Lou was struck by his upbeat demeanor. He was an optimist. He was also, in his professional life, if not his investment philosophy, a risk taker. I was awed by his decision with Arthur Kramer and others to leave the security of established law firms and found their own. There were of course models: Cleary Gottlieb and Paul Weiss were "new firms" when I was in law school; Skadden Arps was a little later. But the founders of those firms were of an earlier generation; these were my contemporaries and younger to boot. As it turned out, the venture was a great success. Several of my earliest students were lifers and other alumni joined the firm in mid or later career.

Lou, on the other hand, found new challenges irresistible. When an important client died Lou was asked to become President of Supermarkets General and accepted. When that short lived venture ended, instead of going back to the firm Lou accepted the law school's invitation to become our (I think) first Visiting Professor from Practice. The position was not conceived of as a way of turning practitioners into academics but Lou took to the academic life and we took to him and offered a tenure track appointment. Once again there was a large risk. Lou was in his fifties with no record of scholarship. I advised him to hold out for a tenured appointment following the model used in the sixties when the law school had replenished its ranks from practice. But Lou was shocked at the suggestion: He knew he would write and if he did not he would not belong on a law faculty. And he did write, and write, and became an important part of our corporate group—surely one of the great strengths of the law school.

As Vice Dean I relied heavily on him for recommendations as to course offerings and staffing and he made my life much easier, except once. There was no one available to teach Securities. "We don't need to offer Securities this year," Lou said—confidently—and I believed him. The students disagreed and we invited a visitor to offer the course. The enrollment was huge. The attendance was less so, of course. That students had to have the course did not mean they had to attend.

---

* Joseph Solomon Professor Emeritus of Wills, Trusts, and Estates, Columbia University School of Law.

1. Professor Murphy served on the Atomic Safety Licensing Board of the Atomic Energy Commission and the Presidential Commission on Catastrophic Nuclear Accidents.

Apart from writing I think Lou's greatest satisfaction was in his work with colleagues on development and management of curriculum. Unlike his more theatrical colleagues he did not crave the attention that comes from being in the front of the classroom. When he took emeritus status, he stopped teaching. It wasn't that he did not enjoy students, however. He continued close involvement with students on the *Law Review*, of which he was for years Chairman of the Board of Directors, and mentoring recipients of Lowenstein Scholarships under the program that he and Helen generously endowed.

The Law School was not the only beneficiary of his philanthropy. He was actively involved in Coalition for the Homeless for many years after retirement.

Shortly before he died he made a lunch date with me at a restaurant near my home. When the appointed hour arrived I was unable to get to the restaurant so Lou picked up sandwiches and came to me. In retrospect I realize that he came to say goodbye but there was no talk of goodbye—law, politics, even sports, but no farewell. His visit was in character. It always seemed to me that he gave more than he received. On the other hand, I am confident that he did not see it that way.

A TRIBUTE TO LOU LOWENSTEIN

*William Savitt**

I met Lou Lowenstein when he asked me to lunch on a grey afternoon in March 1996. In a substantial stroke of unearned good fortune, I had just been elected Editor-in-Chief of this Law Review. Lou was the Chairman of our Board of Directors, and the Law Review, it turned out, was one of the many causes that Lou promoted, safeguarded and guardian-angeled. I had become its temporary custodian, and Lou was concerned to imbue me with an appropriate sense of historical mission.

We met in the Columbia University Faculty House, which was (and I expect still is) as uninspiring a luncheon venue as human ingenuity has yet invented. No matter: I was about to learn that there are no grey afternoons, no uninspiring venues, when it's a question of Lou Lowenstein. He greeted me in his signature bow tie, oversized glasses, and insistent smile. He shook my hand as though we were old friends. We talked and talked about the *Review* and its history, and Lou's vision for it. There wasn't anything about the *Review* that had escaped his notice. Lou knew how members were selected; what we were publishing; the state of our finances in detail; legal scholarship in general; what worked and what didn't; *everything*. He could have managed the publication himself in a fraction of the time it took our outsized editorial board, and no doubt much better.

It was like that with everything with Lou. As recounted elsewhere in these pages, he crafted a career remarkable in both its depth and variety. After graduating from Columbia Law (and serving as Editor-in-Chief of the *Review*) in 1953, Lou clerked for Judge Stanley Fuld of the New York Court of Appeals, co-founded a leading New York law firm, served as CEO of a large supermarket company, and then joined Columbia's faculty, where he became a beloved teacher and a leading corporate law scholar and critic of Wall Street. My guess is that scarcely a detail escaped Lou in these various endeavors. From our conversations and work together, I learned that he shared Judge Fuld's notorious commitment to written perfection, and that he ran Supermarkets General (an NYSE-listed grocery chain) with as much attention to the contents of the frozen foods case as to the balance sheet.

Lou built enormous intellectual achievement on his eye for detail. One now-timely illustration: In 1997—long before Enron and Sarbanes-Oxley, not to mention the recent economic unpleasantness—Lou published an article making the then-novel point that good and transparent financial accounting "provides the brightest light and the most objective, detailed, and textured portrait of managerial performance."[1] While

* Partner, Wachtell, Lipton, Rosen & Katz; Member, Columbia Law Review Association, Inc. Board of Directors.

1. Louis Lowenstein, A Governance Tool That Really Works, Directors & Boards, Fall 1997, at 51, 54.

other would-be corporate governance reformers focused on obvious targets such as board structure and director independence criteria, Lou understood—long before other observers —that no corporate governance regime could work unless the data underlying performance, the very stuff of corporate performance, was accurate, detailed, and immediately available, to managers and investors alike. Visionary is not too strong a term to apply to the insight.

Lou brought this same sense of committed attention to all of his many passions and interests. I learned—not from Lou, of course, as he was far too modest to relate his charitable contributions, but from mutual friends—that he served as a board member of the Coalition for the Homeless. No surprise there (just further admiration for a man who appeared to know everything there was to know about topics ranging from gardening to FAS 5) and, this being Lou, no surprise either to learn that Lou insisted on coming out on cold evenings to serve hot meals to homeless women and men.

For all of his attention to detail and seriousness of purpose, though, Lou was great fun to be around. He had a critic's taut wit and the exuberant soul of a showman. As Chairman of the *Review*'s Board of Directors, he marched through our corporate business as if ringleading an intellectual variety show. The financial reports were an especial highlight. Lou was a committed believer in value investing and, as manager of the *Review*'s portfolio, he practiced what he preached. When it came time to report the year's results, Lou became our very own Sage of Warren Hall—not only detailing our routinely better-than-market results, but using the opportunity to inveigh against the speculative short-term bias that he believed infects most professional investing.

It is difficult to overestimate the significance of Lou's highly original investing acumen to the life of this publication. *Columbia Law Review*, unlike nearly all of its peers, is an independent not-for-profit corporation, and it receives no financial support from the Law School. There are plenty of advantages to this arrangement, but one important challenge—we have to find our own space and pay our own way. Whether we could have remained afloat all these years without Lou's steadfast and entertaining fiscal stewardship is an open question, but count me doubtful. In any event, however, Lou painted the *Review* in the black year after year, and in the process allowing us to undertake scholarly projects and fellowships that would otherwise be far beyond our means.

My lunch meeting with Lou signaled the beginning of an intense year-long collaboration between Lou and our editorial board. During the time I worked with Lou, we achieved much, restoring the publication to an on-time, 8 issues per year schedule, hosting an international symposium introducing the just-passed Telecommunications Act, publishing an absurdly overlong issue collecting the papers from that symposium, and moving the *Review*'s headquarters from soon-to-be-condemned space over a now-demolished post office to a brand-new building across the street from the Law School. The new building was an only-in-New York affair, called the "Sliver Building" because it was erected 10 stories high at a width that might make for a walk-in closet in other metropolitan areas. It was also an only-because-of-Lou production. In response to Lou's insistence that the *Review* remain entirely independent of the Law School and thanks to the endowment Lou had nurtured, the *Review* substantially participated in the financing of the building's construction and is the effective owner of half the building over the next century. Come what may in legal publishing, this journal (or whatever it may yet become) has a secure home for the next 99 years.

And while I say that we made progress together, the truth is that the "we" was all Lou. It was his careful planning that allowed the *Review* to flourish economically and intellectually, for unlike the mayflies that populate each year's editorial board, Lou planned for the long term as well as the next issue. But with Lou at the helm, it was easy for the rest of us to imagine that *we* were getting the job done, when in fact *he* was doing the heavy lifting. This was the essence of Lou's leadership style: to accept responsibility broadly, absorb criticism gladly and distribute credit generously. And he was the same kind of teacher, one with the rare knack for actually listening before he talked, with the result that he taught by pulling stuff out of students rather than trying to put stuff in.

After I graduated, Lou asked me whether I'd be interested in serving on the Review's Board of Directors. This was a little bit like asking a kid whether she wanted to sit at the grown-up table. And the invitation, coming from Lou, counted double (triple?) what it would have from some other quarter, so of course I accepted. In the years since, I watched Lou lead the Review in his amused and relentlessly focused fashion and realized that his deft administrative touch and investing wizardry are mere sideshow. His main achievement has been to bring every successive editorial board to the conviction that it is responsible for the publication, as a matter of profound historical trust between the first hundred years already past and however many successive years there might be. Lou was a magician that way, effortlessly guiding those who had the good fortune to be in his company to one good, sound, right result after another. I miss that, and him, very much.

LOU LOWENSTEIN: AN ENDURING LEGACY

*David M. Schizer**

It was inspiring to know Lou Lowenstein, and a great privilege to have him as a colleague, mentor, and friend. Lou was proof of the idea that there is no necessary correlation between excellence and ego, and that the highest of achievers can be the sweetest and most decent of people. Lou's intellect and character were the gold standard. He had a brilliant analytical mind, exceptionally good judgment, a tireless work ethic, and ironclad integrity. He was forceful when he needed to be, but only when he needed to be. Lou had a warm and generous spirit, always cheerful, attentive, and thoroughly understated. His extraordinary talents inspired the deepest admiration, and his warmth and decency inspired the deepest affection.

Lou's talent and dedication enabled him to enjoy extraordinary professional success. Indeed, anyone would be proud to accomplish a fraction of what he achieved. After serving as Editor-in-Chief of the *Columbia Law Review* and graduating from Columbia Law School and Columbia Business School, Lou clerked for Judge Stanley Fuld on the New York Court of Appeals. He thrived in corporate practice at Hays, Sklar & Hertzberg and then helped found the firm now called Kramer, Levin, Naftalis & Frankel LLP, one of the leading institutions of the New York bar. Eventually, Lou left to become the head of Supermarkets General, a New York Stock Exchange listed company, and then joined the faculty of Columbia Law School, becoming the Simon H. Rifkind Professor of Law. A great many of his students have told me how profound his influence has been on their careers, and how deeply they respect and love him.

Of course, if you asked Lou what his single greatest achievement was, he would say, without hesitation, that it was marrying Helen Lowenstein and raising their beautiful family. Helen was the love of Lou's life, and their complete dedication to each other, and the delight they took in each other's company, was nothing short of inspiring. Lou also was utterly devoted to his children and grandchildren and took boundless pride in their achievements.

Lou knew how fortunate he was, and was committed to giving back to a world that had been so good to him. One cannot think of Lou without also thinking of his extraordinary commitment to the *Columbia Law Review*, to public interest lawyering, and to the needs of the homeless. Generations of Columbia Law School graduates have worked after graduation as Lowenstein Fellows, a program established by Lou and Helen to support young public interest lawyers. Lou believed that talented people have an obligation to lead and to set an example. He was an optimist, and felt that if people in leadership roles followed their conscience instead of their narrow self-interest, the world would be a better place. I

* Dean and the Lucy G. Moses Professor of Law, Columbia Law School.

miss Lou terribly—everyone who knew him does—but that message remains with me.

Indeed, the greatest tribute that we can pay to a scholar is to acknowledge the enduring quality of his intellectual contribution. So it was with Lou. For example, although he published *Sense and Nonsense in Corporate Finance* in 1991,[1] much of it reads as if it could have been written about the financial meltdown that we have experienced in the past year.

Lou captured the dynamic in which market sentiment can turn on a dime: "The sunlit days when money flowed in the streets," he wrote, "soon turned into nights when even worthy companies would go begging for funds."[2] Although he was writing about the downturn of the late 1980s, his language is almost eerily fresh today: "Wall Street had almost convinced corporate America that credit would always be available; even for the poor, it would be only a question of the interest rate," he continued.[3] "But now credit was being rationed, not by price but by the quality of the borrower. The once-deep market turned out to be remarkably shallow and unforgiving. Santa Claus had gone back home, and there was no promise that he would return anytime soon."[4]

To Lou, the heart of the problem was bad information and bad incentives.

Lou had an insider's skepticism about finance experts: "Finance is complex," he would say, "but the basic rules are not."[5] The complexity could sometimes lure people into making bets that, if translated into everyday language, simply make no sense. During the 1980s, for example, companies began overpaying to acquire other companies, and banks made bad loans because "[t]hey mistook a short-lived bubble for the nature of the universe."[6] The problem, he said, is that too often "[p]rojections are usually nothing more than an extrapolation of current trends."[7] If too many people assume that earnings will never slow—or, in an example that is closer to home nowadays, that real estate prices will never decline—then the market will go off the rails. But this sort of unrealistic assumption will be persuasive to some if it is embedded in a glitzy and seemingly sophisticated model—for instance, for pricing derivatives. Lou was tireless in warning against this sort of naïveté: "My own experience," he wrote, "suggests the importance of not becoming overly caught up in the complexity of finance."[8]

---

1. Louis Lowenstein, Sense and Nonsense in Corporate Finance (1991) [hereinafter Lowenstein, Sense and Nonsense].
2. Id. at 5.
3. Id.
4. Id.
5. Id.
6. Id. at 6.
7. Id. at 10 (italics omitted).
8. Id. at 8.

This sort of "nonsense" in corporate finance, as he called it, derives not only from naïveté, but also from the self-interest of some market players: "[T]here are tens of thousands of brokers," he wrote in 1991, "people of quite ordinary skills, who need to generate commissions if they are to keep up with the payments on their cars."[9] He returned to this theme again in his latest book, *The Investor's Dilemma*, which emphasized that mutual fund managers don't always have the investor's interests at heart.[10] "Mutual funds," he wrote, "conceal a deep, abiding conflict of interest between the shareholders of a fund and its managers."[11] The problem, he emphasized, is that managers are not compensated based on fund performance, but on the volume of assets under management.[12] This means that funds spend a great deal of money on marketing expenses, and manage the funds to fill market niches, instead of to maximize return. "One way or another, all the [fund manager's] profits are coming out of investors' pockets," Lou wrote, "and they are huge."[13] More fundamentally, if you compensate people for deal volume, rather than deal quality, they will take risks that aren't worth taking. If the people who are supposed to monitor them don't have good information, or if they have their own incentives to look the other way, bad things will happen.

But Lou was always quick to point out that there are some market participants who do the right thing. For example, he was a firm believer in value investing: "The excesses of the 1980s largely grew out of an almost obsessive preoccupation with near-term developments."[14] People who have the foresight and discipline to focus on the long term and to ignore day-to-day and even month-to-month fluctuations can help stabilize the market, while also earning handsome profits for themselves over the long term.

More generally, Lou believed that "good corporate policy should be socially responsible."[15] Those who are fortunate enough to occupy positions of leadership within society have an obligation, he believed, to tend to more than their narrow self interests. Lou fervently believed that people of talent and good character can make an enormous difference in the world. It is an inspiring legacy, and one that will endure.

---

9. Id. at 13.
10. See generally Louis Lowenstein, The Investor's Dilemma (2008).
11. Id. at 2.
12. Id.
13. Id. at 5.
14. Lowenstein, Sense and Nonsense, supra note 1, at 6.
15. Id. at 8.