



IN MEMORIAM: MICHAEL E. LEVINE

The editors of *New York University Journal of Law & Liberty* respectfully dedicate this issue to Professor Michael E. Levine.

INTRODUCTION

Michael Levine had a long and rich career that took him in and out of government for his entire professional career. As an academic he did tours of duty at the Yale Law School, the University of Chicago Law School, the University of Southern California Law School, Cal Tech, the Yale School of Management, the Harvard Law School, and ending up at NYU Law School. Mike took on a key role in the CAB in 1978 and 1979 during its push toward deregulation. Mike also had an extensive career in the aviation industry, serving at various times as an airline executive at Continental Airlines, New York Airlines, and Northwest Airlines.

Mike's death on February 3, 2017 left a large hole in the lives of the many people with whom he lived and worked during his academic and professional career. On March 24, 2017, the NYU Law School and the Classical Liberal Institute organized a tribute to remember Mike. The event was attended by members of the Levine family, the NYU community, and other of Mike's many friends and admirers. A video recording of that event can be found at <https://www.youtube.com/watch?v=PXf73P78OiE&feature=youtu.be>. Since that date we were able to gather additional remarks from people who intersected with Mike at various points in his life. The

New York University Journal of Law and Liberty has graciously agreed to publish these tributes which are presented not in alphabetical order, but in rough order of the various stages of his life. What comes through in this composite portrait is the picture of a commanding presence who was fearless in his beliefs and dedicated to the many friends and students with whom he shared a rich, productive and memorable life.

REMARKS BY TREVOR W. MORRISON

We are here today to celebrate and remember the incomparable Mike Levine, our friend and colleague. I'm very grateful to all of you for being here this morning to join in this remembrance and celebration. I want to offer a warm welcome to everyone—the members of the Law School community, and most especially to Mike's family, including his daughters and his wife Carol. Thank you for being here.

We're going to hear from Mike's colleagues, friends, and family in a kind of "narrative history," each one describing a different part of his life. I didn't get to know Mike until the last stage of his career and his life; the four years that I've been here is the period that I knew him.

I experienced Mike directly as the person reliably raising his hand from the back corner of the faculty library at every one of our faculty workshops. And I do mean *every one* of the faculty workshops. It didn't matter the topic. He had read the paper each time, and was always prepared with a penetrating question. My job at the workshop is to keep the queue. Often, I would be looking down, as we got started, just reminding myself of the title of the paper and then saying that the presenter would give some opening remarks, and that in the meantime, I would take names for the question queue. There would be times when, without even looking up to make sure he had raised his hand, I would put Mike first in the queue because I knew his hand was already up.

Then of course there was the trenchant question itself, which Mike always posed with a smile—the most devastating way to ask a Levine-esque question. I know that some of us in this room have experienced those questions. Mike was a special, special member of this community, and I look forward to hearing the remembrances of him, as I know we all do. We'll start with Judge Cabranes.

REMARKS BY JOSE A. CABRANES

I am here to commemorate and to celebrate a friend of more than five decades.

I thank Dean Trevor Morrison and Professor Richard Epstein for the honor of speaking of the Early Levine. What I have to offer is an impressionistic portrait of the artist as a young man at Yale Law School in the early Nineteen Sixties, possibly to provide some context, and set the stage for the reflections on the Later Levine that will follow — reflections by colleagues and associates on the luminous career of Michael Elias Levine in legal education, government, and business.

I hope you will forgive the unavoidably personal, and Yale-centric, perspectives I have to offer. But I think the Early Levine did prefigure the Later Levine.

This assignment is an honor, as I have said, and it involves more than a touch of braggadocio.

Why an honor? Or, why braggadocio?

Because Mike Levine cultivated his friendships, like his many interests, with a passion, a discipline, and an austerity that one associates with connoisseurship. Like his cars, his music, his art, and his champagnes, Mike's friends were subjected always to the closest and most exacting scrutiny. He thus conveyed to his friends the distinct impression that, if you had somehow managed to meet his high standards and earned his approval, you must be quite special and deserving.

You will understand, therefore, why I deem it an honor to be identified as a long-time friend of Mike Levine.

Mike Levine and I converged on Yale Law School in the fall of 1962—this is well before The Revolution in Consciousness that we associate with the phrase “The Sixties.”

Social historians will agree that “The Sixties” as a cultural marker did not begin until the domestic and international turmoil of the late 1960s and the early 1970s—in sum, The Sixties came after Mike and I had graduated from Yale Law School in the Class of 1965.

We had arrived at Yale in 1962. Culturally our three years at YLS fell comfortably within The Fifties—it was Time magazine that, as usual, tried to capture the Zeitgeist, by describing our generation as the “silent generation.”

We had graduated from high school when Ike was in the White House, and we graduated from college when our oldest president had just given way to our youngest president, JFK.

Aside from its small professional schools, the Yale University of 1962 was still the Old Blue Yale, some years away from the supposed ideal of educating the “best and the brightest” — the ideal that would be the inspiration and hallmark of the later, transformative Yale presidency of Kingman Brewster, Jr.

In 1962 “minorities” meant Jews or other “white ethnics,” and these “minorities” famously clocked into Yale College every year at 10 per cent of the class. Then, as now, Yale College was the cultural epicenter of the University.

Yale Law School was a culturally distinct enclave. By 1962 YLS had a track record of three decades of hospitality to talented arrivistes. In 1954 faculty barons led by the liberal Mississippian, Myres S. McDougal, had successfully recommended the appointment as Dean of the Labor and Administrative Law, Professor Harry Shulman; and President Griswold had promised McDougal that if the Yale Corporation dared to resist this recommendation, he (Griswold) would resign in protest.

As it happens, Harry Shulman died young only a year into his deanship, but his appointment signaled that another important taboo was gone forever.

Shulman was succeeded by Prof. Eugene Victor Rostow, whose very name evoked the democratic socialist sensibilities of aspiring immigrant Jews. It was Rostow who, in September 1962, welcomed the Class of 1965—a class of about 165 that included 7 women, 3 blacks, and 2 Puerto Ricans (in those years before the Immigration Act of 1965, the only Hispanics of numerical consequence in the north were the Puerto Ricans).

Contrary to some recent revisionist, self-aggrandizing history, the Yale Law School of 1962 had long since claimed pride of place at the top of the greasy pole of legal education.

To be sure, Yale Law School in 1962 had not yet fully developed its now-famous delusions of centrality—the delusions of centrality awaited the vast expansion of the economy and legal employment, when Yale's small size enhanced its already-substantial market power.

But by 1962 Yale Law School took pride in having been a leader of the Legal Realism movement of the 1920s and 1930s and in having pioneered inter-disciplinary studies by including on its faculty economists, philosophers, and political scientists.

In sum, by 1962 Yale Law School was already the place to go if the law was your default professional option, as it was for Mike Levine and for me and many of our classmates. At Yale, we imagined, a legal education could include everything else worth knowing.

So by 1962, YLS was already a refuge for those who had no single intellectual mooring and who thought we could avoid what Kingman Brewster would later describe as “grim professionalism” by continuing our work in the humanities in the guise of a legal education.

But if truth be told, in 1962 YLS had a quite standard law school curriculum; it also had letter grades for all courses and no “gut” courses or clinics; and it had class standings. Nonetheless, there were

enclaves of economics, political science, international relations, and philosophy, where some of us might take shelter from the perceived drudgery of legal education.

Mike explained to me early in September 1962 that, even before he arrived in New Haven, he had smelled a rat—a suggestion of inappropriate Yale condescension and elitism. The letter of admission from the Registrar, the formidable Ms. Elsa Wolf, had begun as follows: “Dear Mr. Levine: You will be pleased to learn that you have been admitted to the Yale Law School.”

I did not quite get the drift of Mike’s complaint. Not for the first time would he point out my innocence.

Ever on guard, Mike had promptly responded by putting Ms. Wolf in her place, as follows: “Dear Ms. Wolf: You will be pleased to learn that I have accepted your offer of admission to Yale Law School.” Even then, he understood the concepts of offer and acceptance and he was a natural for our Contracts class.

There was no doubt about his concerns, which he uncovered immediately upon arrival: To the dismay of Mike Levine and a handful of other classmates, Yale Law School was indeed . . . well, a law school—yes indeed, it was primarily in the business of training lawyers for the private and public practice of law. (Yes, Virginia, YLS was a law school.)

Mike Levine was shocked, truly shocked, by this revelation.

This aspect of the Early Levine prefigured another aspect of the Later Levine—he was a straight shooter and a person of complete rectitude even in the face of the little white lies of academic life, or the big lies of academic life, or in social settings where the truth might be buried by the need to be agreeable.

(A quarter of a century later, while I served as a trustee of the Yale Corporation, I observed at close hand, with respect and admiration, Mike’s willingness to undertake the difficult, and thankless, assignment of becoming the Dean of the School of Management at Yale. SOM was then truly in the midst of a death spiral, unable to make appointments because of bitter internecine conflicts within its faculty.

President Schmidt and the Corporation looked to Mike to save the place. I can personally attest to the fact that Mike's honesty and rectitude saved that school, an achievement never adequately recognized during his life.)

In any event, back to 1962: Mike announced to one and all that he was the victim of nothing less than deceptive advertising. For this deception, he blamed our kindly and beloved Associate Dean, Jack B. Tate. Tate was Professor of Law and our all-purpose Associate Dean—the only Associate Dean—and that included, most importantly, that he was the Dean of Admissions.

Mike explained to me that the saintly Jack B. Tate was no saint.

Get this for cultural change: In those years Dean Tate, who had been a distinguished international lawyer in the State Department under Dean Acheson, customarily traveled the country in search of extremely capable, and even eccentric, students who seemed to prefer Ph.D. programs and who were definitely not headed for law school. Mike reported to me and others that the not-so-saintly Jack Tate had traveled to Portland, Oregon in his senior year to sell the Yale Law School to students at Reed College—an amazing idea to me then and now, since Reed was already famously counter-cultural, well before we had ever heard the phrase “counter-cultural.”

(There was an admirable subversive streak in the gentleman international lawyer Jack B. Tate, who had come to Yale from Tennessee in the 1920s; in the class before ours he had admitted Eleanor Holmes [later Eleanor Holmes Norton] and Marion Wright [later Marion Wright Edelman.]

Mike Levine claimed that Dean Tate had personally deceived him in Portland by inviting him to apply for admission to “the Reed College of American law schools.”

Having been brought to New Haven under false pretenses, Mike understandably recoiled from what he regarded as the pedestrian professionalism of most of us in the YLS student body of the period. He seemed to find me tolerably different. I often wondered how had I passed muster. I don't know, but in later years Mike enjoyed

describing me as “A Yale- and Cambridge-educated, Yiddish-speaking Puerto Rican.” (This was, I think, a favorable comment.)

In any event, the Early Levine was surely not destined for the practicing Bar – and, as far as I am aware, Mike, like many other law academics, never had the slightest interest in seeking admission to the organized Bar or in practicing law.

A sure prefiguration of the Later Levine was his response to the ennui of the traditional law curriculum of YLS – he would spend much of his time at the Linonia and Brothers Reading Room of the main University Library. The “L&B” was a beautiful reading room that in those years was set aside for non-curricular reading; text books and homework were expressly prohibited. You either went there to snooze in the comfortable chairs or to read in subjects not familiar to you.

If Mike Levine was determined not to be a regular lawyer, he was also determined to not share the conventional political views of his times – traditional Cold War liberalism, or later varieties of conservatism. He was the first of my friends to oppose the Viet-Nam War, for the uncomplicated, non-ideological reason that he simply could not understand how or why we were there. He greatly admired Senator Wayne Morse of his adopted state of Oregon – in 1964, Wayne Morse was one of only two senators to vote against the Gulf of Tonkin resolution, which served as the green light for LBJ’s massive intervention in Viet-Nam.

Mike was proud of his grandparents, who had met at a meeting of the Jewish Bund in the Pale of Settlement. And he enjoyed explaining that his own parents, in turn, had met at a meeting of a Communist Party cell. He was indeed a Red Diaper baby, but quick to explain that his parents had shed the dark legacy of Stalinism. (He and Carol would meet while each was a summer employee of the Executive Office of the President in the early LBJ years – prompting Mike to recall the Bund and the Communist Party and to tell Carol that working at the White House was proof positive that the apple had indeed fallen far from the tree.)

Once Mike had developed a taste for Economics, he would assiduously carve out a place for himself that was at neither end of any known political spectrum. In our many conversations over the decades, he most often referred to himself as a Centrist—though I think that is too simple a concept to capture the complicated and carefully thought out positions of either the Early Levine, or the Later Levine.

In all events, he was ever a prayerful exponent of divided government—in fact, a voluptuary of our constitutional separation of powers. Nothing troubled him more over the years than the prospect of having both political branches of our federal government in the hands of the same political party. “A pox on both your houses” summarized the Early Levine view of American politics, and also that of the Later Levine.

Finally, a word on the legal education Mike Levine did get at YLS, despite his inclination to flee—if only he had known where to flee.

His favorite professors were Robert Bork, who clearly influenced Mike’s views on economics and antitrust law, which in turn would lead Mike to Ronald Coase as a Law and Economics Fellow at the University of Chicago; Charles Reich, whose periodic wrap-up lectures in Administrative Law would send Mike and others into paroxysms of applause heard through the halls of the law school; and Ronald Dworkin, then a junior faculty member who taught Conflicts of Law and a small seminar on international investment that met in Dworkin’s office.

But most of all he appreciated the great Friedrich Kessler (“Fritz” Kessler), who in turn appreciated him.

Fritz Kessler had been a member of the Kaiser Wilhelm Institute and had fled Nazi Germany with his Jewish wife. Kessler taught our first year Contracts class, where Mike’s insights were first publicly recognized.

Fritz Kessler conducted a traditional, and rigorous—to some of us, frightening—Socratic Contracts course in his classic, heavy German accent. At some point Kessler gruffly demanded to know

how a particular rule of interpretation then much criticized in the academy (I think it was the so-called plain meaning rule) could be explained by the philosophy of language. Complete and utter silence from the 40-plus students sitting before Kessler.

But then up went Mike Levine's hand, and, in response to Kessler's questions, came an explanation of the work of Ludwig Wittgenstein.

In the YLS of more recent generations one or another student might have understood the reference to Wittgenstein. I confess that in 1962, to us mere lawyers, it was all a blank. Who? What?

What is a Wittgenstein?

Kudos to Levine from Fritz Kessler, who thereafter would employ Mike's name in all his hypothetical instruments or letters – for example, a letter rescinding an agreement: "Dear So-and-So (Kessler would yell, with gusto): I rescind. Sincerely, M. Levine."

The name of M. Levine was deployed so often by Kessler, and with such warm regard, that forever after I would greet Mike on the phone or by message with the salutation: "M. Levine – how are you?"

So ingrained was this name of "M. Levine" in my consciousness that until recently I had forgotten its origins – remembering only as I began to reflect on today's remarks.

Mike was not a religious person in any conventional sense. But he identified strongly with his people, and his people are a people who believe in God, so maybe he would not mind references to the Deity in a famous medieval Spanish-Galician elegy – an elegy whose beauty in the original may not be well captured in translation, but which I think aptly describes Mike's own last hours:

Asi con tal entender,

Todos sentidos umanos

conservados

cercado de su muger, de sus fillos y hermanos

y criados,
dió el alma a quien gela dió
El cual la ponga en el cielo
en su gloria,
y aunque la vida murió
nos dexó harto consuelo
su memoria.

Imperfectly translated:

And so, at the end, having preserved his full mortal consciousness, and surrounded by his wife, his daughters and brothers and friends, he gave his soul to Him who had given it to him, and Who may place him in His glory in Heaven.

Although his life has perished, the memory of his life remains a source of consolation to us.

So, to M. Levine, who is ever in our thoughts and memories –
“Hail and Farewell.”

REMARKS BY RICHARD A. EPSTEIN

It is a very difficult moment to give you my thoughts about Michael Levine who died, not unexpectedly, this past February. Mike was my oldest, and in many ways, my closest academic friend. We first met when I came out in the summer of 1968 to the University of Southern California to assume my first teaching position. I had just graduated from the Yale Law School, which was my second law degree. The first one was from Oxford in 1966. The two degrees I thought stood me well. Oxford brought out the best in my antiquarian instincts on Roman law and mediaeval English land law and procedure. Yale gave me a taste of the contemporary debates and political struggles, many of which took place on the New Haven Green in the tense period of the late 1960s. When I arrived at USC, I

had a diverse set of skills. I could bar an entail; I knew that *res judicata* did not apply to pleas in abatement; that *scienti non fit iniuria* was not the same as *volenti non fit iniuria*. I also had, as a then budding tax professor, some sense of how to structure like kind exchanges under section 1031 of the Internal Revenue Code.

I thought that I was a pretty complete package for a 25-year old. All of that changed quickly when I walked into Dorothy Nelson's office in early July 1968 to say hello to the woman who, as interim dean at USC, had hired me as an assistant professor after a whirlwind visit to U.S.C. the previous November. It was there that I first met Mike, who had just arrived from Chicago, brimming with nervous energy, ever eager to speak his mind on any topic that arose. As fate had it, the third person in the room was an adjunct professor at USC, Louis Brown, then aged 60 and a retired partner from Irell & Manella. Lou and his wife Hermione (a named partner at a Beverly Hills law firm) had taken me in until I could find permanent accommodations. That lunch captured in one hour the intellectual transformation across the generations.

Lou wanted to remind Mike and me again that it was better to prevent litigation than to win it, a conclusion that we readily accepted. But it was only a matter of seconds before Mike took over center stage in the conversation with the kind of inexhaustible energy and insight that marked his entire career. Within a few short moments, I had mentioned something about the tort law, only to learn from Mike that a Coasean transaction costs perspective might better explain the field than the traditional doctrinal categories that I had learned during my two years at Oxford.

At this point, my first feeble question was "Coase, who or what?", after which Mike made full use of his comparative advantage on the Coasean frontier. As he quickly told me, he had just spent a year at the University of Chicago Law School, working with Coase on all manner of issues relating to both basic price theory and his passion of a life time, the airline industry on which he had already made a notable contribution with his 1965 student note "Is Regulation Necessary? California Air Transportation and National

Regulatory Policy.” Rereading the article, I am still struck by its total command of the historical and technical material, and the pugnacious character of its author. Barely 24, Mike had laid out in clear, emphatic and persuasive terms the case for upending that 1938 New Deal confection, the Civil Aeronautics Board, which imposed a regulatory straightjacket of fixed routes at fixed prices. This early engagement with aviation was no passing fancy, for Mike was an enthusiastic pilot as well as a student of the industry. One of Mike’s lasting achievements was working with Cornell’s Alfred Kahn in dismantling that New Deal system during the Carter years. What made him so successful was his unique combination of a deep appreciation of the basic theory coupled with a complete command of the intricacies of the old CAB system.

My initial dose of Michael Levine was shortly followed by many other similar encounters. Mike loved to argue, but even more than argue he loved to teach, and he loved to teach other teachers and to teach them on any subject, at any time and in any forum. So my education from Mike on the fine points of regulation and markets took place between innings at softball games, and between plays at our touch football games, in which Mike revealed the unlikely athleticism given his portly frame. It was especially dangerous to play billiards afternoons with Mike at the nearby faculty club. At the time I was a more or less hard-core libertarian, who saw something in the case for enforcing cartels on the ground that their successful execution did not involve the use of either force or fraud against any third party. It was dangerous to take that position when Mike was armed with a pool cue, which he waved ferociously in my direction, saying that it was hopeless to think about any form of regulation unless you took into account its social welfare consequences. He admitted – insisted is probably the correct word with Mike – that he could not give the fancy formal proofs of the proposition that would be supplied by a professional economist. But in words or with graphs, he bellowed that he could demonstrate how the cartel was socially inferior to a competitive solution, even if it was privately formed. A combination of lurking physical danger and major

intellectual power brought his main thesis home to me with a vengeance. His teaching came at a most impressionable time in my life, and helped me see the limitations of the set of insights I had developed with my peculiar Anglo-American orientation. It was a lesson that has lasted a lifetime, and by the time he railed against the Nixon price controls of mid-August 1971, I was more or less a convert to his way of looking at the political and economic landscape. It was to my great advantage to have such a great informal, learned and enthusiastic teacher at one of the key early points of my own intellectual development.

Yet there was more to Mike than nonstop tutorials with his vaunted intellectual intensity. Mike was also a man of the world, who in the three years since he had graduated from law school had held positions in the CAB, with the Chamber of Commerce, and most importantly, at Chicago with Ronald Coase. When he came to USC, the faculty ranks were depleted, and Mike pitched in with the teaching with his usual enthusiasm. Shortly before his first class, which I believe was in torts, Mike looked at me in distress in the faculty lounge stating that he did not think that he had enough to say about the subject to last more than two or three hours. A couple of days later he did a complete double take saying how difficult it was to get anything across to the students in the short time allowed. So he announced a rule for instruction that has stood the test of time. "First tell them," he said, "what you are going to tell them, then tell them, and then tell them what they have said, and then maybe they will understand it." Mike for all his bluster, and in part because of it, was a dedicated, attentive and respected teacher who went to enormous lengths to spread his gospel to the new recruits at USC in their Bermuda shorts and thongs.

Given his background, he was also eager to do administrative work, and Dorothy Nelson who had a keen eye for talent, put Mike through his paces. For starters, Mike was immediately pressed into service in 1968 with charge for the creation of a five-year budget, to which I was his designated assistant. I watched with admiration as he filled out the various columns, thinking that 1973 would never

come. I also learned on that occasion that the dean's slush fund was located in the library budget, without having any idea of its use. Mike chaired the appointments committee the next year, and brought out among others Robert Ellickson. When I ventured a demurrer to his enthusiastic support of the appointment, he launched into a memorable and learned tirade that I could not object to a splendid appointments candidate because he occasionally mumbled when it turned out that he knew more about the housing industry than anyone else of our generation. As on so many issues, Mike left me feeling slightly humbled. Yes, he did change my vote, and the friendship of the three of us remained solid for the next 47 years.

I do not mean to create the impression that Mike never lost an argument. But when he did lose it was always in an instructive fashion. Thus one day when we were playing yet another touch football game on a piece of land marked "private property," an employee of the landowner came by and ordered us to summarily leave. Mike protested, noting that our activities did no harm to the landowner. His subtext was that since we were better off and the landowner was not worse off, social welfare dictated that we should continue our game to its glorious conclusion. The fellow was not impressed, and he repeated his request in a more sinister tone, at which point we all duly departed. The standard tort books say that trespasses are not excused when there is no harm, so that short of cases of necessity, of which touch football was not one, you had to go. On balance, I think that employee actually got the better of that argument.

My final debt to Mike is more personal. On August 2, 1971, I careened into the faculty lounge at USC with an acute case of vertigo, in a near swoon. A helpful secretary advised me to drive home and go to sleep. As I crashed onto a nearby couch, Mike burst into the room, took one look at me, and boomed out, "I am taking you to your doctor or to my doctor, now." I didn't have a doctor so I went to his doctor, who said that I would have to be admitted to a hospital unless someone looked after me in the interim. Mike took me to his house. Carol had already prepared the basement bed in advance, where I

crashed only to wake up about 15 hours later, still the worse to wear. So, I could not move to 11910 Mayfield Avenue in Brentwood, on Thursday, August 5, 1971 as planned. Instead, I put off my move into my new digs until Saturday, August 7, 1971, when I first ran into Eileen on the north side of Mayfield, carrying a broken shoe in her right hand. When I crossed to the south side of Mayfield with the boxes, I saw her for a second time. I did not miss my chance. In my confused state burst out with a line that I would have never uttered if fully in control of my faculties: "Don't I know you from somewhere. She thought that I was the son of the building agent when I showed her my apartment, which had been furnished courtesy of Carol who had taken me shopping just a few weeks before. Eileen liked the furniture well enough, and so we were married less than 10 months later. Mike and Carol were not the *causa causans* of our marriage, but they were the *causa sine qua non*. And for that and so many other memories about Mike Levine, I am eternally grateful.

REMARKS BY MATTHEW SPITZER

In 1969 I was in the 12th grade at Fairfax High School in Los Angeles. A loud, opinionated, red-headed kid named Ed Levine suddenly appeared in my classes. His parents had died and he had been sent to live with his oldest brother, Mike, and Mike's wife, Carol. When I became friends with Ed I went over to Ed's house. There I met Mike, who at that time I mainly regarded as an authoritative figure who was telling us to refrain from engaging in the many self-destructive and often illegal behaviors that teenagers are prone to favor. One thing impressed me and the rest of the guys in our group, and one thing puzzled us: We were puzzled about how a guy like Michael (large, loud, and not obviously athletic) managed to get a gorgeous, smart, poised and sophisticated wife. If truth be told, it gave some of us hope for the future; and we were impressed by his material possessions, particularly his stereo and his record collection. (Of course, we thought of it as *his*, and not theirs.) The

stereo was the best we had ever seen or heard, and we were *not* allowed to touch it. Mike and Carol had good judgment.¹

The next time I interacted with Mike was in 1972. I was considering going to law school and I wanted advice about which school to attend. The backstory is that I was engaged to a woman who was attending USC Dental School. I wanted permission to attend USC instead of attending Harvard. Mike told me that as long as I did “extremely well” in law school it wouldn’t hurt me *too* much. I decided to go to USC.

On the first day of law school, in September of 1973, I walked into Torts class. Mike was the professor. The class was so intellectually compelling that half way through the first year of law school I allowed Mike to talk me into going to Caltech simultaneously with USC Law to earn a PhD in Economics. By 1979 I had taken 4 classes from Mike and had been his RA, and Mike was my thesis advisor. By 1981 I joined the law faculty at USC and was fortunate enough to be Mike’s colleague. So, to sum up, Mike was a father-figure to one of my high school friends, an advisor, a professor, a thesis advisor, a mentor, and a colleague, all before the period where he and Carol became friends first, and colleagues second.

In the summer of 1975 Mike called me to his office at Caltech. I had been assigned to help Mike much earlier, but he never had any use for my services. Things were about to change a lot. Mike had five days before the deadline for sending in his article, and nothing was on paper. Mike had apparently promised the editors at the Journal of Law and Economics that he would provide an article, and they had

¹ There was one other person I met, briefly, at Mike and Carol’s place in Los Angeles. A very fast-talking, almost frenetic guy named Richard Epstein. He was a colleague of Mike’s on the USC Law faculty. I thought he was sort of strange, but in an acceptable way. My cousin, Eileen Wolfe, apparently also found him acceptable because three years later she married him. It is a very small world.

agreed on a date. It was five days off. I was to help him by reading volumes of Congressional hearings on the Airline Reform Act of 1970, and telling him what the hearings said. I was also responsible for proofreading and offering suggestions.

Over the next five days Mike wrote page after page of history, law, politics and economics on the regulation of post office procurement of airmail transportation. The draft was beautifully written, and Mike was a master of weaving all of these intellectual approaches together. He really did have a broadly sophisticated mind. I will spare you the details about the article because, well, it is about airmail, after all! But the basic issue was that airline service was heavily regulated, producing massive inefficiencies, and they worked their way into the carriage and pricing of airmail.

After the article was drafted, I indicated amazement at how quickly Mike could produce a superb article. Mike responded that it *looked like* he had just written an article in five days, but that was wrong. He had been reading and thinking about the article for two years. He had been composing it in his head, and it finally flowed onto the paper.

Airlines were only one of Mike's passions. The others, some of which he shared with Carol, included cars, wine, art and high fidelity sound reproduction. But airlines were different. As a scholar he produced devastating critiques of the system of regulation. Then, he went to work at the CAB and with the judiciary committee in the Senate, to help produce the deregulatory act of 1978 that created the relatively free market in airlines. And, finally, Mike worked at airlines in the deregulated market. That's an amazing career.

Mike was always kind and generous with me, and helped me many times in my career. Probably the most important of these was to persuade his colleagues at USC to give me a lateral offer at USC Law. I took it. Joining the USC Law faculty of the early 1980s was an amazing experience. The group included, among others, Mike Levine, Steve Morse, Michael Moore, Alan Schwartz, Chris Stone, Scott Bice, Peggy Radin, Larry Simon, Denny Curtis, Judith Resnik, Jeff Strnad, Michael Graetz, and Dick Craswell. That group was

stunning, and Mike's intellectual performance at these workshops took a back seat to no one. I used to read the papers for workshops with a sense of excitement that was wonderful. It was also a process of creating a reputation for USC. As Mike said to me on more than one occasion, "We bring them in, beat them up, and send them back home."

For the past 25 years Michael was also my audio buddy, variously talking me out of and, sometimes, into making audio purchases. For this talk I looked up my last e-mail interaction with him. It was about Shinola's² decision to produce a brand new turntable for vinyl records in their factory in Detroit. As I said, he had many passions, and he was the most broadly intelligent and interesting person I have ever known. I will miss Mike deeply, and forever.

REMARKS BY ROBERT ELLICKSON

Mike graduated from Yale Law School in 1965, a year before I did. I recall only one interaction with him during our law school years, but it was an event that captures his singularity. It took place toward the end of the spring semester of 1965 in a class taught by Charles Reich, one of the school's star teachers. At the time, Lyndon Johnson was launching his Great Society programs. Reich was popular in part because he held two views that seemed to be in tension: progressive politics, and a deep skepticism about what the national government could accomplish. That spring, Reich offered a course entitled something like, "The Administrative State," and I was one of the many enrollees. Late in the semester, a student seated in the back of the classroom delivered an articulate and insightful five-minute monologue on the issues at hand. The student of course was

² See SHINOLA, <https://www.shinola.com/> (last visited July 6, 2017).

Mike, whose remarks were inspired by his ongoing research on the Civil Aeronautics Board. Mike, remarkably, was not enrolled in the course. He had ventured into the classroom that day as a visitor.

I had my first face-to-face substantive conversation with Mike five years later. USC Law School had invited me to Los Angeles to interview for a tenure-track position. Among my scheduled appointments was one with Mike, who was joined at that session by a second faculty member, Richard Epstein. I don't think of myself as a tongue-tied person. But, during that hour-long session, less than one quarter of the spoken words were mine.

I joined the USC law faculty in the fall of 1970. With a median faculty age of 33, USC was a hotbed of emerging law and scholarship. During the ensuing decade, our formative years as law professors, Mike and I were colleagues. This was the period of my closest association with him. Although the USC law faculty then included many other stalwarts, most of its members would have acknowledged—reluctantly, given faculty egos—that Mike was the most powerful, intellectual and institutional force on the faculty.

He had been a central player, I was to learn, in orchestrating my own job offer from USC. Later in the 1970s, he would deserve primary credit for spotting and recruiting, among others, Mike Graetz and Alan Schwartz to the USC faculty. As John Ferejohn reports, Mike was a key figure in the building of USC's intellectual bridge to Cal Tech. During his year at the University of Chicago in the late 1960s, Mike had observed that faculty workshops—rare at the time—could contribute to the gestation of scholarly projects. He was instrumental in establishing a successful variant at USC. As Lewis Kornhauser's companion essay describes, workshops brought out Mike's many strengths—the breadth of his interests, his incisive intelligence, and, as often as not, his humor.

Law professors routinely argue for changes in the status quo, but few actually have any direct influence on the evolution of legal institutions. Mike was a notable exception. He had many passions, but topmost among them was the airplane. In 1965, the year of the incident I reported at the outset, he published an influential Note in

the Yale Law Journal that advocated the deregulation of airlines' choices of routes and fares.³ A dozen years later, working at Alfred E. Kahn's elbow in Washington, D.C., Mike achieved that objective.

Mike's was reared as a red-diaper baby. It didn't take. Late in life, his political ideal was divided government, a stance that seldom appeals to ideologues of any stripe. He was among the earliest enthusiasts of mainstream law-and-economics, a movement that emerged full-steam in the 1970s. He also championed empirical work. His student note tellingly recounted the successes of Pacific Southwest Airlines, an unregulated airline. Mike observed that PSA's fares for flights between Los Angeles and San Francisco were roughly half the ones that regulated airlines charged for flights between Boston and Washington D.C. In another of his influential scholarly works, co-authored with Jennifer Forrence, he induced from historical evidence a theory of when regulated industries would succeed, or not, in capturing an agency established to regulate them.⁴

Law-and-economics has advanced from the version that Mike, I, and others practiced in the 1970s. Jolls, Sunstein and Thaler, in their classic critique of the 1970s economic model of human behavior, mention the growing recognition of three bounds: bounded rationality, bounded self-interest, and bounded willpower.⁵ In a candid moment, Mike likely would have acknowledged that the last of these, self-discipline, was his weak suit. Although he authored many successful scholarly works, they didn't come easily, as Matt Spitzer reports.

³ Michael E. Levine, Note, *Is Regulation Necessary? California Air Transportation and National Regulatory Policy*, 74 YALE L.J. 1416 (1965).

⁴ Michael E. Levine & Jennifer L. Forrence, *Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis*, 6 J. L. ECON. & ORG. 167 (1990).

⁵ Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1472, 1477-79 (1998).

But, in many contexts, Mike was an unsurpassed doer. He single-handedly designed a plan for the most memorable weekend of my life. He proposed that Ellen and I join Carol and him—our two couples were childless at the time—on a roundtrip flight from Los Angeles to Canyon de Chelly. Our airplane would be a single-engine rental, and he would pilot it. Canyon de Chelly is a National Monument located in a remote portion of the red-rock territory of the Navaho Nation in northeastern Arizona. The trip and scenery both proved to be knockouts. When planning a venture of this sort, Mike never suffered from creator's block.

Mike Levine was as ebullient as they come. In any social setting, he was an irrepressible presence, unusually capable of influencing the thinking of those around him. At times, he was peppery. But all of us who knew him can remember the many occasions when his smile was broad and he was given to chuckling.

We have lost a truly exceptional colleague.

REMARKS BY JOHN FERREJOHN

I joined the Caltech faculty in the Fall of 1972 as part of a re-orientation of the Division of Humanities and Social Sciences that was led by Robert Huttenback. Along with longtime colleague Lance Davis, Bob recruited Economists Jim Quirk, Charlie Plott, and David Grether and soon got Roger Noll to return from Brookings. And they were able to add some young political scientists too: Robert Bates, Morris Fiorina and me. There were already some excellent historians on the faculty (Dan Kevles and Morgon Kousser) along with a lone anthropologist (is there any other kind?), a psychologist, and a philosopher. All we needed was a law professor and we would be good to go.

I am not sure how it got started but someone had the idea of hooking up the Division with the USC Law School which was embarked on an interdisciplinary renaissance of its own, somehow money was found at the Henry Luce Foundation to endow a Luce Professor of Law—president Harold Brown played a key part, I

think—and Mike Levine was deemed the right person to start the program. So, we interviewed him. I was only a first year assistant professor (this was winter or spring of 1973) and, having recently gone through job interviews, I felt right at home in our meeting: Michael made it obvious that HE was the one doing the interviewing and that it was not really very clear that we were living up to his expectations. My senior colleagues were sweating. He had my vote right there.

From the start, it was evident that Michael was not going to be a mere ornament—he needed to be in the middle of everything: teaching undergraduates, training PhDs, doing research, and recruiting faculty. But the first thing was to move in. Michael's office was created by dividing Dan Kevles's (humongous) office in half. I am sure Michael did not love that: Where was he going to put his shelf-loads of high fidelity and aviation magazines, notwithstanding his law books? But I am sure Chairman Huttenback gently pointed out that he was actually only half-time; I am not sure if Mike did anything more than grumble about it (he did that). Anyway, that situation lasted for a few weeks, until Dan complained that he could not work with Michael next door: Michael was constantly on the (rather unnecessarily in his case) phone, telling others in business and academia how to run their lives or firms. So, it was decided to put in another wall for sound insulation. Michael later admitted (a bit too proudly, I thought), "My voice resonates with all known building materials." I am sure he was convinced that a little insulation would not prevent Dan from gaining some refracted wisdom.

Anyway, Michael dug in right from the start. We were designing a new undergraduate major that would work, we hoped, at Caltech; and Michael convinced us that we needed to teach students some law. He gave lectures in my part of the sequence and, within a couple of years over lunches at the Sawmill and the Chronicle, taught me enough about torts and contracts to do that on my own—I figured that if they ended up in law schools, any errors could be fixed; and I

learned that some people could consume an enormous hamburger while continuing to talk (the Sawmill's burger was legendary).

Mike also began building a bridge between the Caltech and USC law faculties – paving the way for Michael Graetz and Alan Schwartz to eventually rotate onto the Caltech faculty – and various Caltech faculty were also enabled to give short faculty courses to the USC faculty as well. Charlie Plott gave a series of lectures on experimental economics; I gave a series on social choice and mechanism design, and I think others presented lecture series too. Looking back, the amazing thing was that virtually the whole law faculty would show up to lectures, which were often pretty technical, and they would get really engaged with the subject matter too. This included not only the social science oriented faculty but also those with more humanistic and practice oriented interests. They asked difficult questions and were not easily satisfied with pat answers. It was a great experience for me and for anyone else who had the chance to interact with that wonderful faculty. These interactions often produced research collaborations that extended over many research papers.

Michael began a collaboration with Charlie Plott centered on Michael's experiences with a flying club in the San Fernando Valley (I think). It's a long story with many parts, and I am no Tolstoy, but the collaboration started this way: Michael, representing himself as the lowest paid member of the club (which was filled with surgeons and tycoons), asked if social choice theory could tell him how to get the club to buy relatively inexpensive planes (so that he could continue to afford it) rather than the bigger and faster ones the rich people wanted. I thought for a minute (remember, I was an unpublished assistant professor) and said, "Go see Charlie." The rest is history. Charlie and Michael developed an agenda theory that, if all worked well, would produce an outcome Michael wanted if the club agreed to adopt it. Somehow, they got that through Caltech's human subject's committee, and they got these gullible, rich folks to use their procedures; as far as I know, the whole thing worked. At the same time, they developed laboratory experiments to test their ideas (maybe before they approached the club, I am not sure). The

result was two very good and important articles: one in a law review and the other in an economics journal.

Michael's intellectual evolution did not stop with his excursions into applied social choice theory. He was soon drafted by Fred Kahn to run the rate setting bureau at the CAB and moved on from there to executive positions with several airlines. His odyssey through the upper echelons of the airline industry was reflected in Michael's continuing reflections on the political theory of regulation, which formed the basis of his teaching and research over the past decades of his life. Michael was not a man to sit still for long, and I am sure that, were he still with us, we would see him continue to evolve intellectually while remaining a warm and caring human being.

In any case, all was not games (theory) at Caltech. As it happened when Michael and Carol became part of our community, luck had it that everyone was pregnant. The Levines, the Fiorinas, the Koussers, and Ferejohns and others to be named later, were all blessed; and so Baxter Hall became a kind of nursery. This led to deeper levels of social interaction and a better understanding of what made Michael tick. As far as I could see, these included at least five things: Carol and the family; airplanes; stereo equipment; "fast" cars; and fine champagne. When it came to any of these domains Michael had infinite time and love and the patience to inquire and savor deeply. Decisions in any of these areas were profoundly serious and needed to be circled around and contemplated deeply; each was made only after extensive deliberation but, in the end with the great confidence (and moral certainty) that it could be defended before God himself (or herself as the case may be). In these respects, and many others, Michael was a man to emulate. And I have tried to do so in my own way.

Michael's appetites were large and wide ranging and they ran well beyond planes, cars, stereos and fine champagne. He was also a founding member of the famed Will Jones Society, named for Caltech's resident philosopher—a wise old Mississippian, early-1930s Rhodes Scholar, political philosopher, and Claremont Colleges Trustee. Will and his wife Molly were wonderfully erudite

humanists, and they led the Levines, Kevles's, Ferejohns, Schwartz's, Steve Morse, Nancy Bekavak, and others in one of the early (way pre-Oprah) book clubs, which ran from the mid 70s until Will and Molly died many years later; it lingers nostalgically still (there is a special handshake). We read widely in fiction, poetry, history, biography, and, under Will's gentling touch, we all experienced unexpected facets of Michael's personality and intellectual depth.

Anyway, I decided long ago that I could not really compete with Michael on fast cars. He agreed and, as a consolation, he sold Sally and me his used and perfectly serviceable Toyota station wagon. And, while I could not afford a vintage red Porsche 356 (which looks fast), we did once rent a red convertible sports car to drive up the California coast. We sent Mike and Carol the picture, posing proprietarily in front. I could never have afforded the high end B&W speakers that dominated their living room, but I do have a more modest set of B&Ws of my own in New York, which Michael insisted on moving around for "optimal" sound production whenever he came over for dinner (mercifully, he did not inflict his vintage rock and roll tastes on my system). And I could not afford Michael's exquisite taste in Champagne either: but thanks to his tutelage, I have developed a good enough collection of bubbly that I was able to share, without apologies, a bottle or two with Michael and Carol in his last days. Most importantly, as to family, Sally and I have followed Michael and Carol as far as we could, having been married for 54 years (with Sally's patience: emulating Carol and Penelope of course). Like everyone else who knew this exemplary man, we are on our own now, having absorbed from Michael a plenitude of advice and counsel.

REMARKS BY CHARLES R. PLOTT

Mike and I worked on many projects for a period that stretched over several years and a variety of issues. The joint work evolved as a series of related events that are best described as the history unfolded.

Mike joined the Caltech faculty as the Luce Professor of Law and Social Science. He immediately involved himself with the research of the social science group, which was heavily focused on the integration of institutions and economic theories of regulation and political processes. He quickly became absorbed by the power of the theory and the paradoxes that abounded. His understanding of the technical issues brought him to me with a practical question he faced as the agenda chairman of a flying club.

The flying club was planning to purchase a new fleet of planes and faced considerable controversy among its members about the number and types of aircraft that would be chosen. Mike was charged with designing an agenda that the group could use to resolve the conflict, and Mike asked me if axiomatic social choice theory could be applied to the problem. Mike was interested in finding a fair way of voting. I told him that theory points to many fair ways to proceed but each of the fair agenda would end with a different fleet, and that my preference would be to choose from among the fair agenda the procedures that would result in the fleet that he wanted. Mike had serious problems with that analysis, but in the end, we designed an agenda.

Mike's preference was for a substantial supply of larger, inexpensive aircraft. Basically, Mike wanted availability, room, and reduced cost. He was afraid the club, and the president in particular, would prefer a small fleet of smaller, expensive aircraft. Using his intuition about the patterns of preferences among club members, we designed an agenda. As it turns out, Mike had extraordinarily good intuition about the preferences of others. The principles worked as predicted, and the fleet chosen by the voting was the fleet the agenda was designed to get. Interestingly, Mike's intuition about the preferences of others did not stop with the club members in general. He felt that the votes would be misrepresented to a special decision group that would make key decisions based on the vote. So, Mike presented his own report to the decision group. As it turns out, his guess was correct. The votes were misreported, but in the end, he got what he wanted.

Mike was suspicious of the basic agenda theory and the experimental methods used for laboratory testing. He was unhappy with the methodology of induced preferences and the use of neutral language and alternatives, like letters of the alphabet. He thought that the methods contaminated the “flow and momentum” of debate that takes place outside laboratory environments.

Basically, he was unhappy with the propensity of pure theory and experimental methods to use monetary incentives to study committees that were faced with a choice from abstract alternatives in which language had a limited role to play. His grumblings would be backed by rhetorical questions like, “What can you say about an A?”. But, his opinions were also backed by ideas, intellectual curiosity, and excitement that lead to a new series of experiments and theory in which language, words, and procedural changes could play a meaningful role as part of the decision process.

In the end, we produced a series of papers that opened the door between broad areas of theory, laboratory experimental methods, and field applications. Indeed, the flying club was the first experimental field test of a theory—a methodology that is now routine. The theory of the agenda is now part of the standard understanding of committee behavior.

Mike was deeply interested in the intellectual bridges between the law and social sciences. He managed to recruit several of the Caltech faculty for teaching courses in the USC Law School. It was a great experience, and even today, I hear from my law school students from time to time. Indeed, one wrote to me about the tragedy of losing Mike and Kenneth Arrow in the same week. Mike left Caltech to go to the Civil Aeronautics Board (CAB), but his contributions at Caltech are documented by the joint USC and Caltech law and social science program and the leaders it produced. The tradition continued through other law faculty that he brought to Caltech (Mike Graetz and Alan Schwartz) and the Caltech faculty that ultimately moved into law (John Ferejohn).

Mike was a genius at recognizing key institutional features of complex systems. He could pinpoint changes that would result in

producing the system outputs he wanted. When Mike arrived at the CAB as part of its program of deregulation, he immediately became aware of “airport slot committees” and their power to determine carrier’s rights to take off and land (slots) at an airport. The committees consisted of representatives from the airlines operating at major airports under antitrust exemption. Mike was concerned about the potential for airport use inefficiencies. He recalled the lessons from social choice theory, the flying club experience, and the importance of committee procedures for determining outcomes. He asked me to study the slot committees and began the process of educating me about how they worked and the role they play. He was very supportive of basic research: he provided any data we needed, gave us (Dave Grether, Mark Isaac, and me) access to the meetings, and was open to the use of experiments. For academic researchers in the fields of axiomatic social choice theory and experiments, he was providing extraordinary access to the inner-workings of a complex organization.

The Grether, Isaac, and Plott report recommended a slot auction. Grandfathering with an after-market was proposed as an alternative. The study was published by the CAB and was the subject of hearings throughout the country. The airlines and FAA went crazy, and the proposed auction disappeared from the front page; however, the implications of the study were not lost because it revealed systemic problems of the types that concerned Mike. The slot committee procedures were built on achieving unanimity among carriers and supplemented by a reading of the political winds that the larger carriers would pay a political price if slot committee unanimity was not forthcoming. The consequences of the rules were systemic and suggested inefficient airport access. Regardless of their relative efficiency, the larger carriers, anticipating political consequences, slowly gave up slots to smaller carriers. Large airlines shrank in size, and entrants were given a few slots but never grew beyond that.

The report made public the inefficiencies and revealed the reason why. The airlines’ realization of the consequences of the slot committee process fundamentally changed the dynamics of the

committees. Committee performance changed from having difficulty reaching consensus to a failure to achieve it at all. The failed attempts to reach agreement led to the creation of an airline “failsafe committee” charged with the problem of designing a procedure that could be used to force agreement should one not be forthcoming otherwise. Mike, as President of New York Airlines, appointed me to represent the airline on the committee. Failsafe proposals were advanced but not accepted by the airlines. Mike’s sense and my sense were that the airlines would abandon the slot committees in favor of grandfathering the slots with slot trading allowed in an after-market. As an academic (and with Mike’s blessing), I was free to discuss the issues with members of the Reagan administration, with whom I had worked as part of the CAB sunset process. Those conversations led to a letter (addressed to me as an academic) from the Reagan administration saying that it would support a policy of grandfathering with aftermarkets. Airline support of that policy immediately began to emerge. Mike was delighted. It was exactly what he thought should happen.

Mike was aware that the days of successful slot committee decisions were numbered, and he was working on policies that might be put in their place. However, the process of slot committee unraveling was interrupted by the air controllers’ strike. The number of constrained airports was suddenly increased from four to 30 or more and a need existed to allocate scarce slots among them all. Mike recruited me to represent Continental Airlines on a FAA committee given the task of creating a process to solve the problem. Of course, Mike remained active as the committee worked on the design. The process emerged as a unique version of what would now be viewed as a double auction market, which was well understood from experimental economics. Each airline proposed trades (one slot for one slot) and submitted as many as it wanted. Proposed trades were made available to the airlines who sifted through them in search of chains of trades. Any trade was made possible if counter parties were identified, and chains became possible as other trades were made possible. The chains were identified and put in a “hat,” and winners

were selected at random. Discussions with Mike focused on what trades should be proposed at stage one. Continental was pleased with the outcome, and from the FAA's point of view it worked; but from Mike's point of view, it was not a good policy: proposed trades should include the possibility of many-for-many and supplemented with cash. While the FAA adamantly opposed all moves toward a market for slots, any change such as many-for-many trades or any use of any form of cash would be an implementation of the policy that Mike had supported from the beginning – grandfather with an after-market. Mike continued to support a market for slots, which, over the years and step-by-step, is emerging.

The slot committee problem was really part of a bigger problem of airport access that concerned Mike while at the CAB. Mike saw it not only as a domestic issue but also an issue related to bilateral treaties between the US and other countries. Regulations favored fixed prices. The traditional concept of “fixed price” meant that prices could be changed only if both parties agree to the change. Mike's idea was to adjust what it meant for a price to be fixed. The “Levine” bilateral treaties hold that prices could be changed if either party wants to change: if one party lowers the price, the other party has no control. This is a very subtle but powerful institutional variation. Disagreement results in price changes as opposed to disagreement resulting in fixed prices. There were also issues about the origin of admissible flights that Mike was instrumental in changing. The result was a substantial increase of competition, lowering of fares, and expansion of international travel.

Mike had amazing insights about the workings of complex processes. He was often asked for opinions, and of particular interest was his opinion on a proposed auction to be conducted by the New York Ports. The auction was called “zero out” in the sense that the auction revenue would be distributed to out-bound aircraft in proportion to the passengers loaded at the NY ports. This auction did not seem right to Mike, and he asked me to take a look. Theory and experiments revealed the auction would result in substantial inflation, a type of bubble, as anticipated revenues became

incorporated into new bids for departing flight slots. Mike presented the results to the administrators and engineers who had proposed and strongly supported the auction. His skills were revealed as he used theory and experiments to illustrate why the auction would not perform as they expected, and which had implications that would make them unhappy with the result. The “zero out” auction idea was dropped.

Mike had a passion for cars. He loved flying. He thought that wine is great stuff. He liked to eat. He had an over-weight problem, as do I, and we sometimes tried to encourage each other to take off a few. Part of that encouragement was in the form of a bet on who could lose the most by a given date. The terms of the bet were dinner at any restaurant of the winner’s choosing and for anything on the menu. He won the dinner and, of course, chose the most expensive restaurant in L.A. He had no problem finding the most expensive meal and his eyes fell on a \$2500 bottle of wine. I recall his smirk as he made me feel a bit uneasy. He did not order the very expensive bottle, but he did remind me that the dinner was just the first of a series of bets. Years later, after he lost a lot of weight due to an operation, I casually mentioned the old bet. He immediately said with a pride revealing chuckle, “You’re right! We do have a bet! I win!”.

REMARKS BY STEPHEN J. MORSE

Some years ago, I semi-whined to Mike that “life is hard.” He gave me that smiling look that Jose Cabranes described—ironic, appraising—and Mike replied, “How would you know, Stephen?” Well, now I know.

I first met Mike in 1974 at the USC Law School; we were colleagues in the USC glory days. To my everlasting benefit, Mike took me up. I don’t know why he took me up because very early in our relationship he confided that if he hadn’t been away on leave the year I was hired, I probably wouldn’t have been hired. How very Mike, but he nonetheless took me up. Mike was special, and not in

the Fred Rogers smarmy way. Can you imagine two people more unlike than Fred Rogers and Mike Levine? He was singular. He was exceptional in both intellect and character as the previous speakers have said, and I would like to reinforce everything that's been said so far. He was a person of, and I mean this totally positively, maniacal integrity. As so many have said, Mike had great passions for ideas, for airlines, for transportation generally, for music, for audio, for food and wine, for culture, and most of all, for his beloved Carol and for Sarah and Anna.

He was a dear, loyal friend and he was my teacher for 43 years; from the first day, I talked to him, in the ways that so many have described, until the last conversation I had with him, which I will tell you about as I close.

Every time I talked with Mike about work, the benefit was always in one direction. I was benefitting. I think the only thing I was ever able to help him with, and this will not surprise anybody, is that Mike had trouble getting it together academically administratively. I could help him do that. But when it came to ideas, he was unparalleled. Mike had the most incredibly polymathic and incisive mind. Every conversation with Mike taught you something and helped with whatever you were thinking about.

Here are some little anecdotes of that sort. Very early in my career - I teach criminal law - I was teaching a charming English case called *Wilcox & Jeffery*. It's about two men who tried to profit from a concert given in London by the great American jazz saxophonist, Coleman Hawkins. They had attended Hawkins' concert as general members of the audience and published a magazine, "Jazz Illustrated," that was to report the concert. At the time, England had a law that criminalized foreign musicians playing anywhere in England for profit. The question was whether Wilcox and Jeffery were accomplices to Hawkins' crime because they had allegedly aided and abetted this criminal conduct. This was in the early nineteen-fifties. I was perplexed by this apparently stupid law and went to Mike to talk about it. Quick as a flash he said, "You don't understand; England was then Pareto-pessimist. They kept doing

everything they could to make people worse off and worse off and worse off. Finally, if one person was going to be made better off, they stopped.” Think about that for a second. It’s an absolutely brilliant insight.

Another example. I was working up a book project, and I thought a particularly obscure case in mental health law was somehow the lynchpin. I had been trying to work out how, and I just couldn’t get there. As always, I walked into Mike’s office. Within two seconds, Mike had shown me the obvious solution. And when I say obvious, it was obvious only after you hear it. It was anything but obvious until Mike said it. It was like his observation about Pareto-possibility. That’s the way his mind worked: fast and incisive.

My later career turned to the intersection of the new neuroscience with law. Mike asked, always, the most penetrating, helpful questions, using the Wittgensteinian insights that he had picked up as a philosophy undergraduate at Reed. These were consistently illuminating conversations.

Not a day goes by that I don’t want to share something with Mike, ask something of him, discuss something with him; he is always there in my head.

I want to finish with two iconic stories about my relationship with Mike. The first has to do with that very first fall in Southern California; the fall of 1974. Mike was at that time a licensed pilot and owned an airplane. He invited me to fly up with him to Palo Alto for the day. It was a gorgeous, sunny Saturday. remember driving to Burbank Airport, General Aviation, and there was Mike’s aircraft. I believe the plane was orange, was it not? [Carol answered, “Yes.”] It was a four-seater, single-engine propeller model. Mike was so full of ebullience. He was in his element. He was going to be flying, and he was showing his skills to somebody he cared about and liked. It was a transcendent day. Flying up and down the California coast at 10,000 feet on a gloriously clear, sunny fall day is like nothing you can imagine. And we had such a good time together. He was so Mike.

The bookend is a story from the very last days. Mike’s good friend, Toby Knobel, and I had come up to visit Mike in the New

Haven home he loved so much. Carol told me when I walked in the door that Mike was not taking anything for pain because he wanted to be clear-headed. So Mike. A word someone used about him was austere. It seems a strange characterization given his passions, but there were no frills. This characteristic was related to his integrity. At one point when I was sitting there with him, Mike grimaced. I asked if he was in pain. He was very weak so he simply nodded his head to indicate that this was true. I asked if he wanted anything to ease the pain, but I feared he wouldn't take anything. He signaled by shaking his head to communicate that he didn't want anything. Then, I had an idea. I said, Mike, how about some champagne? He absolutely lit up and gave a thumbs-up.

Sarah was out picking up Anna from the airport at the time. Carol, Toby, and I were there. By the time Sarah and Anna got back to the house, the champagne was cold. Toby, who is also an expert in champagne, and Carol had chosen the bottle. The six of us sat and drank champagne. Mike became animated. We had a wide-ranging conversation, some of which was reminiscing and some of which was about issues. I learned two things. I learned substantive things in that conversation, and I learned something about character on Mike's part with that last glass. He had great courage as well as integrity. Mike is no longer with us, but he will always be with us.

REMARKS BY ELEANOR M. FOX

I first met Mike Levine in 1978. I was a member of President Jimmy Carter's Commission for the Review of the Antitrust Laws and Procedures, and one of my fellow commissioners was Alfred Kahn, new chair of the Civil Aviation Board. President Carter had appointed Fred as Chair of the CAB to reform the regulation of the airline industry. Fred had just formed a super-bureau on airline reform in the CAB and hired Mike to head it.

How did Fred know about Mike? Fred discovered Mike by reading his Yale Law student note, *Is Regulation Necessary? California*

Air Transportation and National Regulatory Policy.⁶ The note was a breakthrough article. This was the 1960s, before the age of liberalization. Everyone took for granted the need for entry and fare regulation of airlines. The market was highly concentrated and barriers were high, there were high fixed costs and low marginal costs, and Mike's was the first article to urge economic deregulation of the airline industry.

Fred Kahn knew that he needed Mike. He always talked about Mike—Mike was the wunderkind. I soon met Mike at one of our Commission hearings. But Mike had more important things to do. Mike, with Fred, became the principal architects of deregulation in America.

Some time thereafter, I met Carol with Mike. I believe this was in Aspen at the summer spectaculars put on by NERA (the National Economic Research Associates). These were think-tank like events—the leading intellectual edge of antitrust, markets and (de)regulation, organized by NERA's then CEO, Irwin Stelzer.

This was nearly 40 years ago. Years passed. We saw Mike and Carol occasionally, but not enough. But I do remember seeing them at the time Mike was CEO of New York Air, a post de-regulation airline, which, as Mike said, he "guided . . . to its first profit." I remember taking New York Air to Washington DC as often as I could, not only because it was Mike's airline but because he chose the menu—New York bagels with cream cheese and wines of his selection—as proudly announced on the cards in the seat pocket in front of you. I thought that was cool.

More years passed. It was 2005, and I found to my delight that Mike was about to become my colleague here at the law school. Mike's office was right down the hall from me. His door was always open. He loved to engage in the intellectual debate. He was part of

⁶ 74 YALE L.J. 1416 (1965).

our antitrust group and he taught a wonderful course on regulation, which we included as part of our antitrust curriculum: “What Creates and Influences Regulation?” I will read you the description Mike wrote because it is typical, provocative framing by Mike and highlights his signature issues.

“GOVERNMENT INTERVENTION IS PERVASIVE. It helps and hurts the general public, creates and destroys private profits and advances or undermines ideological agendas. What are the forces that underlie regulatory policy and practice? What motivates intervention and regulation in legislatures and regulatory agencies? How can interested parties influence them?”

He continued: “We can’t cover even a small fraction of the political universe that influences private and government behavior, but we can look for issues and behaviors common to regulation, deregulation, and regulatory activity.”

More recently, I wrote an article on antitrust law and restraints by the state—by state or local government through acts or regulations. It was not so much about US antitrust law but the antitrust law of a critical mass of post-statist countries that use antitrust law as a tool to invalidate excessive, unjustified anticompetitive regulations by state and local government bodies. We discussed my paper at some length including the proper limits of antitrust agency power to condemn excessive regulation, and indeed what is *illegitimate* regulation. Mike referred me to his article with Jennifer Forrence on regulatory capture, public interest, and the public agenda. I learned from it and from Mike. I am still learning from Mike.

My last email from Mike was regarding my acknowledging his helpful comments in the first footnote to my still-draft article. First, he gave me really wise advice to “explicitly acknowledge the difficulty created by the ambiguity and self-interested overuse of ‘public interest’ justifications [to defend legislation]. It’s less naïve and may point the way to limitations on the [use of these justifications].”

And then: “One small vanity point: if you do decide to include me in the acknowledgements, please use my middle initial, as ‘Michael E. Levine’. For Jewish boys of a certain generation, ‘Michael Levine’ is ‘John Smith’.”

So, I want raise my glass to Michael Elias Levine. There is no other.

REMARKS BY LEWIS A. KORNHAUSER

I knew Mike nearly as long as many of the earlier speakers but our encounters were more intermittent – roughly once a decade – until he came to NYU in 2005. I first met Mike Levine over 40 years ago. I was on the entry level job market and, unlike Steve Morse’s situation, Mike was in residence. At that meeting I discovered Mike’s twin passions for intellectual and culinary feasts that ideally occurred together and his penchant for saying no.

USC Law School invited me to come to LA for a day of interviews and to give a presentation. My day included a session with Mike, who was a central figure there, followed by a good dinner at both of which Mike asked me very hard questions that demonstrated a clear understanding of both economic arguments and real world phenomena. I didn’t get the job (and the paper was never published). But I learned that Mike cherished both gourmet food and direct, intense intellectual debate. More specifically, in our discussions, Mike bridged the worlds of theory – and not just economic theory – and institutional practice.

My next meeting with Mike was roughly a decade later. NYU was looking for a new dean. I wanted a dean that both had and valued intellectual rigor, had high academic standards, and who would appeal to the large cohort of my more practice-oriented colleagues. Mike had all these qualifications and the search committee agreed to meet with him. This decision proved a bittersweet event for me: I once again encountered Mike who asked hard questions about the school over a very good meal – we ate at Le Bernadin – but then Mike said no again; he withdrew his name from

consideration and became instead the Dean of the Yale School of Organization and Management.

Roughly thirteen years later, this ritual of intellectual and culinary feasts repeated itself with one minor variation. Mike was a guest at the spring 2001 Colloquium on Law Economic and Politics. His paper was a draft of "Price Discrimination without Market Power".⁷ This time I asked the hard questions which he answered with his usual clarity vigor. The event of course was followed by a good meal.

The "no" in this encounter was in the paper which challenged prevailing orthodoxy in industrial organization. The paper rejected the standard neo-classical economic analysis of price discrimination largely on the basis of ideas inspired by Mike's experience in the airline industry. This paper argued that multi-product firms with common costs can price discriminate by a clever allocation of these common costs among the products. Mike felt that a firm structure of many product lines with common costs of production was widespread in the economy. Not surprisingly, airlines were a prime illustration in his argument. Each airline is a multi-product firm that has to recover both the costs specific to the product sold and the costs common to it and the other product lines offered by the airline. Attending to this phenomena led to a recognition that price discrimination was more common and more rational than the neo-classical economics of that era acknowledged.

I knew from earlier work that Mike often brought practice to theory or theory to practice. In the 1980s, I often taught his article (with Charlie Plott) on the manipulability of voting agendas⁸ to economic analysis of law students. In typical fashion, Mike had taken

⁷ 19 Yale Journal of Regulation 1 (2002).

⁸ Michael E. Levine and Charles R. Plott, "Agenda Influence and Its Implications," 63 *Virginia Law Review* 561 (1977). The two also conducted more formal lab experiments to test their theory.

theory for a test drive in the real world: he and Charlie constructed an agenda for their flying club's meeting to decide on the size and composition of its fleet. Indeed, they structured the agenda so that their flying club in LA bought the planes that *Charlie and Mike* wanted. They succeeded even though, by their calculations, the chosen fleet was not a Condorcet winner. They then confirmed the field experiment's power through laboratory experiments.

In more recent years, I've used Mike's work on regulation to illustrate and critique various theories of public choice and interest group politics.⁹ With these articles, Mike went, as he had in his Colloquium paper, in the opposite direction; he brought practice to theory as his understanding of when radical changes in regulatory practice can occur explicitly derives from his experience at the CAB. In this paper, Mike extends the conventional economic framework used to analyze public choice to account for features of real-world politics that entrepreneurial public officials to make policy.

Mike joined the NYU law faculty in 2005. He began immediately to participate actively in the intellectual life of the school. Most importantly to me (and John Ferejohn), Mike regularly attended the Colloquium on Law Economics and Politics which now meets every Fall Semester on Tuesdays from 4 to 6 pm. In his tenure here, he rarely missed a session.

Until recently, it met in Room 202. A long, narrow seminar table runs virtually the entire length of the room. The convenors and the guest sat at the east end of the table. Mike always sat at the opposite, west end of the table where he had an unblocked line of vision though, because of the noisy fan, somewhat impeded hearing – he and I not infrequently yelled at each other to speak up.

After John or I summarized the paper, the guest took questions.

⁹ Michael E. Levine and Jennifer Forrence, "Regulatory Capture, Public Interest, and the Public Agenda," 6 *Journal of Law Economics and Organization* 167 (1990).

Mike invariably was first on the queue. Moreover, no matter how abstruse the paper was, Mike's question not only understood (or constructed) the core point but also saw its applicability to the real phenomena that the papers purported to study. Though not mathematically trained, he penetrated the formal models or the econometric technique to uncover the problems, both theoretical and practical in the approach. Mike's manner was always direct but also impersonal. He often drew on his experience as an airline regulator and then executive. His detailed knowledge of the industry and his understanding of theory combined to uncover difficulties in many theoretical and empirical papers. Though penetrating and, as I can attest, often discomfiting, his questions advanced understanding rather than scored points.

Mike behaved similarly in other workshops as well. The faculty workshop has met regularly on Mondays in the Faculty Library for a long time. Mike was there most of the time, sitting in the far northwest corner of the room, in the most comfortable chair. And, as in the colloquium, he was often at the top of the queue with a probing question.

Most academics are specialists. They know about one thing. And they know about it in one way. One is a master of legal argument, a second knows how institutions work from the inside, a third looks at institutions from the outside with large data sets and arcane statistical methods, a fourth makes abstruse philosophical arguments while a fifth writes down mathematical models. Often one specialist disdains the efforts of the others.

Mike certainly knew institutions from the inside and he could construct legal arguments with the best of us. But he also understood and valued both philosophical and social science arguments. He could thus ask hard questions of everyone: how does the theory apply to a specific institution given this set of operational details? Were these data representative of the functioning of the institution at issue? Was the question asked a real question, one that needed answering or simply one thrown up to demonstrate technique?

Few people can cross these disciplinary boundaries. Fewer still

can ask these penetrating questions with generosity and without provoking animosity. Mike did that in virtually every seminar and at virtually every lunch or dinner table. He enriched our intellectual lives and improved our scholarship. He will be sorely missed.

REMARKS BY JAMIE BAKER

I was privileged to work for Mike at Northwest back in 1996 – until he personally fired me! I mention this only because it made the friendship we later formed all the more valuable to me. And valuable it was. Mike and I would constantly debate any and all issues related to the airline industry. The depth and breadth of his knowledge, not to mention his wit, inspired me to work harder. There are several professional accomplishments I can point to in my career, but the fact that I could call Michael my friend will continue to be a point of immense pride. I was so looking forward to our next lunch this month, and I will sincerely miss his company. The airline industry has lost one of its most formidable minds. Mike, I salute you, I thank you, and I'll never forget; and for what it's worth, you were right to boot me from Northwest. I wish I had thanked you.

REMARKS BY RICHARD L. REVESZ

We are here to celebrate the life of a remarkable man and a remarkable career. A top legal academic as a scholar of regulation; a top government official, who accomplished something really important in a short stint in government; a leading business executive; an academic leader as a very successful and transformative Dean of the Yale School of Management; and then later in his career, an academic of the purest form. All these experiences came together to make Michael E. Levine who he was.

I met Mike for the first time in 1988 while he was a potential dean candidate at NYU Law School. I had joined the faculty two and a half years earlier and was a very junior faculty member then, but I was invited to a meeting with Mike and we had a fabulous conversation.

Shortly thereafter, I learned that he actually wasn't interested in pursuing this appointment.

I didn't actually get to spend much time with Mike until 2005, when he joined NYU Law School as a distinguished research scholar. In the interim, I had encountered him at American Law and Economics Associations conferences and had seen him from time to time at other academic events. But, from the summer of 2005, until his passing, he was a very valued colleague here at the Law School and I got to know him well.

Yesterday, I reread 11 years of email interactions with Mike. I'm really glad I did that. My memories of these interactions came alive through these emails and I will talk about a few vignettes.

The enormous pride that Mike took in his work came through clearly. He would write to me about pretty obscure things with enormous delight. For example, he told me one day that he had just been chosen to be the keynote speaker of the World Air Transport Summit and, also, at the International Air Transport Association 63rd Annual General Meeting. Messages of this sort were frequent. Obviously, Mike had been invited to give speeches like these lots of times because he was a leading authority in the field, but each one seemed to bring enormous pleasure to him.

Mike and I interacted frequently on his and my articles. We both had academic interests in the field of regulation and he would always send me his works in progress and I would send him mine. His comments on my pieces were extraordinary. I would get two versions. One was a handwritten version on the hardcopy itself, which was really perceptive though sometimes a little hard to decipher. Then, an email would follow explaining the things that were hard to decipher and extending an offer to talk sometime, which we did. Mike made extremely trenchant comments and it was obvious that Mike had spent a lot of time putting them together. His wasn't a quick read followed by "here are three random things that you should look at." Mike plunged into pieces, understood what the author was trying to accomplish, and commented extensively on everything.

As a former dean, Mike was quite interested in issues of institutional governance, and even though he didn't have the responsibility to do that here – and he was pleased that he didn't – he would send me frequent emails about things that I was doing. Generally, they were encouraging.

Mike would comment on matters that were important to the institution. He didn't just reflexively comment on every institutional email that went around. For example, when NYU Law School makes appointments, the dean sends around an email to the faculty, expressing pleasure that the person decided to join us. Not too many people commented on those emails. Mike did comment on them, but not on all of them. So he would say from time to time, "This was a very distinguished appointment!"

I'm sure you're all now really curious to know whom Mike thought was so distinguished, but I am not going to tell you that. I will say one thing: he had excellent taste. So if someone asked me about the most distinguished appointments during this period, our list would have been almost entirely congruent. His taste in academic appointments was simply excellent. I think that if our faculty had delegated to Mike, and exclusively to Mike, the authority to make appointments, we probably would have ended up with a better faculty, though it's not totally clear how we would have dealt with the governance issues that would have arisen here.

The day when I announced that I was going to step down as Dean, I got a very long message from Mike, from which I will include a couple of sentences:

Please accept these comments on your achievement as coming from one who does not praise easily, and who has direct knowledge of the challenges presented by transforming an academic institution made up of tenured individuals with very different goals, aspirations, and prejudices—especially one as prominent in as a peculiar ecological niche as NYU School of Law.

I knew that, in fact, he didn't praise easily because we had been at workshops together for a very long time, so his message was very meaningful. He had mentioned previously how it wasn't that hard to make great appointments: the University of Southern California, where Mike had spent the early years of his career, had done that. But it was actually very hard to get a great group of people to stay there over a long period of time, that NYU Law School had succeeded in doing that, and that he was very impressed.

Our emails weren't all about academic work. Mike and I shared an interest in travel and I started getting very good advice from him. He once told me that airlines were not all equally safe and if I was going to be traveling with my family to faraway parts of the world I should check with him. I feel more comfortable mentioning names here: Aeroflot did not come out looking good in Mike's emails.

I also got advice on hotels and places to visit. I am now planning a trip with my family to Chile this December and we want to go to Atacama. I remembered a while back that someone had told me once there was a wonderful place to stay and I had forgotten who had told me that and what the place was. In these emails I found the answer, just when I needed it.

The last email I got from Mike was in response to an obscure message that went out from a small environmental institute – the Institute for Policy Integrity – that I run at the Law School. We have a monthly newsletter that is distributed to the faculty. On September 12, 2016, just a few months before his passing, Mike wrote to me in response to one of these newsletters. He said: "Congratulations on the [Social Cost of Carbon] result and your contribution towards it. It is a huge step forward in environmental law and policy."

We he had filed an amicus brief, which had been the only brief presenting an argument supporting the federal government's use of the Social Cost of Carbon – the estimate of damage caused by a ton of carbon dioxide emissions. (The federal government had not defended its own number, saying instead that it didn't need those benefits to justify the rule.) The U.S. Court of Appeals for the Seventh

Circuit was the first federal appellate court to address this issue and it blessed the Obama administration's use of this number. The decision was very important then and is even more important now, with a new administration in place. Mike recognized that. Nobody else outside the field had any clue that this was important or that it was something worth responding to. And he was totally right. As in the case of academic appointments, Mike wasn't one to respond to everything, or praise randomly. He was always very discerning: this was the only response from him to one of these newsletters.

I didn't know Mike as well as many of you did. I cherished our relationship and very much wish that I had gotten to know him better. The Law School will miss him a lot. I can always picture him in the faculty library, in the place where he always sat, and from which he would ask a question at every workshop. For reasons that I don't understand, around the time that Mike stopped being able to come to these workshops, the seating configuration in that room changed. I think otherwise I would have always looked at that place in the room and instinctively missed Mike. But I will definitely miss the trenchant questions that we would hear from him every Monday at lunch.

It was a real honor to have gotten to interact with him closely for eleven years while he was an important member of our community and a treasured colleague here at NYU Law School.

REMARKS BY CAROL LEVINE

Mike didn't have any, as we understand it, skills. He loved music, he loved sports, he loved many kinds of things, especially flying. The one skill he had, since he didn't play music or other things, was flying and he loved getting to be really good at it. He remarked on time that one of his favorite things was to do instrument flying and the reason was that when you go instrument flying you put on a hood and you can only see the dash and the instruments and you take instructions and at the very end as you're seeking down towards what you hope is the run way at the last minute you whip

off the hood and you are either lined up directly with the runway or you're not and if you're not you have to fly around again and do it all over again. What he loved about this he said was that in academics you might be right but you might not, you can have an argument and you might be wrong so you never knew on the one hand or the other if you were absolutely right but this was a moment in which you knew for certain sure that you were absolutely right.

There was nothing that mattered more to Mike than scholarly conversation; to be in the game as he would say it. It was for him a very serious game though he often found humor in almost any subject. In the seminars and workshops that he loved attending, he found a faculty with great energy and they embraced and engaged the world high and low and sought out experience, and in exercising unrelenting integrity in forging new paths and maintaining genuine curiosity towards, and respecting, each other's diverging opinions what he loved about his time here at NYU was encompassed in exactly that. From the very bottom of my heart I am grateful for that and on behalf of his daughters and his brothers, as well as myself, I thank you.