

1992

Dedication to Professor Edward Yorio

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Dedication to Professor Edward Yorio, 60 Fordham L. Rev. 803 (1992).

Available at: <https://ir.lawnet.fordham.edu/flr/vol60/iss5/1>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

DEDICATION

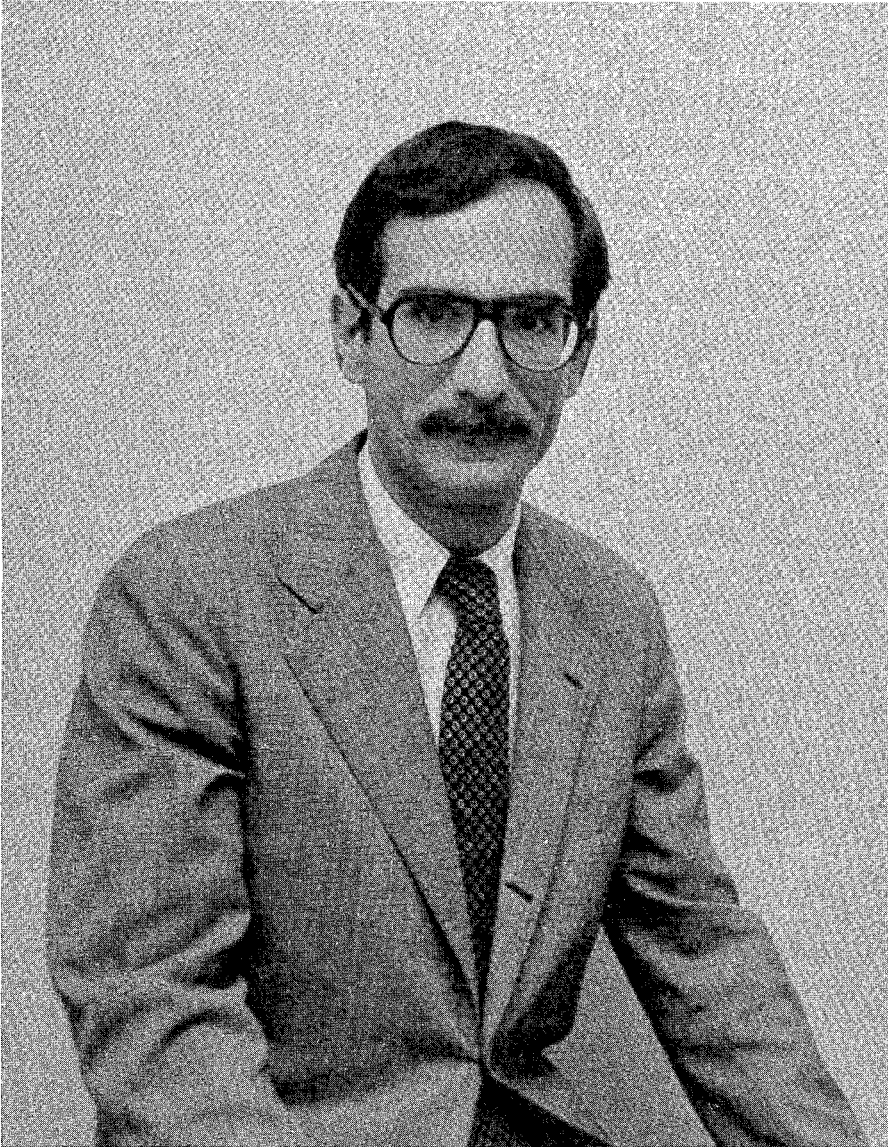
THE BOARD OF EDITORS OF THE FORDHAM LAW REVIEW

Dedicates this Issue
to the memory of

PROFESSOR EDWARD YORIO

Professor of Contracts

Edward Yorio graduated from Harvard Law School with honors in 1971 and was appointed to the faculty of Fordham Law School in 1973. In a very short time, he became a dearly valued member of the legal profession and of the Fordham Law School community. To students who had the privilege of taking his Contracts class, he was a dedicated teacher who inspired them with his energy, mind, and ability to teach. Utilizing his keen wit, Professor Yorio challenged students to think and respond to arguments as skilled lawyers should. To his colleagues, Professor Yorio was a respected scholar who published numerous articles on tax and contract law in leading journals. To the law school as a whole, Ed Yorio exemplified a spirit of unsurpassed scholarship, leadership, and collegiality. The following pages contain some thoughts of people who knew him well.



A TRIBUTE TO EDWARD YORIO

*JOHN D. FEERICK **

In our age of specialization, it is very difficult for an individual to excel in areas outside of his or her chosen field. Edward Yorio was an exception to that rule. He was a person of diverse interests and great intellectual talent, whose zest for living crowded several lifetimes into his short forty-four years.

Professor Yorio was accomplished in the art of fine writing, a scholar of national acclaim with a heralded book and numerous articles that appeared in our country's leading journals, and a brilliant teacher, whose students will perpetuate his legacy for generations to come. He was a classicist who majored in Latin and Greek at Columbia College, where he was elected to Phi Beta Kappa. He was an authority on opera, a renowned gardener whose tomatoes were without equal, a world traveler whose love of culture and haute cuisine competed for equal attention with his many other interests, and a golfer par excellence.

At the time of his death, Professor Yorio had already accomplished more than most of us dream about. The respect of his colleagues and the admiration of his students made him a leader at Fordham Law School. He was an articulate spokesman for intellectual integrity in all aspects of legal education and, even when his opinions on controversial issues expressed a minority viewpoint, we all listened carefully to and respected his views. Professor Yorio challenged all of us to be the best we could be.

The following remembrances, from colleagues and students, present a vivid portrait of an individual who served his school and his society in the best possible manner. It was a privilege for those of us at Fordham Law School to have had him as one of our own, and we will always treasure the gift which he gave to our community.

* Dean & Professor of Law, Fordham Univ. School of Law; B.S. 1958, Fordham Coll.; LL.B. 1961, Fordham Univ. School of Law.

EDWARD YORIO: IN MEMORIAM

*E. ALLAN FARNSWORTH**

Dedications of this kind are commonly written by close friends, by institutional colleagues, by former students, or by former teachers. I was none of these to Edward Yorio. But we taught the same cases, studied each other's treatises, read each other's articles, and cited each other in footnotes—in short we cultivated the same garden of contract law. And, during his academic career at Fordham and Cardozo, I came to see him as a creative, insightful, thorough, careful, and respected scholar in that field. He was also a much-cited writer in the field of tax law. And he was reputed to be a brilliant teacher in the classroom. But I can speak only of his contributions to contract law.

He made four major contributions to the literature in that field: his one-volume treatise on the equitable enforcement of contracts, published by Little, Brown & Company in 1989; his article on money damages for breach of contract, published in the *Columbia Law Review* in 1982; his article on equitable defenses, published in the *Ohio State Law Journal* in 1990; and his article on Section 90, published in the *Yale Law Journal* in 1991. All of them enriched the existing literature in important ways.

In an era when the fashion is to denigrate the traditional, Edward Yorio had the courage to defend the traditional. His treatise supported the classic division between law and equity, his articles on money damages and equitable defenses were both styled as "defenses" of traditional notions, and his most recent piece on Section 90 upheld the Willistonian view that based recovery on a promise made enforceable by reliance rather than on reliance itself. All of this was done with prudent skepticism and fresh insights.

Fields such as poetry and music produce prodigies. With rare exceptions—Wesley Newcomb Hohfeld, who died before reaching forty, was one—legal scholarship does not. Arthur Linton Corbin lived more than six decades after beginning his academic career, and Samuel Williston lived more than seven decades after beginning his. That Edward Yorio, who died at age 44, did so much in less than two decades of academic life is a cause for admiration; that he had no more than two decades to do it in we can all mourn.

I assume that Edward Yorio wrote his last contribution to contract law, and perhaps his last two, knowing that his career was to be short lived, but sure in the conviction that he had something of worth to leave to the world of legal scholarship. In this there may be a lesson for the rest of us, who cope with less absolute deadlines, when beset by the self-

* Alfred McCormack Professor of Law, Columbia Univ. School of Law; B.S. 1948, Univ. of Michigan; J.D. 1952, Columbia Univ. School of Law; LL.D. 1988, Dickinson; LL.D. 1988, Paris; LL.D. 1989, Louvain.

doubt that so often goes with authorship. For Edward Yorio the challenge of writing seemed to suffice, even without anticipation of the satisfaction that would have come from the profession's certain appreciation of his most recent work.

ED YORIO—A REMEMBRANCE

GERALD T. McLAUGHLIN*

To talk about Ed Yorrio without mentioning opera is like “talking about Hamlet without mentioning the ghost.” Opera was an integral part of Ed’s life. After a night at the Metropolitan Opera, Ed would often say to me: “Did you hear the *vibrato* at the top of the voice?” It was this incredible insistence on “getting it right” that made him such a wonderful colleague and teacher. He really cared that students “got it right”—that they could argue logically and meticulously to a conclusion.

I never realized that December 20, 1990 would be the last time that I would see Ed. I had come to the Fordham Law School Christmas Party to say goodbye to old friends. My family and I were about to leave for California. I was looking forward to taking over the Deanship of Loyola Law School in Los Angeles. I hoped that Ed would come and visit us in Los Angeles during his upcoming sabbatical. We spoke about many things on that day—his research, his optimism about the future of Fordham Law School, etc.

We also talked about the challenge that lay ahead for me at Loyola. Ed was one of my closest friends and I always sought his advice. I remember joking with him about what a dean’s job entails. Charles De Gaulle once said that it was difficult to be the President of a country that produced over 400 cheeses. I said that it would be difficult to be the dean of an institution that comprised over 1400 constituencies—the approximate total of Loyola’s faculty and students. I joked that one of my main responsibilities as dean would be to keep the peace. Ed’s comeback was predictable. “Gerry,” he said, “remember how in Verdi’s *Don Carlo*, King Philip informs the Marquis of Posa that Flanders has been subjugated by the Spanish crown and is finally at peace. The Marquis’ rejoinder was telling—he says ‘La pace e dei sepolcri’ . . . the peace of the grave.” Ed’s message was clear—peace is welcome as long as the price of peace is not silence and a lack of productivity.

Others in these remembrances will undoubtedly write about Ed’s impeccable scholarship. I have chosen instead to write about Ed’s personal qualities. He was my friend for almost twenty years. His good taste and good judgment were always with him. My wife Irene and I will miss Ed—he was irreplaceable. The best way to memorialize a friend is to keep him in your life after he is gone. I have thought of Ed many times since I learned of his death. I will not forget him. In the end, that is really all that any of us can do.

My last conversation with Ed was about a month before he died. I had to cut the conversation short because I had to take my son Mark to bas-

* Dean & Professor of Law, Loyola Law School, Los Angeles; B.A. 1963, Fordham Coll.; LL.B. 1966, New York Univ. School of Law.

ketball practice. I have thought several times about the utter banality of my last words to Ed—"I've got to take Mark to basketball practice." But in another way my last words to Ed were really "Life goes on." I know Ed would agree.

A PORTRAIT OF ED YORIO

BARRY E. HAWK*

Many speak of excellence. Few seriously pursue it with consistency of resolve. Only a very few achieve it. Ed Yorio did. Indeed, excellence defined the man.

A constant striving for excellence drove Ed Yorio's standards of teaching and scholarship. It drove his judgments about legal education and Fordham Law School. It explained his impatience with the imperfect in all things, be they found in opera, sports, art, legal reasoning or literature. He scorned with never disguised contempt persons, ideas and institutions that failed to achieve excellence—from squawking Met tenors to Steinbrenner's 1980s Yankees.

Ed was an elitist in the best sense—the Greek sense of excellence measured by the disciplined development to the fullest of one's intellectual and physical capacities. Ed took to heart Peleus' admonition to his son Achilles—"Now always be the best." Ed was deeply attracted to classical Athens and quattrocento Florence against which much of contemporary society appeared to him a pale shadow—a judgment professed frequently and eloquently during long night sessions at espresso cafes, McGlade's and other West Side venues.

But Ed Yorio was no mere cosseted seeker of perfection. His disdain of the mediocre was coupled with a wit and warmth and generosity of spirit toward friends and family. Ed liked and respected students and sought out their company. He required much of himself and of others. But he gave back in equal measure loyalty, empathy and affection.

Ed's renaissance range of interests was infectious. Few aspects of Thackeray's vanity fair passed him by unnoticed and unremarked. From bel canto to spring tomatoes, from Carl Furillo to l'Aventura, Ed came, saw and conquered with his knowledge and taste. He was never bored and thus he never bored—a quality that made him not only a valuable colleague but a boon companion with whom to spend lengthy lunches and dinners in lively conversation about subjects ranging from the failure of papal diplomacy vis-à-vis the Mongols to the perverse influence of von Neumann on contract law to the comparative chic of Parisian and Milanese women.

A powerful sense of family completes my own portrait of Ed Yorio. He deeply loved his parents and was very close to his brother's family. He spoke frequently of his niece and nephews with avuncular affection.

The world has lesser scope since Ed's departure. His death diminishes us all. My little personal world has certainly narrowed, for I have lost a

* Director of Fordham Corp. Law. Inst., Partner, Skadden, Arps, Slate, Meagher & Flom, Brussels; Cert. 1961, Inst. D'Etudes Pol., Univ. of Paris; B.A. 1962, Fordham Coll.; LL.B. 1965, Univ. of Virginia.

close and much beloved friend whose counsel and insights broadened and refined my interests and views and enhanced my own enjoyment of life.

Memories of Ed bring to mind many classical and literary references. But several lines from *The Divine Comedy* capture best what was for me much of the essence of Ed Yorio. Dante's ancestor Cacciaguida counsels him to continue writing and to publish:

Tutta tua vision fo'manifesta;
 E lascia pur grattar dov'è la rogna !
 Chè, se la voce tua sarà molesta
 Nel primo gusto, vital nutrimento
 Lascerà poi, quando sarà digesta.

...

E ciò non fa d'onor poco argomento.¹

1. Dante, *La Divina Commedia*, Paradiso, XVII canto, 128-35.

Make thy whole vision manifest;
 And let them scratch wherever is the itch.
 For if thy voice be pungent at first taste
 Yet shall it leave a vital sustenance
 After the mind has leisure to digest.

...

Honour not small shall be thy recompense.

A TRIBUTE TO ED YORIO*

MICHAEL M. MARTIN**

To understand Ed's significance for me personally, you have to realize that when we joined the faculty—I in 1972 and he a year later—Fordham Law School was a very different place from what it is today. The full-time faculty was less than half the current size, there was not the wide diversity of backgrounds seen in today's professors, and the school's mission seemed focused almost entirely on teaching future New York practitioners. Although we came from starkly contrasting backgrounds—he a product of a Jesuit preparatory education and a graduate of Columbia College and Harvard Law School, and I from Iowa public schools and the University of Iowa—we were both outsiders to the "Fordham mold" of the time. That sense when we were young of being on the margin brought us together, but it was Ed's special qualities that kept him important in my life.

Some of those qualities came to mind recently when I saw a draft report of the University's committee on Fordham in the Year 2000. One section of that report dealt with the topic, Fordham's Identity, and spent more than a page discussing what it meant to provide "Education in the Jesuit tradition." I'm not a Jesuit, or even a Catholic, but for me the concept is easy to define: education in the Jesuit tradition is education the way Ed did it. He was a part of that tradition, with Regis High School clearly being a formative influence and Fordham Law School being his home as a teacher.

And the way he did it? Why, that was education characterized by intellectual rigor, applied to all aspects of life. Ed firmly, whole-heartedly, tenaciously believed that real education was intellectually rigorous: constantly questioning, probing, testing until all premises and assumptions had been exposed and themselves tested and checked. He did it himself; he expected it of his students and colleagues.

In Ed's hands, this process was neither destructive nor narrowing. He got joy from playing with ideas, especially when something new came out of the process, like his and Professor Steve Thel's insights in the Yale article.¹ And he enjoyed playing with all sorts of ideas, whether they dealt with the law of contracts (his specialty) or of evidence (mine), or with religion or politics, or opera, or Italian cuisine. Much of my sense of loss—and I know I share this with many of my colleagues—comes from no longer having Ed around, always willing to hear your latest thoughts or to read your latest paper, no matter what the subject, and to

* Tribute delivered at a memorial service on February 20, 1992, at Fordham University School of Law.

** Professor of Law, Fordham Univ. School of Law; B.A. 1964, J.D. 1966, Univ. of Iowa; B. Litt. 1968, Oxford Univ.

1. See Yorio & Thel, *The Promissory Basis of Section 90*, 101 Yale L.J. 111 (1991).

ask his insightful questions and to make his penetrating comments. He chose academic law for the give-and-take; he always gave more than he took.

I have told you, even if I never told Ed, some of why he was important to me and what I admired about him. Let me indicate briefly some of what I cherished about our friendship. Although he was frugal—I often ate well when I went out with Ed but it certainly was never expensive—he was never selfish; he was always generous with his time and attention. I cherished his concern for excellence and his willingness to pursue that concern at some personal cost if necessary, as shown by his continuing efforts to reform the faculty compensation scheme. I cherished the fact that Ed so deftly combined what are to me the ultimate signs of cultural sophistication—an education in classical languages and an encyclopedic knowledge of opera—with the homey virtues of Italian cooking and growing tomatoes. And I cherished that he shared his love for his nephews and niece—I care no more for my own son than he showed with his pride in their accomplishments and his concern for their welfare.

By the time Ed left us, all too soon, it was clear that he was no longer at the margin, but at the center. He was the one the junior faculty looked to for guidance and for inspiration. It is his vision of intellectual rigor, of excellence, that defines the educational mission of the law school.

In his gallant fight over the past few years, Ed didn't encourage us to tell him how much he meant to us; rather, he showed us how we should carry on. Through his ever-increasing scholarship and his ever-better teaching and his ever-greater faculty leadership, he has left Fordham Law School, and left each of us, an invaluable and enduring legacy.

ED YORIO: A REMEMBRANCE

MARC M. ARKIN*

“When you agree to listen to the talk of Socrates, it might seem at first to be nothing but absurdity; such words and phrases are wrapped outside it, like the hide of a boisterous satyr. Pack-asses and smiths and shoemakers and tanners are what he talks about, and he seems to be always saying the same things in the same words, so that any ignorant and foolish man would laugh at them. But when they are opened out and you get inside them, you will find his words first full of sense as no others are; next, most divine and containing the finest images of virtue, and reaching farthest, in fact reaching to everything which it profits a man to study who is to become noble and good.”¹

Ed Yorio was, above all other things, a teacher. Even now, I have to suppress the urge to walk down the corridor and poke my head into Ed's office to ask his advice about how exactly to frame this piece, what tone to take, what grammatical infelicities to avoid. His insights were always on point, always kind, and always encouraging.

Like so many other members of the junior faculty, I asked—and took—Ed's advice on everything from scholarship to food, travel, and opera. About the only thing I didn't take Ed's advice on was politics, and even there, I think he cherished the illusion that I might be coming around to his way of seeing things. As a generation of students can attest, Ed was nothing if not persuasive.

In fact, Ed was a personality larger than life, who profoundly influenced everyone who had the great good fortune of listening to him. He was a person of fierce integrity, broad interests, profound intellect, unswerving loyalty, and rare warmth, unstinting with his time and care. An intensely private person, nevertheless, his friendships were as wide-ranging as his interests. As for myself, I can pinpoint the exact moment we really became friends; it was when he found out that I bought my mozzarella cheese from a different place than I bought my sausage.

One other thing about Ed; he was never shy with his opinions and he was never one to accept the received wisdom. Once, about a year ago, we went to the Metropolitan Opera House to see the much-touted French ballerina, Sylvie Guillem, who was then dancing with the American Ballet Theater. As we slipped into standing room, I realized that Ed had taken the time to know every usher by name, day job, and aspirations. More to the point, as everyone else was giving Guillem a standing ovation, Ed leaned over to me and said, in what might have passed for a stage whisper in a lesser mortal, “She's really not all that good, is she?”

* Associate Professor of Law, Fordham Univ. School of Law; A.B. 1973, Oberlin Coll.; M.A. 1975, M. Phil. 1976, J.D. 1982, Ph.D. 1983, Yale Univ.

1. Alcibiades, speaking of Socrates, Plato, *Symposium*, in *The Great Dialogues of Plato* 115 (W.H.D. Rouse transl. c. 1956).

Heresy, perhaps; enough to draw disapproving stares from the assembled balletomanes, certainly; but, as in so many other things, he was right.

On the other hand, Ed was unfailingly modest about his own achievements and abilities. Few people knew that one reason his opinions about opera, and particularly about singers, were so unerring was that he had perfect pitch. I knew he had some Latin and Greek, but it wasn't until I read his obituary that I learned that he had won the Earle Prize in Classics on graduation from Columbia. The story he preferred to recount from his college years was how, as a young Republican, he had stood on the outside of Low Memorial Library, helping to enforce the rules of occupation agreed to by the student protesters barricaded inside.

In fact, Ed enjoyed being a gadfly and tweaking the powers that be, but he never lost sight of the things that really matter in life. Once, at a particularly heated lunch table argument about the nomination of an unnamed Supreme Court justice, Ed was unusually free with his views, even for Ed. We disagreed, to put it mildly. Afterward, he called me and asked if I would ever speak to him again, and, possibly more important, whether I would ever give him any more homemade roasted peppers. Of course I did, and I wish I still could.

PROFESSOR YORIO, MY MENTOR

JERRY CHOE*

Professor Yorio was the best professor I ever had. In my first year Contracts class, Professor Yorio did not just teach—he performed. He performed the most electrifying display of pure dialectic I have ever experienced. His process of questions, answers, and analysis exhibited a most powerful and energetic mind.

He took students' arguments, filled them with substance and reason, and turned their premises inside-out. His teaching process meant respecting every student's remark and clarifying them to make them persuasive; it meant knowing when to pose questions himself and when to position students against students in an exercise of controlled debate; it meant posing questions that challenged students, made them challenge each other, and made them challenge themselves. During his classroom performance, Professor Yorio was a true intellectual, never suggesting a correct result—the underlying message being that every answer is subject to doubt.

While teaching, he demonstrated his incredibly keen and energetic mind, which was precise in debate and impeccably accurate in memory. It was a mind that understood subtle arguments and could bring out their merits and flaws in a way that was accessible to an entire class. Because he was able to orchestrate an energetic dialectic in class, he kept students on the edge of their seats from the first to the last moment of class.

Professor Yorio created this intellectually charged atmosphere in my first class with him by his first question, "Why do we need Contract law?" After an hour of class, every premise was questioned, every argument was refuted, and all the students left questioning whether there was any concrete law to be learned. By the end of the year, the class realized through Professor Yorio's tutelage that every truth had doubt, and that every doubt had truth. As a fellow student recently said to me, "It was incredible how much we learned in that class after being confused for the entire year." His class was a truly incredible experience, one I will cherish forever.

After my first year and until his death in my third year, I had the additional honor of being Professor Yorio's research assistant. In this capacity, I discovered that his scholarship was as remarkable as his classroom performance. His publications took profound theoretical positions with respect to legal doctrine and supported it with scrutinizing readings of cases. For example, the article that occupied most of my research time espoused a radical view concerning the concept underlying promissory estoppel liability under Section 90 of the Restatement (Second) of

* A.B. 1989, Duke Univ.; J.D. 1992, Fordham Univ. School of Law.

Contracts. The article, entitled *The Promissory Basis of Section 90*,¹ argues against views held by contract scholars such as E. Allan Farnsworth, Melvin Eisenberg, and Robert Braucher (the reporter for the Second Restatement) and advocates the position that liability under Section 90 is promise based rather than reliance based.

Professor Yorio's other publications were of similar depth and persuasion to his Section 90 article. Early in his career as a professor of Tax, shortly after leaving his two years of private practice with the New York firm of White & Case, he published a number of articles about tax law. These articles included *The Taxation of Damages: Tax and Non-Tax Policy Considerations*,² *Federal Income Tax Rulemaking: An Economic Approach*,³ *The President's Tax Proposal: A Major Step in the Right Direction*,⁴ *Equity, Efficiency, and the Tax Reform Act of 1986*,⁵ and *The Future of Tax Reform: A Rejoinder to Professor Zelinsky*.⁶ During his career as a professor of contracts, he again published several very successful articles, the last two with Professor Steve Thel, a fellow professor of contracts at Fordham. These articles were *In Defense of Money Damages for Breach of Contract*,⁷ *A Defense of Equitable Defenses*,⁸ *The Promissory Basis of Section 90*,⁹ and *Promissory Basis of Past Consideration*.¹⁰ Finally, Professor Yorio published a major treatise in contracts, entitled *Contract Enforcement: Specific Performance and Injunctions*, which was published in 1989. Because his writing was so prolific so early in his career, there is no doubt that he would have been one of the greatest scholars ever—if only he had had the chance.

Researching for Professor Yorio was no small feat. He was demanding, often giving little guidance for my research. Yet, by working closely with him, I learned to think with precision. The rigorous research he demanded taught me to be mentally disciplined. Professor Yorio taught me how to critically analyze legal propositions and how to read a case for subtle points and arguments. He taught me how precise a science the law can be.¹¹

He was a true intellectual, always engaging in and encouraging scholarly debate on a variety of topics—from current events to ancient philosophy. He represented the spirit of scholarship and leadership to students and faculty.

1. 101 Yale L.J. 111 (1991).

2. 62 Cornell L. Rev. (1977).

3. 51 Fordham L. Rev. 1 (1982).

4. 53 Fordham L. Rev. 1255 (1985).

5. 55 Fordham L. Rev. 392 (1987).

6. 55 Fordham L. Rev. 885 (1987).

7. 82 Colum. L. Rev. 1385 (1982).

8. 51 Ohio St. L.J. 1201 (1990).

9. 101 Yale L.J. 111 (1991).

10. To be published in — U. Va. L. Rev. — (1992).

11. To Professor Yorio, law was like a science—all cases fully explainable through consistent doctrine.

I believe that Professor Yorio (himself single with no children) considered the Fordham community his family and his students his children. Despite his affection for his fellow professors and students, during the last three years of his life, he chose not to share with us his news of terminal illness. Because he was a private man of tremendous strength and pride, he was able to live through such grief without the support of the many of us who cared. This was the same pride and strength which normally fueled his unsurpassed dedication to his students, to his teaching, and to his scholarship.

When Professor Yorio began to show marked signs of chemotherapy, students came to me left and right, concerned for his well-being. They were not only curious, but sincerely upset that he seemed so seriously ill. They told me how great his contracts course was; they told me how much they respected his thoughts, respected his work, and respected his person; they told me about the great loss they would feel if he were to pass away; they told me how Professor Yorio was the best professor they ever had. All I could do was agree with them, because Professor Yorio was an incredible man with an incredible mind. That is why he was my mentor. I will forever be grateful for the honor of knowing and learning from Professor Yorio.