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Lou Lowenstein: An Enduring Legacy

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

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

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

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

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

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

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

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

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

1. Louis Lowenstein, Sense and Nonsense in Corporate Finance (1991) [hereinafter Lowenstein, Sense and Nonsense].

2. Id. at 5.

3. Id.

4. Id.

5. Id.

6. Id. at 6.

7. Id. at 10 (italics omitted).

8. Id. at 8.

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

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

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

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