

TRIBUTE TO ROBERT H. MUNDHEIM

MARTIN LIPTON†

I have had the privilege of being Bob Mundheim's friend and sometimes colleague for twenty years. As such, I have had a front-row seat from which I have observed and admired his achievements as a legal scholar, law professor, Dean of the University of Pennsylvania Law School, and General Counsel of the Treasury Department. Bob's career has been a pacesetter for the legal profession. Now that he has moved on to private practice, he is sure to set even higher standards for all of us.

My first opportunity to work closely with Bob was in connection with the Practising Law Institute's Annual Institutes on Securities Regulation. Bob Mundheim and Arthur Fleischer, Jr. started the Annual Securities Institutes in 1970. Bob was co-chairman for the first eight Institutes. After his stint in government, he returned to co-chair the 12th and 13th Institutes. I had the privilege of keeping Bob's seat warm while he served in Washington, then continuing as co-chair with him and Art when he returned. Early on, the Institutes were established as one of the preeminent gatherings at which private practitioners, attorneys in government service, and academicians could discuss then-current and emerging issues in securities regulation and corporate governance. Revisiting the transcripts of those Annual Securities Institutes, one is struck by the trenchant analyses of problems and prescient observations about their likely evolution. Many of the papers presented at those Institutes continue to be valuable sources for work in those fields.

In addition to the Annual Securities Institutes, Bob Mundheim has organized or participated in numerous continuing legal education programs and symposia that have advanced our understanding of complex topics in the fields of business and securities law and provided essential instruction to the profession. To name but a few, Bob has been involved in conferences on the impact of conglomerates on various areas of accounting and the law,¹ the regulation of

† Partner, Wachtell, Lipton, Rosen & Katz, New York, New York.

¹ See *National Institute on Conglomerates and Other Modern Merger Movements*, 39 ANTITRUST L.J. 1, 270-71, 300-05, 354-66 (1970) (Moderator).

the activities of corporate managements,² the ethical responsibilities of corporate lawyers,³ and the scope of personal jurisdiction under the federal securities laws.⁴ Whether presenting a paper, acting as a panel moderator, or being a panelist, Bob's penetrating analyses and lucid descriptions of the issues have always helped make the conference or course a valuable experience.

In 1967, Bob and Arthur Fleischer co-authored a seminal article on tender offers as a technique for acquiring corporate control.⁵ In their article, published while the Williams Act was working its way through Congress, Bob and Art concisely reviewed the potential ramifications of tender offers for bidders and targets and discussed why tender offers had become a popular acquisition method. They went on to analyze and describe why then-current federal and state laws were inadequate to protect shareholders from the coercive aspects of tender offers. For example, they discussed how the potential application of Rule 10b-5 (which was then the federal securities law rule most relevant to tender offers) would tend to induce a bidder to disclose only the minimum bare facts of its offer because of the hazards of incomplete disclosure.⁶ The article also explained why, absent substantive federal regulation, a bidder might prefer to use a "first-come, first-served" offer that would induce stockholders to tender their shares quickly and would prevent management from developing an alternative to the bid.⁷

Bob Mundheim's abiding interest in the ethical dilemmas that can confront individuals engaged in business activities, particularly officers and directors of publicly held corporations and lawyers who serve as corporate counsel, is clearly shown by his writings and his participation in numerous conferences and panels.⁸ For example,

² See *Symposium on Federal and State Roles in Establishing Standards of Conduct for Corporate Management*, 31 BUS. LAW. 859, 965-85 (1976) (Panelist).

³ See *Symposium on the Ethical Responsibilities of Corporate Lawyers*, 33 BUS. LAW. 1173, 1495-1519, 15330-35, 1547-48, 1563-64, 1579-82 (1978) (Presenter and Moderator).

⁴ See Fedder, Wade, et al., *Waiver by Conduct — A Possible Response to the Internationalization of the Securities Market*, 6 J. COMP. BUS. & CAPITAL MARKETS L. 1 (1984) (Panelist).

⁵ See Fleischer & Mundheim, *Corporate Acquisition by Tender Offer*, 115 U. PA. L. REV. 317 (1967).

⁶ See *id.* at 346-47.

⁷ See *id.* at 350.

⁸ See, e.g., Kubler, Mundheim & Shapiro, *Panel Discussion on Corporate Governance: U.S., German, and Japanese Perspectives*, 8 J. COMP. BUS. & CAPITAL MARKETS L. 401 (1986); Leech & Mundheim, *The Outside Director of the Publicly Held Corporation*, 31 BUS. LAW. 1799 (1976); Ballard, Mundheim, Weinstock & Wetzel, *The Corporate Conscience and the Corporate Bar*, 26 BUS. LAW. 959 (1971); Mundheim, *Some Thoughts on the Duties*

based on a series of panel discussions, he and Professor Noyes E. Leech wrote an illuminating article in 1976 about the evolving roles of the boards of directors of publicly held corporations.⁹ The article described the "monitoring" functions of a modern board of directors, how those functions could be performed, and why, if those functions were properly performed, both stockholders and regulators should be satisfied with the results. Bob's fascination with these topics also led to his involvement in related projects of the American Law Institute.

At the University of Pennsylvania Law School, Bob Mundheim has a well-deserved reputation as a teacher who strove to help students achieve their potential. He believes, moreover, that a law professor's obligations do not end in the classroom. This belief led to his contributions to the overall Law School environment, which have ultimately benefited the legal community as a whole. In 1970, he founded the Center for the Study of Financial Institutions and Securities Markets, which is currently part of the Law School's Institute for Law and Economics. A ground-breaking endeavor, the Center gave students the opportunity to study intensively some of the questions posed by the regulation of financial intermediaries and capital markets. The Center has sponsored research projects¹⁰ and served as a forum for the exchange of information and ideas between academics and non-academics.

With Professor Leech, Bob organized the International Faculty for Corporate and Capital Market Law, a group of seventeen academics from nine countries. This Faculty has sponsored a series of conferences on issues of corporate law, securities regulation, and the law of financial institutions. As an outgrowth of the Faculty's activities, in 1978 Bob and Noyes Leech founded and became the general editors of the *Journal of International Business Law*.¹¹ With their sponsorship and support, the *Journal* became a student-run review at the Law School. The *Journal* today is an influential vehicle for the discussion of transnational capital markets, securities regulation, trade regulation, and international private contractual relationships.

and Responsibilities of Unaffiliated Directors of Mutual Funds, 115 U. PA. L. REV. 1058 (1967).

⁹ See Leech & Mundheim, *supra* note 8.

¹⁰ See, e.g., Fleischer, Mundheim & Murphy, *An Initial Inquiry Into the Responsibility to Disclose Market Information*, 121 U. PA. L. REV. 798 (1973).

¹¹ At which time it was entitled *The Journal of Comparative Corporate Law and Securities Regulation*. It was later entitled *The Journal of Comparative Business and Capital Markets Law*.

Among Bob's many accomplishments as Dean of the Law School, I believe that he will be remembered best for his successful recruitment of new faculty, at a time when much of the senior faculty was retiring, and for the organization and initiation of a major fund-raising drive. These two endeavors ensure that the Law School will enter the twenty-first century in a condition befitting an institution of its national importance.

In addition to his activities as Dean, scholar, and professor, Bob Mundheim has more than fulfilled the lawyer's obligation to engage in public service. In 1978, Bob was named General Counsel of the Treasury. In that position, he played crucial roles in the Chrysler debt restructuring and in the Iranian hostage negotiations. During the Chrysler saga, Bob recognized the necessary balance between economic realities and political constraints and demonstrated the diplomacy needed to persuade others to accept that balance. Our firm, which represented the steering committee for the American bank lenders to Chrysler, often worked closely with Bob. He was a key participant in the multi-layered negotiations. His constructive suggestions, adroitness, and unfailing discretion in handling delicate negotiations were greatly needed and appreciated. In the Iranian hostage crisis, Bob's ability to craft a workable solution under extreme time constraints was evident in resolving critical open points.

Bob Mundheim, through outstanding service at the University of Pennsylvania Law School, to the greater legal community, in the federal government, and in private practice, has established a pattern of high achievement. He has consistently added luster to the institutions with which he has been associated. To anyone who knows Bob well at all, it is clear that he will continue to surpass our expectations.