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## Boris I. Bittker: Colleague and Friend\*

Elias Clark†

Boris Bittker is not the kind to let University tradition or Connecticut statute dictate the time of his retirement. His eminence as a scholar, teacher, and lawyer is due not only to his extraordinary gifts of mind and personality, but also to his hard work and self-discipline. It is therefore entirely in keeping with his practice of controlling his own timetable that he should have decided to retire last June, while in robust good health, several years ahead of the schedule ordained by others. We can, however, rejoice that his retirement has not meant a retreat to garden or dark-room. He opens the Law School each morning; his typewriter clatters at machine gun speed throughout the day; and he continues to be available to give wise counsel to students and colleagues. So it is that there are no echoes of "Taps" in this Tribute; it is rather a brief note to say "thank you" to a friend and colleague before sounding the call for "charge" in anticipation of many installments of Bittker wit and wisdom to come.

I arrived at the Yale Law School as a student just about the time Boris started teaching, and, if memory serves me right, I was there for his first class. It was a large class in Business Units I. Boris had carefully crafted his opening remarks to run the full fifty minutes, giving a brilliant summation of the course and the problems with which we would be concerned. It had only one flaw—thirty-seven minutes into the class it was over. How to occupy the remaining thirteen minutes? Boris gamely came up with a question that cleverly wove together several of the points in the first two cases, while requiring an observation or two on the role of the corporation in contemporary society. As teachers everywhere have experienced, the question was followed by a long silence. Finally, a man in the

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\* Much of this Tribute was delivered at a retirement dinner in honor of Professors Boris Bittker and Ralph Brown, April 15, 1983.

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back of the room volunteered and made a stab at the answer. He talked around the point for a time, clearly not winning the new professor's favor. Five minutes elapsed on the clock. Now what? In some desperation, Boris decided on the terror tactics used by some of the great teachers of the day. He selected a name at random from the long list. "Mr. Smith, you don't believe one word of that nonsense put forth by the previous speaker?" On to his feet rose the same hapless respondent: "A few minutes ago I did, sir."

Three years later, I returned to the faculty, by which time Boris was established as one of the most effective and popular teachers in the School. He had also made two major discoveries, his wife Anne and the Internal Revenue Code. I mean to make no suggestion that Anne and the Code are rivals for his heart. Anne has that place alone. She is his equal in all things, including brains, wit, integrity, and downright Bittker decency.

Boris's relationship to the Code has been of a different sort, more that of the lion tamer to the lion. He showed who is boss right from the beginning in two articles written in 1949 and 1950.<sup>1</sup> There, he analyzed two Supreme Court cases and their legislative aftermath, which had attempted to correct several decades of misinterpretation of an important section of the estate tax. For their first articles, most people pick topics that are congenial and provide opportunities for observations on law, life, human folly, and the pursuit of the greater good. The topic Boris chose was completely devoid of any such handles; it was instead unrelentingly technical and seemingly unconnected to the land of the living, but Boris's genius for writing the language of tax was immediately apparent. The analysis was clear, readable, often humorous, and always insightful. Those two early articles influenced the final language of section 2037 and helped discourage to this day any further assaults on the scope of sections 2036 and 2037. This was just the beginning of an extraordinary career that has made Boris preeminent among tax scholars in this country. He has written and lectured on all phases of the federal tax system; his titles encompass law, policy, philosophy, economics, and ethics. Scholars and practitioners alike are most fortunate that this vast learning has been collected into the four, soon to be five, volumes of his *Federal Taxation of Income, Estates, and Gifts*,<sup>2</sup> hailed by reviewers who, after running through all the superlatives, have put it in the pantheon of treatises with *Wigmore on Evidence* and *Corbin on Contracts*.

Boris takes all this fame with characteristic modesty, none of the false "aw shucks, twarn't nothin'" modesty but rather, because he sets such

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1. Bittker, *The Church and Spiegel Cases: Section 811(c) Gets a New Lease on Life*, 58 YALE L.J. 825 (1949); Bittker, *Church and Spiegel: The Legislative Sequel*, 59 YALE L.J. 395 (1950).

2. B. BITTKER, *FEDERAL TAXATION OF INCOME, ESTATES, AND GIFTS* (1981).

## Boris Bittker

very high standards for himself, a “why should anyone expect less?” modesty. His modesty, even when used in a slightly mocking way, once got him into trouble.

The Bittkers’ daughter, Susan, arrived on the same day that the Board of Permanent Officers voted Boris a full professor. Those were the olden days of the rack and the thumb screw. Before a tenure decision was made, a senior professor sat in the classes of the junior to see whether the teaching was up to appropriate standards. It is likely that the experience gave rise to the expression “chilling effect” now so commonly used in constitutional litigation, but, of course, the students thoroughly enjoyed the drama. Myres McDougal drew the assignment of monitoring Boris’s classes and attended a number of them, a fact noted by everyone in the school. Mac was a friend and neighbor of the Bittkers, and it was rumored around the corridors that he warmly supported Boris’s promotion. The day after the Bittkers’ double joy, Boris entered the class, and the students, having been informed of Susie’s birth, gave him a rousing round of applause. Boris, assuming that the students were thinking professionally rather than domestically, waved and responded, “Thank you, and I also want to express my gratitude to Professor McDougal—he is the one who is responsible.”

Boris is a man of many talents. He is a skilled photographer, dedicated environmentalist, intrepid adventurer, and witty conversationalist. The details of those facets of his career must, however, await another time and place. This Tribute is intended to focus on the very special role that he has played in the life of the Law School.

The School has prospered in the years since 1937 when Boris arrived as a student. Progress does not come, however, without problems. This place has been in the past, and undoubtedly always will be, populated by persons of powerful intellect and ego who are not overly burdened by self-doubts. Clashes of will are inevitable, and so at times it has seemed as though the divisions, wounded feelings, grudges, and tensions must tear the enterprise asunder.

In such times of crisis, Boris stood out as the binding force, making his colleagues control their differences and remember their shared goals. He has many strengths, but first on the list is his capacity to be fair and open-minded, to remain unmoved by the passion and strife of the moment, and to move decisively in search of solutions. It is not his style to buy peace by pasting together a compromise from bits and pieces taken from competing arguments; rather, he seeks out new high ground on which to rest a solution in which all can happily join. His has been the highest form of leadership, and Yale is greatly in his debt.

I close on a personal note. Boris’s office door has been open, literally

and figuratively, for thirty-seven years. I speak for myself and legions of others who have gone through that door to be helped, to be informed, and to be cheered. Never have we been disappointed. And so to you, Boris, a most heartfelt thank you.