

## A GREAT SCHOLAR AND A GREAT MAN

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“I’m going to tell you a story,” the famous law professor announced. “Warning at the outset: There will be points in this story when you’re going to think that this is nothing more than endless ramblings and reminiscence. And there may be some truth to that. But, more importantly, I’m going to provide an elaborate groundwork for you to understand perhaps the most important concept in legal thought that you’re going to hear in your entire lifetime. And that’s an understatement!” Professor Redish waited politely for the laughter to subside. “Actually, I’m not kidding.”

On October 22, 2006, Marty Redish changed my life. This was a feat that he would accomplish repeatedly as I became his research assistant, he became my mentor, and, above all, we became good friends. But on that October afternoon—among my first days as a law student—I did not know Marty Redish except by reputation. And as I watched him at the lectern, I indulged visions of naïve grandeur concerning my chosen profession.

The law was, I imagined, a theatrical endeavor on at least some level—an intellectual cityscape populated by debonair advocates and fast-talking deal junkies who propelled the engines of justice and commerce beneath supple armors of virgin wool, Italian leather, and Chinese silk. Its pantheon included Daniel Webster, Henry Drummond, Arnie Becker, and just about any character that Aaron Sorkin might dream up. Jack McCoy was its philosopher king, Harper Lee its documentarian. But over the next ten minutes, I bid the likes of Atticus Fitch adieu as Marty peeled back the blinders, exposed an intricate clockwork of legal thought, and replaced fantasy with a far more compelling reality.

It began where the great stories often begin—with a dead fox in New York, a paddling of ducks in Maine, a beached whale in California, and a young law student’s love-hate relationship with his law professor—namely, the famous A. James Casner. Marty described Professor Casner as “the scariest dude that I encountered in law school.” A devotee of Socratic pedagogy, Professor Casner would pose quandaries leagues beyond the intellectual limits of his students, scan his classroom like an apex predator, and, following an inevitable collective gasp from the gallery, select his victim. In those salad days, Marty studied case law concerning the legal

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definition of a wild animal, or *ferae naturae*—an animal not designated as domesticated by law. He spent halcyon weeks in the company of Blackstone, Fleta, and Justinian until, one rueful morning, Professor Casner announced ominously: “Tomorrow, I want you to come in with a definition of wild animals that takes into account every case we’ve read on the subject.”

Marty, a city boy, was ill equipped for the task. Even today, Marty can flawlessly recite the Brooklyn Dodgers starting lineups from 1941 through 1957, but as he reads this very tribute, has no idea what to make of the phrase “paddling of ducks.” Still, Marty persevered, and inspired in no small part by abject terror of being caught unprepared by Professor Casner, Marty’s study group set out to meet the challenge. But each time a group member proposed a definition, another would observe that it failed to account for the fox case, or the duck case, or the whale case. Late that night, defeated and exhausted, Marty and his comrades declared: “Kill us; do anything you want; we just don’t know.” As Marty told it, breakfast the next morning felt like a last meal as he silently calculated the probability that Professor Casner would call upon him that day.

To Marty’s simultaneous relief and consternation, Professor Casner did not revisit the question that day or any other day. Instead, he advanced to the next chapter of his property casebook—the definition of “wild animals” be damned! That afternoon, after Marty expended what he described as considerable mental energy contemplating professor-cide, he experienced an epiphany. The reason the group was unable to ascertain a comprehensive definition was simple: No such definition exists.

At this point in his story, Marty grew stoic, his voice quiet. “Do you know why no such definition exists?” he asked. The words hovered in the air like zeppelins. The classroom was silent. Marty had masterfully led us to aporia, and we eagerly awaited revelation. In law, Marty explained, “there is no abstract floating-in-the-air definition of terms.” There are legal consequences that flow from definitions. Thus, different jurisdictions with different social and economic needs at different points in history will define terms to meet the social and economic needs of the times.

And there it was: A concept that would forever reshape my worldview. The tumblers clicked into place. And, though it may sound trite, in that moment Marty inspired me to love the law. Marty had crystallized what I too have come to believe that the law is all about. Law is not a function of extremes, but of balance. It is neither a product of rigid abstract formalism nor of epistemological nihilism. It is, properly understood, a synthesis of the two—of principled analysis combined with social jurisprudence. Thus, within reasonable linguistic boundaries, words—the term “wild animal,” for example—can mean different things in different jurisdictions based upon varying considerations of social purpose. Or, in Marty’s words, you define your terms in a streetwise way and apply them in a principled way to meet the standards of the rule of law. To do that, you cannot switch among

definitions depending on whether or not you personally support the outcome of the analysis. You must render your definition based upon a categorical, transparent choice—whatever social need you endeavor to foster—and then you must enforce that choice in a principled manner.

Marty paused again. “Pretty much every bit of my scholarship in one way or another comes back to this basic insight,” he said.

This was heavy stuff. Heavier still as I realized that all I thought I knew about law—the dramatic wrangling in the matters of *Right v. Wrong*—was essentially fictional. The philosophical space that Marty inhabited was not one of blind advocacy or righteous indignation. It was one that married principal, pragmatism, and purpose. From that moment forward, I wanted to learn everything that Marty Redish was willing to teach me.

Marty’s story ended on a humorous note. The young law student, thrilled with this basic insight, approached Professor Casner at the end of the semester and thanked him for changing his life. Professor Casner gave Marty an appropriately Kingsfieldesque look and sauntered off. “But twenty years after his death, I’m still talking about him,” Marty quipped. “I guess you can’t argue with that!”

There, thankfully, whatever parallels may exist in our respective coming-of-age stories depart. When I approached Professor Redish and thanked him for the tremendous insight, he smiled and asked me if I might like to discuss the matter over a cold beer. In the following months and years, over countless hours of spirited discussion and correspondence, Marty and I would continue to build on, and would even coauthor an article on, this core interpretive philosophy. Yet, we would spend just as much time discussing values, family, personal histories, and, of course, baseball, as we would the intricacies of law. Looking back, I am forever grateful to Marty for teaching me what it means to be a good and decent lawyer, but, much more than that, I am grateful to him for helping to instill in me what it means to be a good and decent man. Marty has joked that I am the gentile son that he never had—something that I consider a true honor. Marty is certainly someone that I consider a father figure, and I feel remarkably lucky to be able to say that.

This was a sentiment that was echoed time and time again at the symposium in honor of Marty as panelists recounted just how much Marty means to them and how essential he has been to their lives. One panelist recounted how she continues to follow Marty’s advice: “If your legal analysis and politics line up more than once in a blue moon, stop and think again.” And heads around the room nodded knowingly: “Yes, I too follow that advice.” Another panelist described how Marty’s sense of humor has stayed with him throughout his career—allowing him to add levity to even the most tense of situations. And, again, heads around the room nodded: “Yes, Marty taught me to do that too.” The lessons that Marty imparts, in other words, are indelible.

The reason is simple: Professor Martin Redish is a truly great legal mind and scholar. But Marty Redish is a truly great man, beloved by his family, students, colleagues, and friends. We would all be much, much poorer in Marty's absence—and, despite their critical importance, that has nothing to do with his theories on the law. I have absolutely no doubt that twenty years after his death, I will still be talking about him. I guess you can't argue with that.