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### O Captain! My Captain! - A Tribute to Professor Lewis R. Katz

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*James M. Klein*<sup>†</sup>

O CAPTAIN! MY CAPTAIN!—A TRIBUTE  
TO PROFESSOR LEWIS R. KATZ

“I returned and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill; but time and chance happeneth to them all.”<sup>1</sup>

It was by time and chance that Lew Katz became one of my mentors for life—first as a law student, then as a legal-services attorney, and finally during my forty-six years as a law professor. Every step of the way, Lew was there for me. I owe my entire professional career to Lew Katz. This tribute is personal. It has been my good fortune to know Lew outside the classroom and to be the beneficiary of his wisdom and support.

In 1965–66, Lew and I were living in Ann Arbor, Michigan. Lew was an instructor at the University of Michigan College of Law under the tutelage of legendary law professor, Yale Kamisar. I was a senior in the College of Literature, Science, and Arts. Our paths never crossed in Ann Arbor; little did we know that our respective careers were heading in the same direction. Lew wanted to be a law professor; I wanted to be a law student. Sometime that year, both of us learned that Louis Adelbert Toepfer, the Vice-Dean at Harvard Law School for sixteen years, would be the incoming Dean in the fall of 1966 at Western Reserve University’s Franklin Thomas Backus School of Law. Lew accepted Dean Toepfer’s offer to be a tenure-track assistant professor at Reserve; I decided to enroll in law school at Reserve. Time and chance brought both of us to Cleveland in the fall of 1966.

I was not assigned to Lew’s Criminal Law section that fall, but my classmates in his section raved about him. The rap on Lew was that although he was not much older than us, he was an incredibly good teacher. They said he was a tad intimidating and he held their feet to the fire. Showing up for class without briefing the cases was not an option. My classmates were so pleased to be in Lew’s Criminal Law class.

In the spring of 1967, my Torts I teacher did not teach Torts II and Lew was assigned to teach our section. His specialty areas were criminal

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1. *Ecclesiastes* 9:11.

law and criminal procedure. As 1966–67 was his first year as a law professor, this was the first time Lew taught Torts. You would not have known it. He was a marvelous teacher and I looked forward to every one of his classes. He did not lecture: he would call on us to recite our case briefs and then he would pose many questions, including answering some questions with more questions. He taught us to think, to analyze, and to challenge him in class. On occasion, when asked a question, he even would admit that he did not know the answer.

During the spring term, I began visiting Lew in his office to discuss torts. His door was always open and he welcomed student visits. The more I visited Lew, the more comfortable I felt as a law student. My final-exam scores that spring were a marked improvement over my fall scores. In Torts II, I got the book award. By the end of the spring term, Lew had taught the entire 1L class. The love affair between the Class of 1969 and Lew Katz was well underway.

In the fall of 1967, Western Reserve University merged with the Case Institute of Technology and became Case Western Reserve University. That semester I did not have a course with Lew, but I continued my office visits. My second and final course with Lew was in the spring of 1968, in Lew’s Criminal Procedure course. Lew had a passion for this subject, especially the constitutional parts (i.e., the Fourth, Fifth, and Sixth Amendments). One day during class, he played a video of an Ann Arbor judge instructing a defendant at an arraignment hearing. I immediately recognized the judge in the video: he was my landlord my senior year at Michigan. Back then, he was the Ann Arbor City Prosecutor, which my roommates and I discovered on the Monday following a weekend that we had a loud party and received citations requiring our presence in his office. We agreed that there would be no more parties. But I digress. After watching the video in class, I met with Lew to share this coincidence. It was after that meeting that I realized I wanted to be around Lew as much as possible for the rest of my time as a law student. He became my *de facto* law school advisor—like an older brother I could, and did, lean on.

For example, during one visit, Lew told me about a part-time law clerk position at the Cleveland Legal Aid Society. I recall that Lew was friends with Burt Griffin, Legal Aid’s director. I decided to apply and Lew recommended me. I got the job and was assigned to work for C. Lyonel Jones, the Director of the Hough office. I learned a great deal from Lyonel, who later became Director after Burt Griffin was appointed Common Pleas Judge for Cuyahoga County.

In my 3L year, I mentioned to Lew that I wanted to be a legal-services attorney after I graduated. He told me about the Reginald Heber Smith Community Lawyer Fellowship Program (the “Reggie Program”), sponsored by the University of Pennsylvania Law School and in partnership with OEO Legal Services, the predecessor to the national Legal Services Program created by the Legal Services Act of 1974. Created in 1967, the Reggie Program’s mission was to train,

support, and deploy young social-justice attorneys and place them with legal-services programs in virtually every state. Lew encouraged me to apply for a Reggie fellowship and he wrote a letter of recommendation on my behalf. I was accepted and in August 1969, I started at Contra Costa Legal Services Foundation in Richmond California.

One of my first clients was a woman who was terminated by her boss, the editor of a small newspaper in eastern Contra Costa County. She applied for California unemployment insurance (UI) benefits. The claims handler interviewed the woman and the woman's former employer and determined that her termination was not for just cause, entitling her to UI benefits. The woman began receiving her UI benefits, but when her employer lodged an administrative appeal, her UI benefits were automatically and immediately suspended, pursuant to state law. I was co-trial counsel in a section 1983 class-action suit challenging the constitutionality of the California UI statute that required the suspension of a claimant's benefits when the employer appealed the initial determination of eligibility. A three-judge panel in the U.S. District Court in San Francisco ruled that the statute violated due process, and the State appealed directly to the U.S. Supreme Court. The Court unanimously affirmed the lower court's decision; it affected 47 other states that had similar UI statutes. Although my senior co-counsel argued the case, it was a thrill for me just to be at the appellee's table at the hearing.

I visited Lew in Cleveland on my way back from the oral argument in Washington. We had a long talk during which Lew asked me what I liked most about my legal-services job. I told him that (1) I learned so much from my clients, and (2) I enjoyed supervising work-study research assistants, who were law students at the University of California-Berkeley's Boalt Hall. Lew told me about what he described as an ideal job for me: a newly created tenure-track faculty position at the University of Toledo College of Law. Until that day in Lew's office, it had never crossed my mind to be a law school professor. Around this time (the late 1960s, early 1970s), the Council on Legal Education and Professional Responsibility (CLEPR) awarded grants to a number of law schools to create clinical programs in which students, under faculty supervision, could represent indigent clients. Between 1969 and 1972, CLEPR awarded more than \$4,000,000 in the form of 116 grants to more than ninety then-existing ABA-approved law schools. Toledo was awarded two grants: one to set up a Criminal Law Clinic in 1970; one to set up a Civil Law Clinic in 1971. Lew strongly encouraged me to apply for the second position and become a law professor. After considerable thought, I decided to apply. Lew wrote a letter of recommendation, which led to an offer that I accepted. In July 1971, less than a month after my twenty-seventh birthday, I joined the Toledo Law faculty as an assistant professor and co-director of the newly-created Civil Law Clinic.

Lew continued to be my mentor during my thirty-eight years at Toledo and my eight years as a visiting professor at the Charleston School of Law. When I was at Toledo Law, Lew encouraged me to visit or take sabbaticals at other law schools. I went to the University of Western Australia in Perth twice, the University of New Mexico twice, as well as the University of San Diego, Tulane, and Florida Coastal Law School. Several years ago, Lew recommended me for a Fulbright Specialist grant, through which I taught a mini-course in Civil Procedure at East China University of Political Science and Law in Shanghai.

Early in my career at Toledo, Lew emphasized the importance of scholarship. He recommended me to the Banks Baldwin Publishing Company where he was an established author. Banks needed a new author to continue updating the late CWRU Professor Sidney Jacoby's *Ohio Civil Practice*. That book was replaced with a new first edition of Banks Baldwin's *Ohio Civil Practice* that I co-authored with Professor Patrick Browne. I co-authored a second edition with Professor Stan Darling. Without Lew's support, I never would have had that opportunity. Lew was an author with Banks Baldwin his entire career.

Lew also encouraged me to serve on ABA inspection teams for the Section on Legal Education and Admission to the Bar. That led to my service on the two Section Committees involved with law school accreditation: The Accreditation Committee (1997–2003) and the Council (2012–2018).

In addition to being a mentor, Lew was a role model who shaped my career as an attorney and a law professor. As a law student, I knew Lew as a law teacher. Lew was a rock star to the Class of 1969; much too young to be our “father,” he was more of a wise, older brother. As a faculty member at Toledo Law School, I learned of Lew's reputation as an exceptional law professor and administrator. Lew was a prolific writer, having authored more than 10 books, nearly 30 articles, and numerous newspaper columns in the *Cleveland Plain Dealer*, *Washington Post*, and other publications. Lew mostly wrote in the areas that he taught: criminal law and criminal procedure, with a special interest in search and seizure, the right to speedy trial, and other criminal-justice issues. His professional activities also focused on those areas.

In 2019, Lew was appointed to the Cleveland Community Police Commission as part of a Consent Decree issued by U.S. District Judge Solomon Oliver in a high-profile lawsuit brought by the U.S. Department of Justice against the City of Cleveland; the case arose out of the deaths of unarmed African Americans who were killed by Cleveland police officers, and the Commission was created to foster police and community communication and to provide input on reform. Additionally, Lew was an advisor to the Ohio Sentencing Commission for five years and he co-authored the original draft of the felony-sentencing reform legislation that was adopted in 1995. His public service included serving as trial counsel in a section 1983 action on

behalf of Cleveland public school teachers claiming pregnancy discrimination. The U.S. Supreme Court ultimately held in favor of the teachers.

Lew's service to the law school included directing the Center for Criminal Justice from 1972–91 and, beginning in 1992, directing the internationally acclaimed Foreign Graduate Studies program, which put the law school on the map in the area of international legal education. His foreign law students earned LL.M. degrees from CWRU and they joined the ranks of all of the J.D. students who learned from and admired Lew Katz.

In June 2019, Lew and Professor Leon Cabinet were honored at the Society of Benchers' Annual Banquet. When asked what was the highlight of his fifty-three-year tenure as a full-time CWRU faculty member, Lew said that it was being proud of the successes of his former students. Lew wanted all of his students to be successful in their careers. He taught us the importance of being prepared, being passionate about the law, serving our clients, and attacking injustices. Lew was keenly aware of our strengths and the types of situations in which we would be happy and thrive. Lew put us in touch with his many contacts in the legal community; those contacts advised us and, in some instances, hired us.

It took a long time for the Class of 1969 to repay Lew for all of the things he did for us. We invited him to all of our class reunions, but that was as much for us as it was for Lew. In 2006, however, our Class had the opportunity to contribute to Lew's huge effort to unseat a two-term incumbent Congressperson in Ohio's Fourteenth Congressional District. Lew won the contested Democratic primary but was defeated in the general election after receiving nearly forty percent of the vote. In 2015, in honor of Lew's completing five decades as the longest-serving faculty member in the law school's history, and being the recipient of the Distinguished Teacher Award, the Class of 1969—Lew's first graduating class—established a new endowment for a student scholarship in his name. In a video shown at the 2015 CWRU Law School Luncheon honoring Lew, Lew's colleagues and former students, both domestic and international, expressed their gratitude for Lew's support and friendship. Professor Cabinet, a colleague and close friend of Lew's since 1968, said that Lew "embodies the best of what is required as a law professor."

In my case, I don't know if there is a better way to sum up being in the right place at the right time, or if the phrase "surrounding yourself with good people" has ever rung truer than when I met Lew Katz in the fall of 1966. I did not know it then, but I certainly know now how fortunate I was to meet one of my closest friends and my mentor for life. If not for you, Lew, I wouldn't have had a clue. And I certainly would not have the honor of writing this Tribute.

Thank you, Professor Lewis R. Katz.