

## SYMPOSIUM

### Foreword

### **A World Less Silent: Celebrating Jay Katz's Contributions to Law, Medicine, and Ethics**

**David C. Tolley, M.A.\***

On October 15, 2004, more than one hundred and twenty people convened at the Yale Law School for what has come to be known as “Jay Katz Day.” Many of them former students of Dr. Katz’s, they came from as far as Geneva and California, and from as near as their offices down the halls of the law school. It was a day of celebration and reflection on what Harold Koh, Dean of the Yale Law School, called “the healing wisdom of Jay Katz.”<sup>1</sup> It was also a day of great anticipation.

I had the privilege of serving as the primary coordinator for this conference, and I was in dialogue with Dr. Katz from the beginning—“What are you planning?” he often wanted to know. “Who will be there? What are the topics?” For many weeks through the spring and summer of 2004, Dr. Katz and I spoke often about how much he was looking forward to this great event. Besides the many scholars we invited, I sent more than one hundred invitations to friends and family of the Katz’s.

However, two weeks prior to the symposium, Dr. Katz fell ill with a serious respiratory infection. He spent the better part of those two weeks in a Boston hospital. Knowing that he had been discharged from the hospital on the afternoon

---

\* Teaching fellow, Yale University; Adjunct Faculty, Fairfield University and Sacred Heart University. This symposium was convened and sponsored by the Yale Institution for Social and Policy Studies and its Interdisciplinary Center for Bioethics, as well as the Yale Law School.

1. Harold Hongju Koh, *Introductory Remarks—The Healing Wisdom of Jay Katz*, 6 YALE J. HEALTH POL’Y L. & ETHICS 397 (2006).

of the October 14th—the day before the conference was to begin—we all hoped that he would be able to attend, but we were unsure. I met a friend of the Katz's, a gentleman who had been taking care of their New Haven home while Dr. Katz and his wife were in Boston, at 7:30 a.m. on Wall Street behind the law school. He and I carried Dr. Katz's recliner into the conference hall in hopes that he would be able to be with us.

Immediately to the right as people filed into the conference hall to begin the day, his recliner sat poised and ready—we, and his chair, were ready for him. Mid-morning, during Robert Burt's keynote presentation, Dr. Katz arrived; he too was ready for us. It was a spectacular moment.

As Professor Burt paused to acknowledge Dr. Katz's arrival, the room rose to its feet in joy and relief. Characteristically humble, Dr. Katz waved and blew a respectful kiss to the room, sat down in his recliner and nodded at Professor Burt to proceed please. There Dr. Katz sat for the rest of the day—smiling, nodding, and waving politely, as person after person offered their reflections on what he has meant, and what he will continue mean, for scholarship and practice in law, medicine, and ethics.

In the first paper of this symposium, *The Uses of Psychoanalysis in Law: The Force of Jay Katz's Example*,<sup>2</sup> Robert Burt reflects upon how Dr. Katz has turned our attention to the life of the unconscious in order to help us all turn a more honest eye toward ourselves. Professor Burt compares Dr. Katz's work with that of Joseph Goldstein, and Burt recounts how Dr. Katz as scholar and teacher illuminated systemic patterns of repression and denial that play out to the detriment of legal and medical practice. Professor Burt calls our attention to ways we can think about structuring policies and practices so that we pay attention to the often mischievous unconscious, so that the unconscious does not operate mischievously in secret.

Professors Elyn Saks and Charles Bosk offer responses to Burt's work.<sup>3</sup> Professor Saks focuses upon how certain fundamental precepts of psychoanalysis can shape medical practice for the better, and Professor Bosk reflects upon how the sociological milieu of contemporary bioethics is more complex than we usually realize, and he suggests ways that Dr. Katz's work can contribute to more honest, effective research in the sociology of medicine.

Alex Capron takes a sobering look at the state of the ethics of research with human subjects and the long distance we still have to go in order to deal

---

2. Robert Burt, *The Uses of Psychoanalysis in Law: The Force of Jay Katz's Example*, 6 YALE J. HEALTH POL'Y L. & ETHICS 401 (2006).

3. Elyn Saks, *Response—Our Debt to Jay Katz*, 6 YALE J. HEALTH POL'Y L. & ETHICS 415 (2006); Charles Bosk, *Response—A More Skeptical Bioethics*, 6 YALE J. HEALTH POL'Y L. & ETHICS 425 (2006).

adequately with the moral dilemma at the heart of research with human subjects: “We are asking you to do this not for yourself but for others, even though we know that the role human subject research entails real and sometimes unforeseen risks including death.”<sup>4</sup> Professor Capron highlights the problems entailed in heralding often complex, jargon-laden informed consent forms as benchmarks of ethical research. He also pays particular attention to the problematic nature of many physicians’ dual roles as caregiver and researcher. His call is for a willingness to acknowledge these problems that often linger in the shadows, unexposed to the light, and find ways of moving towards constructive resolutions.

Professors Ruth Faden and Larry Palmer respond to this second paper.<sup>5</sup> Professor Faden elaborates on two issues Capron raises: how moral dilemmas are sometimes ignored in research and how informed consent can sometimes promise more than it can actually deliver. And Professor Palmer takes Capron’s paper as a springboard into a discussion of Dr. Katz’s work as it relates to broader issues in bioethics like race, genomics, and what he calls “community engagement.”

In the third major paper of this volume, Ellen Wright Clayton pays particular attention to the physician-patient relationship.<sup>6</sup> She highlights places where silence still persists in medical relations to the detriment of medical care. What Professor Clayton terms “barriers to conversation” occupy the bulk of her reflections. She cites an exaggerated fear of diseases like cancer, an over-confidence in what genetic testing really tells us, and a lack of awareness regarding potential treatment options as examples of conversation barriers. But the most significant reason for the persistent silence between doctor and patient, Clayton acknowledges, is that the kind of communication and deep identification Dr. Katz calls for is both time consuming and exhausting—both emotionally and professionally. In short, what Dr. Katz encourages medical professionals to do “makes them squirm.” However, Professor Clayton, as both physician-scholar and physician-caregiver, admonishes medical professionals to heed Dr. Katz’s hard advice nonetheless.

Professors Alan Meisel and Susan Wolf respond to Clayton’s paper.<sup>7</sup>

4. Alexander M. Capron, *Experimentation with Human Beings: Light or Only Shadows*, 6 YALE J. HEALTH POL’Y L. & ETHICS 431, 431 (2006).

5. Ruth Faden, *Response—Reflections on Jay Katz’s Legacy*, 6 YALE J. HEALTH POL’Y L. & ETHICS 451 (2006); Larry Palmer, *Jay Katz: From Harms to Risks*, 6 YALE J. HEALTH POL’Y L. & ETHICS 455 (2006).

6. Ellen Wright Clayton, *The Web of Relations: Thinking About Physicians and Patients*, 6 YALE J. HEALTH POL’Y L. & ETHICS 465 (2006).

7. Alan Meisel, *Response—From Tragedy to Catastrophe: Lawyers and the Bureaucratization of Informed Consent*, 6 YALE J. HEALTH POL’Y L. & ETHICS 479 (2006); Susan Wolf, *Response—Doctor and Patient: An Unfinished Revolution*, 6 YALE J. HEALTH POL’Y L. & ETHICS 485 (2006).

Professor Meisel reflects upon the bureaucratization of informed consent by lawyers and how this affects the physician-patient relationship, and Professor Wolf focuses upon Dr. Katz as a revolutionary for thinking about the physician-patient relationship; she ends her remarks with a substantive and inspirational rallying cry.

The collection of papers in this symposium all come from influential scholars. The constructive work they offer here is important. But the work in this collection is also personal, as the occasionally informal style reveals. Most of the authors are former students of Dr. Katz's whose remarks are enriched by their ability to place the person Jay Katz alongside the scholar Jay Katz. What one realizes is that Dr. Katz's contributions to law, medicine, and ethics, which are undeniably profound, are especially profound because of the person Jay Katz is. It is my strong impression that Dr. Katz has always self-consciously attached the personal to the professional—a self-consciousness that is important but sorely lacking in the fields of law, medicine, and ethics generally speaking. In this light, Dr. Katz serves as an exemplar of the person-scholar that many of us who participated in “A World Less Silent: Celebrating Jay Katz’s Contributions to Law, Medicine, and Ethics,” hope we can become in the years ahead.

One message that resounded throughout “Jay Katz Day” is that Dr. Katz’s scholarship has much to offer for the future of scholarship in bioethics. You will see at numerous points how various writers remark that Dr. Katz’s wisdom—his “healing wisdom”—offered insights thirty years ago that are every bit as important now as they were then. In a time of heightened anxiety over health care issues and a legally contentious clinical and research environment, a world less silent would go a long way towards improving relations between patients, practitioners, and payers.