

JUDGE ROBERT A. KATZMANN

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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JUDGE KATZMANN (WITH PROFESSOR NEIL SIEGEL) DURING A
2016 EVENT AT DUKE LAW SCHOOL. PHOTO COURTESY DUKE LAW.

A scholar, a citizen, a colleague

BY DEBRA A. LIVINGSTON

The following remarks were delivered at Judge Katzmann's memorial service in June 2021.

There are so many things that can be said about Bob Katzmann's service on the Court of Appeals for the Second Circuit, about his tenure as chief, and about his contributions to the Judicial Conference of the United States. Bob was a scholar who embodied more judicial virtues than could be listed. But he was also a leader, who shepherded our Court through historic challenges — from budget sequester and governmental shutdowns at the beginning of his tenure as chief, to the pandemic, which upended our Court's operations last spring.

In preparing my remarks for today, it occurred to me, first, that Bob Katzmann was an extraordinary figure on our Court in part because his intellectual background fitted him for a range of projects that are the province of judges, but that are somewhat outside their experience, at least typically. For Bob was not simply a student of the law, although he was certainly that. He was also a student of govern-

ment — in fact, Bob was the first federal judge, ever, to have held not only a law degree, but also a doctorate in government. Bob was a leading scholar in the field of judicial-legislative relations long before he joined the bench. He had studied with, as he put it, “extraordinary scholars, public intellectuals, and government officials . . . concerned with practical governance — with understanding how institutions operate in practice, not just in theory.”¹ Bob became a judge having already worked closely with the Judicial Conference, the national policymaking body of the federal courts. He had the personal experience of having forged pragmatic solutions to the sorts of issues that arise, both within the Conference and between Congress and the courts.

Bob's ability to work effectively in both intra- and interbranch relations

was of profound benefit to the Court of Appeals, to the courts of the Second Circuit, and, indeed, to the courts of the nation during his tenure. Whether working to ensure that New York City's courthouses retained adequate security in light of proposed budget measures or to explain to members of Congress why a superficially salutary reform could be ill-advised, Bob worked tirelessly and effectively on behalf of sound, practical governance within the courts. He offered all of us, and particularly me, a huge education in this area.

But it wasn't just Bob's scholarly accomplishments and practical experience that explain the extraordinary success of his life's work and the deep affection that all the judges of the Second Circuit have for him. Both also stem from Bob's character and his values. ▶

Bob's unfailing willingness to consider all arguments seriously and to respond with patience and good cheer were character traits that operated as guardrails, protecting our Court's heralded collegiality.

Bob's father, John, passed away a few years ago. Bob and I had a quiet moment to chat at the service, and Bob took the time to share with me, his eyes bright with memory, some stories of his father's enthusiasm for teaching his children about American democracy. Bob spoke about piling into a car for trips from Queens to Washington, D.C. Bob's father was a refugee from Nazi Germany, and his mother, Sylvia, the Brooklyn-born daughter of Russian immigrants. They taught Bob and his siblings, Gary, Martin, and Susan, about the Capitol, the U.S. Supreme Court, and the White House. Then they visited these places, when Bob was six years old. Bob said in speeches many years later that those lessons from his parents, and particularly that visit when he was six, made a lasting impression on him.

They truly did. Bob cared about public service and he cared deeply about our country and the health of its democracy. This is the reason we have a circuit-wide civics education initiative in the Second Circuit today — because Bob understood, as he put it in 2018, that “[i]f we as a country are to continue to tackle our problems . . . then there must be a shared appreciation about the constitutional system underlying [our] institutions. There must be a shared understanding of the principles, values, and basic workings of that constitutional system.”² Bob worried about what he termed “a corrosive cynicism”³ with regard to the American constitutional scheme. And he believed that the judiciary might lend a steadying hand to our democracy by helping to educate young people about the rule of law and the role of judges — not to put courts on a pedestal or to inculcate

one view of the substantive good, as he repeatedly made clear, but “to increase public understanding of the role and operations of the courts,” and enhance appreciation for our Constitution and system of constitutional liberty, embedded, as it is, with “many checks,” as Bob put it, “designed to curb the abuse of power and rash decision.”⁴

This vision, as well as Bob's practical ability to get things done, both broadened and deepened the concept of public service among the judges and lawyers of the Second Circuit during Bob's tenure. And to good effect. “Together,” Bob said, “we have a collective responsibility to promote civic education so that our Constitution and the government remain vital for generations to come.”⁵ To Bob, this was his most beloved and important project. And it is a legacy that we should tend with care, so that students and teachers will continue to cheerfully visit our courthouses in future years; to participate in moot courts and historical reenactments; and to learn about the basic principles undergirding our constitutional scheme, so that we will have helped prepare the next generation to nurture and tend to our democracy.

There is so much more that my colleagues and I will miss in the years ahead. Bob's good judgment, his profound integrity, diligence, and warm collegiality. You could sometimes disagree about a case when sitting with Bob. But it was impossible to *feel* disagreeable, no matter the issue. Bob's unflinching willingness to consider all arguments seriously and to respond with patience and good cheer were character traits that operated as guardrails, protecting our Court's heralded collegiality. Bob once said that

he learned from his mentor, Senator Patrick Moynihan, about the “strength and fragility of our institutions . . . about the need for humility about what we know and what we can achieve.”⁶ He brought that understanding to the judicial role, and our Court was the better for it.

In Bob's email to the court family in March 2020, counseling us about the start of remote operations as we all packed up and went home, Bob ended by saying, “This too shall pass.” I took some comfort from that. And, as usual, Bob was right. But we didn't realize, as the forced separation of the last year eased and we began to celebrate our return, that Bob would not be among us. To Jennifer, and to the rest of Bob's family, our hearts go out to you. Our court lost an extraordinary colleague this week. But more than this. As one of my colleagues put it to me yesterday, “We loved him. Our Court is heartbroken.”



DEBRA A. LIVINGSTON is chief judge of the U.S. Court of Appeals for the Second Circuit and a faculty member at Columbia Law School.

¹ Ronald Collins, *Ask the Author: Chief Judge Katzmann on Statutory Interpretation*, SCOTUSBLOG (Oct. 7, 2014, 8:00 AM), <https://www.scotusblog.com/2014/10/ask-the-author-chief-judge-katzmann-on-statutory-interpretation/>.

² Robert A. Katzmann, *Leslie H. Arps Lecture: A Republic If You Can Keep It*, N.Y. CITY BAR ASS'N (Nov. 1, 2016), https://s3.amazonaws.com/documents.nycbar.org/files/katzmann_arps_lecture_2016-11-01.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Collins, *supra* note 1.

A quiet innovator and understated leader

BY JON O. NEWMAN

Many federal judges have one trait in common: They're not modest. A rare exception was Robert Katzmann, who left us way too early in 2021 at the age of 68. He didn't try to be modest. He just innately was.

Bob was my chief judge for seven years. From his 21st floor chambers he would call me in my 28th floor chambers to ask if he could come up for a chat. "No, you can't," I would say, "You're the chief judge. I'm coming down." Often he would walk out of the elevator before I could get in.

In his quiet way, Chief Judge Katzmann was an innovator. He thought up and organized the Second Circuit's civics education initiative, formally known as "Justice for All: Courts and the Community." Now a model for federal courts across the country, the program brings teachers and students into the courts of the Second Circuit for meetings with judges and student moot court arguments, and it sends judges into the community to enhance public understanding of the federal courts. Chief Judge Katzmann didn't just start this program. He personally guided its

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growth, cajoling the judges of his circuit to participate.

Another major innovation was his establishment of the Immigration Justice Corp., recruiting lawyers to provide legal services in immigration cases, a vital initiative for a circuit with an unusually high number of asylum cases.

Chief circuit judges have different styles of leadership, from the imperious to the subtle. Bob Katzmann gave new meaning to the word "understated." Always calm, cheerful, and unfailingly attentive to the concerns of his colleagues, he led when leadership was needed and loosened the reins when it was not.

He authored a slew of first-rate opinions and found time to write

Judging Statutes, the highly regarded book on the interpretation of statutes. From his years at the Brookings Institution studying interbranch relationships, he brought to his judicial task a unique perspective on how government works, which many of his opinions reflect.

The federal judiciary has lost a major figure, the Second Circuit has lost a great chief judge, and I have lost one of my dearest friends.



JON O. NEWMAN

is a senior judge of the United States Court of Appeals for the Second Circuit.