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The Influence and Example of Professor Michael W. Lewis

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This short symposium essay pays tribute to my friend and mentor, Professor Mike Lewis, who tragically passed away from illness in the prime of his career last year. It examines his influence in the fields of international law and the law of war and the example he set for students over the course of nine academic years at Ohio Northern University's Pettit College of Law. The essay concludes by calling on law schools to consider hiring more faculty members like Mike, whose career included service as a fighter pilot in the U.S. Navy, the private sector, and significant courtroom practice.

I last saw Mike Lewis in November of 2014 at The Federalist Society's National Lawyers Convention in Washington, D.C. Eight years earlier, we bonded after traveling together from Ohio Northern to the same event during my last semester of law school. In what would prove to be our final conversation, we commiserated over our favorite topic: politics. On the professional front, Mike was awaiting his security clearance so that he could accept a prestigious appointment to the Privacy and Civil Liberties Oversight Board in Washington during his upcoming sabbatical semester. He was concerned that his clearance might not be approved in time to start in January. For my part, I was starting to consider post-clerkship employment options in Washington following my two-year stint on the Seventh Circuit. The end of our conversation was unremarkable and we went our separate ways expecting to see each other again in Washington.

I never learned whether Mike's security clearance was approved in time. It didn't matter because the issue became moot. Within a month, Mike would learn about his illness rendering a return to Washington impracticable. He passed away two weeks before I accepted my current position. After all of the conversations about public service that we shared over the last decade, I deeply regret that I was denied the opportunity to share this good news with him.

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I first met Mike in August of 2006, shortly before 3L classes started. Over the summer, I had learned that the law school had hired a new professor whose biography read something like this:

Professor Michael W. Lewis joins the faculty after serving as a litigation associate at McGuire Woods LLP and as a consultant for McKinsey & Company. He obtained his B.A. from Johns Hopkins University and his J.D. from Harvard Law School, where he was a member of the Federalist Society and served on the editorial staff of the Harvard Journal of Law & Public Policy. Before entering law school, he flew F-14's for the U.S. Navy and graduated first in his class from Top Gun. He later served in Operations Desert Shield and Desert Storm.

I was impressed and particularly interested in the fact that he practiced law at McGuire Woods LLP in Virginia, a well-regarded law firm in the south. As a Virginian with plans to return, I was pleased to learn that this new hire was familiar with the legal market in Virginia.

Before classes started, I paid a visit to Mike's office to welcome him and introduce myself as President of the Federalist Society. I don't remember many details of that initial encounter (although in revising this essay I remembered he told me that his father attended Ohio Northern as an undergraduate), but as a result I ended up dropping labor law to take Mike's international law class. That turned out to be a great decision—for both of us. I never would have imagined I'd find myself in an international law class, but—to my surprise—most of the cases in the book were U.S. Supreme Court cases masquerading under the title of international law. I learned a great deal and very much enjoyed the class. A few of my closest friends from law school—Nicholas Gaunce and Adam Rosplock—were in that class, too, and we still talk about it.

My decision to enroll in international law also inured to Mike's benefit. About a month into the semester of our three-times-a-week course, it occurred to me that Mike was a gifted teacher and speaker with a unique outlook on the material because he had actually participated in armed conflict during his Navy service.

Today, it is hard to believe that this was ten years ago. President Bush was in office and the legality of military tribunals was one of the hottest topics of law school conversation. Although plenty of legal scholars had opinions on this issue, few had any first-hand experience in the military. I returned to Mike's office for a second time and asked him if he would be interested in speaking on the issue to some Federalist Society chapters

within driving distance where I had contacts. He graciously accepted my invitation. As I remember, he gave talks on the Supreme Court's *United States v. Hamdan*¹ decision to small groups at Toledo and Detroit-Mercy Law Schools.² Shortly after he returned, I heard from my contacts that Mike had given thought-provoking talks and that the audiences were very impressed by him. I thought that this was a good opportunity to elevate his profile (and the profile of our law school), so I e-mailed all of the Federalist Society student chapter Presidents, whose names and e-mails I had obtained over the summer in Washington at the Federalist Society's Student Leadership Conference. Critically, Mike—like most law students—preferred debate over stand-alone lectures. Shortly thereafter, the invitations started pouring in. After that, professional opportunities never slowed down for Mike.

In the years that followed, Mike presented on the topics of terrorism, national security, the rules of engagement, military tribunals, drones, and torture at dozens of Federalist Society events nationwide—culminating in his participation as one of four experts on the national security and international law panel at the 2014 National Lawyers Convention. In addition to speaking regularly at Federalist Society events, Mike had served on the Executive Committee of the Federalist Society's International & National Security Law Practice Group. I wish he could have seen the heartfelt *in memoriam* tributes his international law and national security colleagues and adversaries from these debates had posted about him on their respective websites after he passed.³ These tributes suggest that Mike's absence leaves a gaping hole in the legal community where he was once an active participant.

How will I remember Mike? There are no lawyers in my immediate family, so I will remember Mike as one of my first mentors in the legal profession. Besides politics, the topic that Mike and I probably spoke about

1. 548 U.S. 557 (2006).

2. These talks ultimately matured into Mike's first publication while on the faculty, see Michael W. Lewis, *International Myopia: Hamdan's Shortcut to "Victory"*, 42 U. RICH. L. REV. 687 (2008).

3. Peter Margulies, *Mike Lewis, 1964-2015*, LAWFARE BLOG (June 23, 2015, 1:20 PM), <https://www.lawfareblog.com/mike-lewis-1964-2015>; Kenneth Anderson, *Mike Lewis, Ave Atque Vale*, LAWFARE BLOG (June 24, 2015, 10:00 PM), <https://www.lawfareblog.com/mike-lewis-ave-atque-vale>; Chris Borgen, *Remembering Mike Lewis*, OPINIO JURIS (June 23, 2015, 5:16 PM), <http://opiniojuris.org/2015/06/23/remembering-mike-lewis/>; Julian Ku, *Farewell to Professor Michael Lewis: A Tireless and Important Voice on the Law of Armed Conflict*, OPINIO JURIS (June 23, 2015, 10:31 PM), <http://opiniojuris.org/2015/06/23/farewell-to-professor-michael-lewis-a-tireless-and-important-voice-on-the-law-of-armed-conflict/>; Kevin Jon Heller, *A Sad Farewell to Michael Lewis*, OPINIO JURIS (June 24, 2015, 4:01 AM), <http://opiniojuris.org/2015/06/24/a-sad-farewell-to-michael-lewis/>; Jens David Ohlin, *Reading and Learning from Mike Lewis*, OPINIO JURIS (June 25, 2015, 3:11 AM), <http://opiniojuris.org/2015/06/25/reading-and-learning-from-mike-lewis/>; *In Memoriam Michael W. Lewis*, FEDERALIST SOC'Y, <http://www.fed-soc.org/aboutus/page/in-memoriam-michael-w-lewis> (last visited March 14, 2016).

the most often was the legal academy. I continually expressed interest in entering the academy someday, and Mike was a constant source of sage advice. Due in part to the good fortune I have had in securing federal public service positions, my fulltime teaching aspirations have been put on hold. But I still feel Mike's influence because I'm far enough along in my career now that young lawyers occasionally seek me out for advice. Consciously or unconsciously, I try to share with them the kind of reason-based advice that Mike shared with me. Like an education and many other experiences and relationships—a mentor never really leaves a mentee's presence; that relationship is omnipresent in the background, returning to the forefront at the slightest (and often unexpected) provocation.

Mike spent only fifty years on earth, but his was a life well lived. His accomplishments were many and his legacy will be long lasting through the successes of the hundreds of students that he taught. He led by example as a scholar who devoted the same effort to developing his reputation on campus with students and his colleagues as he did to developing his reputation in the global scholarly community. He was graceful in his ability to hold a position without being disagreeable and his scholarship was original, well-written, and made an impact on the development of the law in some of most important national security cases of our time.⁴ These factors—coupled with Mike's military service, academic excellence, his wide range of practical business and legal experience, and his communication skills are very much the qualities that we on the Senate Judiciary Committee like to see in nominees for federal appellate courts. It would not have surprised me if one day we might have seen Mike nominated to the federal appellate bench as a consensus nominee.

Given these facts, you may think it obvious to all of the faculty hiring committees back in 2006 that Mike had what every law school could ever want in a professor—and what every law student could ever want in a mentor. But you would be wrong. To its credit, the faculty hiring committee of Ohio Northern had the foresight to see and appreciate Mike's talent and character and to offer him a position despite his lack of a federal clerkship or previous law teaching experience—practical prerequisites

4. The best evidence of this is the citations his articles received in significant opinions involving national security decided by three different U.S. Courts of Appeals. *See, e.g.,* Bahlul v. United States, 767 F.3d 1, 58-59 (D.C. Cir. 2014) (Brown, J., concurring in part and dissenting in part) (citing Lewis, *International Myopia*, *supra* note 2); Padilla v. Yoo, 678 F.3d 748, 764 (9th Cir. 2012) (citing Michael W. Lewis, *A Dark Descent into Reality: Making the Case for an Objective Definition of Torture*, 67 WASH. & LEE L. REV. 77, 82-84 (2010)); Boimah Flomo v. Firestone Natural Rubber Co., 643 F.3d 1013, 1016 (7th Cir. 2011) (Posner, J.) (citing Lewis, *A Dark Descent into Reality*, *supra* note 4).

(some might say barriers) to obtaining a tenure-track law teaching position at almost every accredited law school today.

Moving forward, how should the legal academy continue to honor and promote Mike's legacy? Because his scholarship speaks for itself, I suggest that the academy might promote his legacy by keeping his background and experience in mind when making faculty hiring decisions in the future. A decade ago, Ohio Northern asserted leadership within the academy by hiring a veteran with no teaching experience but who had valuable business and practical litigation experience. I am uncertain whether the academy has welcomed more faculty with the sort of intellectual and experiential diversity Mike brought to the classroom in the decade that has passed since he was hired.⁵ However, I am certain that every law school would benefit from taking the time to reflect on the positive impact that Mike was able to have at Ohio Northern and far beyond its campus borders to forums across the country (and even the world) due to his unique background. A bit of reflection on Mike's successes should inspire at least a handful of law schools to pursue greater intellectual and experiential diversity within their walls.

5. I have my doubts. See generally Nicholas Quinn Rosenkranz, *Intellectual Diversity in the Legal Academy*, 37 HARV. J.L. & PUB. POL'Y 137 (2014).