

REMEMBERING MARK HUMMELS

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It is fitting that an issue of the *Arizona Law Review* memorializing Mark Hummels is themed to judicial ethics because ethics was a subject which meant a lot to Mark. I know this because the first time I met him he mentioned ethics as a reason for choosing where to practice law, and because he spent a good part of his far-too-short career practicing in the area of ethics and attorney discipline. I know Mark loved this publication, as well, because it was his stories of the great fun he had during his time as Case Note Editor that convinced me to seek the position when I was in law school.¹

Mark went to law school to pursue a second career, after first earning a journalism degree and working as a political reporter. Covering politics from the front line convinced him that the most powerful tools for social change existed in the judicial system rather than the political system. Though he was a Colorado native (where he was a standout high school athlete) and a resident of New Mexico (where he wrote about local politics), and although he had the credentials to earn admission to any law school in the country, he applied only to the University of Arizona because he knew that was where he wanted to be. He graduated first in his class and went on to record the highest score on the Arizona bar examination after graduation that year.

Once in private practice, he gravitated toward ethics partly because it gave him the chance to work directly with his colleague Mark Harrison, a giant in the field, but mostly because he was fascinated by the difficult yet important effort to minimize the impact of human frailty on the justice system.

For Mark, professional ethics was a uniquely human concern because the judicial system is a uniquely human institution. During one of our many informal mentoring sessions (my term for the times Mark and I would talk about work over beers, and our spouses would wander away in boredom) he gave me a bit of profound advice that I will never forget. He said, “One of the most important things you have

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1. His stories of the great fun he had and close friendships he developed during his clerkship at the Arizona Supreme Court also convinced me to seek a clerkship with then-Vice Chief Justice Andrew Hurwitz, who has written an outstanding piece for this issue. Following in Mark’s footsteps was always a great place to be.

to learn to do as a lawyer is take a phone call from your client and explain for the hundredth time, ‘Yes, you’re still screwed.’” I laughed at this, but he was being very serious. Like all humans, lawyers hate delivering bad news, sometimes as much as clients hate hearing bad news. But being afraid to face a client and speak plainly about the odds of success leads to a breakdown in communication, which leads to a breakdown in the lawyer–client relationship, which leads to further ethical troubles and potential complaints to the State Bar. Implicit in the rules of professional conduct, he told me, is the edict that lawyers must be brave when their clients are not. I try to remember that every day, as should all lawyers.

Mark also understood that a judge’s black robe does not remove human frailty, but the robe can conceal weakness to the detriment of everyone, most especially the person wearing it. Unlike lawyers, who are challenged daily by opposing counsel (and often their own clients), judges rarely have anyone tell them that they have taken a wrong turn until they reach the point of spectacular career implosion. Mark always had an extra measure of compassion for judges who ran afoul of the ethics rules, understanding that they were no worse than the rest of us, even though they are often treated worse than the rest of us when they fail to live up to the standards we set for them.²

Mark was a consummate professional, though of course not without his own frailties. His ability to quickly analyze any set of facts and immediately discern the key legal issues was unparalleled. More importantly, he was extremely serious about his role as an officer of the court. He truly believed that, for all of its failings, the judicial system stands out as the most important of human institutions because it is tasked with achieving one of our most important goals: the peaceful resolution of conflict.

The system does not always work. In January 2013, Mark and one of his clients, Steve Singer, were gunned down by an unhinged (and unrepresented) litigant after a failed mediation. Mark is survived by his loving wife and two spirited children. His loss has left a hole in my heart that will never be filled. But I also mourn the loss for our profession. Had he only been given the chance, Mark would have gone on to do even more great work in the field of judicial ethics, bringing his own humane outlook to the task. I am grateful that the staff of the Arizona Law Review has chosen to honor Mark with this issue. For my part, I will continue to honor Mark’s memory by continuing to view professional ethics the way he taught me—not as traps for the unwary or punishment for the wicked, but as guiding lights meant to protect lawyers and judges from their worst selves.

2. Think about how frequently you read stories about lawyers acting unethically and simply shrug. Compare it to the outrage you feel when you read stories about judges acting unethically. Mark hated the gap between the two responses.