

IN MEMORIAM—JACK G. MARKS

Stanley G. Feldman*

I last saw Jack Marks in the law library of the Pima County courthouse. It was shortly before his death and I was amazed to see him, for I knew how ill he was. I asked him why he was there. He was surprised that I would ask and told me that he had felt well enough to get downtown and had come because he had one case left and had to finish it. The message was clear. Then, as always, Jack had no illusions, would make no complaints and would not ask for help, but would make sure that his work was finished before he died. We said goodbye with a few words and he went back to his research.

Jack's compulsion to finish work on his "last case" was symbolic of his life. On that last occasion as on all others, Jack was a man of the law. In an almost literal sense, the law was his life. Jack was many things to me and I knew him in many roles—lawyer, mentor, judge, neighbor and friend. I met him first as a lawyer, more than 25 years ago. Having graduated law school at the University of Arizona, unable to find a job in Tucson, I opened an office on Court Street, opposite the old house which then formed the offices of Udall and Udall. Jack shared office space there on some arrangement which I did not then understand and have never understood. In fact, I doubt that anyone including Jack or Morris Udall ever understood the precise arrangement. Lawyers like Jack and Mo worried about the case first and the money later, if then. Although Jack's position with that firm was always a mystery to me, it was generally rumored that he helped Morris on the legal aspects of many cases and that Morris, renowned for many attributes as a lawyer but never for thorough, meticulous consideration of detail, relied on Jack to translate inspired optimism into grounded legal argument. Eventually a kid named Chuck Ares came along to help out on this problem.

Unfortunately, when I opened my office I had ample time to discover the ins and outs of the practical side of the law. I soon learned that many of the better lawyers from our less prosperous end of town met for lunch every Thursday in a room at the Pioneer Hotel to discuss new decisions of the state and federal supreme court, argue points of law and, sometimes, to

* Justice, Supreme Court of the State of Arizona.

engage in talmudic disputations. I managed to get an invitation to attend and found these sessions pleasurable and professionally rewarding. Jack was usually present and was fun to argue with. To him, the law was not just a series of rules, but a set of behavioral principles, a mental discipline and, for all that, a subject which could be viewed with humor and compassion.

Our Thursday arguments evidently gave him the idea that I might have some promise as a lawyer and when he became City Attorney for the City of Tucson he called me one day and asked that I come to his office. When I appeared there he told me that the City was about to institute a series of condemnation actions for the purpose of acquiring rights of way for the widening of East Broadway, a main street in the City of Tucson. He had decided that the cases could not be adequately handled with the staff provided the City Attorney and concluded that the City would be better off retaining contract counsel. To my surprise, he told me that he had decided to offer me the contract to represent the City. I declined, not because of humility, but because I knew nothing about condemnation law. He laughed, and assured me that he had already thought about that problem and decided that while the City could not afford anyone really competent, it could afford me and he thought I might become competent. I was not hard to convince, and it was agreed that if I would use my own money to attend an upcoming seminar at Southern Methodist University on preparation and trial of condemnation cases, he would then recommend to the City Council that I be retained to represent the City. I did, he did, and I was hired. In a very real sense, Jack was my client. The City was an abstraction and, as always, Jack's presence was very real. Our relationship was indicative of Jack's character. He had the wisdom to supervise without interfering. At the trial of the first case in the series, in the midst of cross-examing the property owner's chief expert, I remember seeing Jack Marks sitting in a corner of the courtroom, smiling gently, and giving me the sense that I was performing adequately, if not better. He was there again at final argument and called while the jury was out to tell me that he was pleased with my performance, and, whatever the result, he thought his judgment was vindicated. I realized later how this was typical of Jack's view of the practice of law. It was not simply results that counted—the important question was whether your performance was lawyer-like. The law was to be respected; no stone left unturned, no point not researched. Nothing was to be taken for granted.

He was appointed to the bench shortly afterward. I tried quite a few cases before him. No judge in the State worked harder, listened so patiently to every argument advanced, or was so ready to discuss the fine points of law with the lawyers. Sometimes, I confess, I thought him too patient and too ready to suffer through and listen to foolish arguments. He explained to me once that he thought it was his duty as a judge to listen to each lawyer, no matter how foolish his argument might be. He was a judge who followed the law, as he discerned it, whether he liked it or not, no matter where it took him. But he was also a judge with vision and courage, and if convinced (as he was on two cases which I tried before

him), without fear of criticism or reliance on technicality, he would declare a statute unconstitutional and proceed to do what he thought was required by principles of essential justice or the dictates of the constitution.

In all the years that I knew him, I had only one quarrel with him and that, naturally, was over the law. The case had come before him after another judge had ruled on a preliminary issue and Jack had expressly indicated that he would go on from the prior ruling and would not reexamine it. Nevertheless, after six weeks of trial on the merits, he overturned the prior ruling and held that the plaintiff had no standing to bring the action. I later reproached him for this, pointing out that if he had intended to reexamine the question of standing it would have saved all parties a lot of aggravation and money had he done so before trial on the merits. His answer, as always, was grounded on the law. He had intended to do just what he had promised us. He had accepted the prior ruling and had attempted to decide the case on the merits, but had found himself unable to do so because he believed the prior ruling was erroneous. He could not proceed when he had an abiding conviction that the law had been erroneously applied. Jack was a man of his word, but nothing could stand in his way when he felt the law compelled him to follow a particular path.

I knew him also as friend and neighbor and in these roles he was somewhat different, more free to express personal opinions and to exhibit a rather wry humor and view of the world. Even in a personal relationship, however, the essence of the man was the same. The law was his abiding interest, his work, and his contribution to the world. His life revolved around the pursuit of justice and, in the most fundamental way, he was a man of virtue. He had no complaints for the many hardships in his life, he engaged in no gossip, had no desire to tear down, only to do what was right. He was an honest man, fair, compassionate, just and understanding. On a day-to-day basis he consistently carried out the biblical injunction to love mercy and do justice. In losing him, the bar, the judiciary and the entire State have lost a just man.

