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A Tribute to Professor Mark H. Grunewald

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A Tribute to Professor Mark H. Grunewald

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A Tribute to Professor Mark H. Grunewald



Photo taken by Patrick Hinely, Washington and Lee University Photographer

Tribute to Professor Mark Grunewald

Sam Calhoun*

I have mixed feelings in writing this tribute to Professor Mark Grunewald. On the one hand, I love it because he's so deserving of the *Law Review's* recognition. On the other hand, I hate it because it signifies Mark's retirement from the law school he has served so well for so long.¹

The first thing I'll say about Mark is that for years he has been my good friend. I've very much enjoyed our regular runs (in earlier times) and our continuing irregular lunches. It's been fun to reminisce about our similar escapades growing up in small Georgia towns. Believe it or not, we both at times engaged in activities of questionable propriety. We've also shared the challenges and triumphs of raising three children each (who're roughly the same ages). I look forward to many future lunchtime conversations.

On the professional side, Mark has been a role model of the generous colleague. His contribution to two of my writing projects demonstrates the high level of his commitment. One project stretched out for almost twenty years, but Mark never wavered in his willingness to discuss the topic [although I'm sure he must have privately bemoaned my apparent inability to finish the job]. Another project had a tight deadline. Mark made himself available virtually round-the-clock to help me complete the piece on time. Of equal, if not greater, importance than Mark's availability was the quality of his input. I could always count on him to express his honest opinion. This was especially valuable on those occasions when he disagreed with my position. By challenging my views, Mark helped me think more carefully and express myself more clearly.

On the broader institutional level, Mark has been a constant source of calm, levelheaded judgment regarding the many issues the law school has faced during his tenure. He has twice served as

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1. If I stretch to find it, the only personal positive I can see is that for a brief period I'll become the most senior member of the law faculty. I've had to wait Mark out for a long time to achieve this illustrious status.

interim Dean of the School of Law. Nothing could more clearly demonstrate his colleagues' trust in his integrity and confidence in his ability.

It's a natural, unavoidable part of life in general, and of an institution's life in particular, that things change due to the passage of time. The Washington and Lee University School of Law has been fortunate to have successive generations of talented, dedicated faculty members. Professor Mark Grunewald sets an exceptionally high aspirational mark for current and future W&L law professors.



A Tribute to Mark Grunewald

Robert Danforth*

I am honored and delighted by this opportunity to pay tribute to a man I hold in the highest regard, a great teacher, scholar, colleague, and leader of our law school, Mark Grunewald. I know that my brief comments will not do justice to his remarkable career and to the invaluable contributions he has made to the past, present, and future of our school.

It was my privilege and good fortune to serve as Mark Grunewald's Associate Dean for Academic Affairs during Mark's most recent stint as Interim Dean of the law school, from 2010 to 2012. I knew Mark before then, of course, as a valued friend and colleague who had served the law school for many years and in many capacities, most importantly as Associate Dean for Academic Affairs from 1992 to 1996 and as Interim Dean from 1999 to 2000. But it was during the two years of serving together as Dean and Associate Dean that I really came to know Mark well and to appreciate what an exceptional man he is. To borrow an expression (the origins of which I am not certain), it was during this time that I learned what separates Mark from most of the rest of us—Mark's professional life is defined not by what he asks of life, but by what life asks of him. The very act of serving as Interim Dean illustrates the point—rather than asking what would be good for himself, he

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asked what would be good for the school. And in two important instances, at moments when the school most needed his thoughtful and steady leadership, Mark agreed to serve as Interim Dean, placing his own personal and professional interests aside for the good of the institution. Mark is one of those rare individuals who contributes more to the institution than the institution contributes to him. We are all the beneficiaries of his unselfish devotion to our school.

During the two years that Mark and I served together in the Dean's suite, Mark regularly demonstrated his exceptional judgment and his unwavering commitment to the good of the institution. Mark is never one to take credit for his accomplishments, and he is quick to deflect praise, but the fact is that Mark did a magnificent job as Dean, during particularly trying times. Much of what Deans do on a day-to-day basis goes on largely behind the scenes, unknown to everyone except the few with whom the Dean regularly interacts. Mark deftly handled the many routine (but often challenging) matters that presented themselves in the Dean's suite during his tenure. But Mark's tenure as Dean involved much more than simply ensuring that the trains ran on time. Some of his most noteworthy accomplishment include the following. First, Mark invested substantial time and energy in reassuring the central administration that the law school remained on a firm footing following the unexpected departure of Mark's predecessor, which occurred during a national period of declining law school applications. That investment paid dividends handsomely as Mark proved himself to be an able, devoted, and trustworthy steward of the school. Similarly, Mark sought to reassure the frayed nerves of two other constituents whose faith in the school is critical to our future—our alumni and our Board of Trustees. Relatedly, Mark worked thoughtfully and carefully to ensure both the continued fiscal health of the school and the continued recruitment of a talented entering class, all in the face of inordinately challenging market pressures. Mark led the faculty through a rigorous (and potentially divisive) re-examination of our innovative experiential curriculum (adopted just two years earlier), to ensure that the curriculum was meeting the lofty goals that it established. That process produced subtle, but important improvements in the curriculum, providing greater flexibility for our students, and ensuring that the curriculum enjoyed broad

support among the faculty. Mark's tenure as Dean also produced several exceptional faculty hires, including Jill Fraley, Chris Seaman, and (now Dean) Brant Hellwig.

But a list of Mark's accomplishments as Dean in many respects understates the value of his service to our school. Much of that value is intangible, not easily quantified by reference to curricular reforms, faculty hires, and the like. The intangibles that accompany Mark's leadership are difficult to articulate. Attributes such as honor, trust, and judgment come to mind. I and many others count the times that we worked with Mark as Dean as among the most satisfying experiences of our professional lives. This is true in large part because Mark cares about and holds in high regard the people he works with, and he demonstrates that care and regard in a myriad of ways—he listens carefully and respectfully, he is quick to praise and to give credit to others, and he is quick to acknowledge his need for advice. He is honest, fair, and loyal.

But most of all, Mark is the consummate law school citizen, willing to give more than he takes, and always with the best interests of the school at heart. I am honored to participate in this effort to express our gratitude and praise for such an exceptional law school leader, friend, and colleague.



Tribute to Mark Grunewald

Sidney S. Evans*

I have known Mark for more than 17 years. At different points during those years he has been a sounding board, an advisor, a colleague, a fellow Golden Retriever lover and my boss. Mark is incredibly thoughtful and wise. In my early years in the law school, I could count on him to help me understand the Washington and Lee context or the faculty perspective on a number of different issues. He was always patient and willing to spend the time talking with me so that I could better handle a particular student

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situation. He asked great questions, and I would walk away from our conversations benefitting from having to answer those to him and to myself.

Mark and I worked most closely together during the 2010–2011 academic year when he was serving as the Interim Dean of the Law School, and I was in my last year as Associate Dean for Student Services at the law school. That was a great year. Mark's commitment to the law school and to Washington and Lee guided his approach and his actions. It was evident in the work he did with students, faculty and staff. He never put himself first. In short, he was a great boss, but he was so much more than that. It amazed me that he was willing to serve as Interim Dean for two years from 2010–2012, given that he had already done it once before. It was clear that he did so because he cared deeply about the law school. As before, Mark was never too busy to talk with me about an issue, large or small. He was fair, thoughtful, and could inject humor when necessary, which is always appreciated by people who do student affairs work.

When I made the decision to move from the law school into my current position, I remember saying to my husband that it was hard to walk away from having Mark as my supervisor for another year. As I transitioned into my role as Vice-President for Student Affairs, Mark continued to be a trusted and valuable advisor. His experience with and commitment to the University, the law school, the students, and our Hillel House, meant that I called on him a number of times for advice and counsel. As before, he was always willing to spend time listening, asking questions and sharing his thoughts.

When I think of Mark, I immediately think of Sally and her incredible generosity in sharing Mark with us when we needed him, but I also remember Georgia, their beautiful, sweet, and lovable Golden Retriever. She was an unofficial therapy dog for me, for students, and for many others when we encountered her on or off campus. That Mark loved Georgia and that Georgia loved Mark says a lot to me about who he is.

Washington and Lee is a special and complex place, and I think we do a wonderful job of educating students. The reason we are what we are is people like Mark Grunewald. He has given selflessly and tirelessly to the institution, to his teaching, to his

committee work, to the faculty, to students, to staff, and to me. We are better for it.



Tribute to Mark Grunewald

Edward O. Henneman*

Many years ago, Roy Steinheimer appointed me Associate Dean of the School of Law, a position that I then held for a number of years. The administration of the school was quite different then, and I became less happy with the job and with my colleagues and even with some of the students. So I quit. That was one of the best things that happened to the Law School because my replacement was Mark Grunewald. Mark was a great choice for the job. So far as I know he never succumbed to the misanthropy that had afflicted me in that position.

Mark was not only a gifted teacher. He was an ideal administrator. As Associate Dean he supported Deans Bezanson and Sullivan during their terms in office, helping them navigate through difficult waters that seemed unusually turbulent in those years. Faculty disagreements seemed somehow more acute for a while. Newspaper publicity was unfavorable and some controversies with the administration of the college began to arise. The Deans received advice and support from Mark that smoothed their paths and calmed the waves.

Subsequently, Mark twice filled interim Dean-ships when the school needed someone to do so. I do not know that he ever aspired to be a Dean permanently, but he would have been a great one.

Being a law school Dean is a difficult job and their terms generally are fairly short. Being an administrator at Washington and Lee appears to be particularly difficult perhaps because the school is small and has a small body of alumni support, has been the only graduate or professional academic program on campus, and is tightly tied to the University administration. Mark made it look easy. He has always been respected and admired by students

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and by colleagues on both sides of the ravine. He listened with care to all opinions and accorded them a worth that sometimes may have seemed only marginally justified.

Mark brought seriousness and order to faculty meetings and to the numerous school and university committees on which he served. I do recall one misadventure when, in Washington for the Faculty Appointments Committee, he locked himself in a hotel stairwell. He may have been trying to avoid a difficult interview but he caused sufficient concern to stop just short of a missing person report. Mark was supportive of, and helpful to, all his younger colleagues working through the tenure process.

When the faculty adopted the first year writing program, Mark made his course in administrative law a cornerstone of it. Convincing faculty members to devote a semester to working with students trying to develop the reasoning and writing necessary for practice is not easy, but Mark took that task on almost every year. His experience in government and private practice in Washington helped him bring colleagues and friends from the “real” world to help his students in all his courses, especially in labor law and employment practices.

Mark and his wonderful wife Sally have been good friends and hosts to many here in Lexington and elsewhere. I remember one occasion involving a test of okra cooking that unfavorably exposed my background on New York’s upper west side. They enjoy and have done a great deal of travel. This is a good thing because their three accomplished children, Leah, Aaron, and Eliot have settled with their families in Montana, Dublin, and Seattle. Mark came back from one trip to Italy with a scooter which he gamely drove from his home in the County to Lewis Hall. The sight of Mark scooting along Route 60 caused terror for a relatively short period before he apparently recognized the risk.

Devoted to the School of Law, friend of colleagues across the campus, Rockbridge County, and the worlds of practice and academia, respected teacher and scholar, Mark Grunewald has for years contributed to the School and to the lives of its graduates. I will miss his leadership and will, I hope, continue to enjoy our lunches together to discuss whatever needs improvement in Lewis Hall.



A Tribute to Mark Grunewald

Andrew W. McThenia*

It is often said that Washington and Lee has a hovering angel who comes into our midst at times of turbulence and great change to save us from an impending crisis (usually ourselves).

I am reminded of that myth when I consider Mark Grunewald's incredible service to Washington and Lee. It doesn't quite fit however. But myths are just that—they never accord with reality. And Mark's long career was never about "hovering" above the fray of academic life. From the time he joined the faculty in 1976, following a stint in the very prestigious Office of Legal Counsel at the Department of Justice, he has been an invaluable member of the University community.

He is a gifted teacher and was a wonderful colleague and mentor for many years. He served as an Associate Dean and as the Acting Dean of the law school on two separate occasions. I do not know how he looks back on those years, but those of us who were around then remember them with awe. His leadership was amazing.

It is a sad reality that the legal academy is like the rest of the world. People have different and often conflicting agendas about how their communities should move forward. When one adds to that reality the complicating fact that all policy decisions in the law school have to pass the muster of a group of academic lawyers—faculty—it is not surprising that the tenure of law school deans is a short and often graying experience.¹ Mark undertook that role not once, but on two separate occasions. His careful listening and clear vision have left the law school a much richer place than it would have been without his dedicated service.

I am honored to be given the opportunity to say to Mark and Sally: "Thank you for your friendship and your service to Washington and Lee."

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1. He did not gray—he never had much hair.

In Thanks to a Fellow Traveler

Brian Murchison*

As Mark Grunewald retires, I dread the loneliness of teaching Administrative Law without his help and insights just down the hall.

The course, as all know who have taken it at W&L over the past twenty years, can be daunting. Previously known as The American Public Law Process, its landscape is replete with strange byways, impenetrable thickets, craggy mountain precipices, with darkness occluding the three branches of government, confusion covering the fourth, and metaphysicians needed to explain the fifth. To walk those paths, you need to know a curious language, and Mark and I over the years slowly abandoned normal English in favor of the odd patter of ripeness, exhaustion, hard look, guidance, *Skidmore* deference, *Hoctor* specificity, inferior officers, the take care clause, and finality. What fun we had with the “unalterably closed mind” doctrine, not to mention the illogic of “logical outgrowth.” A casual listener would think we had recently flown in from outer space, but actually we had a wonderful time trying to understand the material and make it accessible—to keep our students from falling into the gaping voids of formal rulemaking or the third prong of due process.

Mark and Lash LaRue were the original architects of the course, and there was always a question about whether the syllabus should include *Marbury v. Madison*. In the early years, that case was taught at the start of the semester, to show how John Marshall anticipated (or caused) many of the current problems involving the separation of powers. In later years, Mark made an ingenious change: ending the course with *Marbury* rather than beginning with it. This was the kind of inspired originality that Mark always brought to his teaching. As Shaun Shaughnessy writes in her own tribute to Mark, he was also a master in the

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teaching of writing, and his “small sections” over the years were lucky indeed to learn from him.

I am grateful for Mark’s mentorship and collegiality, not only in the teaching of Administrative Law but in many conversations over the years about Washington and Lee’s path in legal education. His sense of humor, modesty, and wisdom have been important in making W&L the truly unique institution that it is today.

A Tribute to Professor Mark Grunewald

Joan Shaughnessy*

To tell the truth, only one sentence is needed for a tribute to Mark—Mark Grunewald is a mensch, a real mensch. That says it all but, since this piece is being published in a law review, more prose, ideally with a footnote or two, is needed.

In *The Joys of Yiddish*, The late Leo Rosten defined a mensch as “someone to admire and emulate, someone of noble character. The key to being ‘a real mensch’”, Rosten observed, “is nothing less than character, rectitude, dignity, a sense of what is right, responsible, decorous.”¹ A mensch doesn’t brag and doesn’t complain. He serves his community with thoughtfulness and humility.² That is Mark.

Mark has provided exemplary service to this law school over many decades. He served not once but twice as Interim Dean, providing thoughtful, careful leadership in times of change. Every decision he made in that office was guided by Mark’s understanding of what would best serve the community—never by ego or self-aggrandizement. During his service as Interim Dean, some of our finest faculty were hired and mentored through their pre-tenure years. The immigration clinic was launched and the

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1. LEO ROSTEN, *THE JOYS OF YIDDISH* 234 (1968).

2. Peter R. Jarvis, *Aspiring to be a Lawyer-Mensch*, OR. ST. B. BULL. (May 2001), <https://www.osbar.org/publications/bulletin/01may/parting.htm> (last visited Mar. 28, 2018) (on file with the Washington and Lee Law Review).

upper-level experiential learning program was revised and strengthened. In addition to his two stints as Interim Dean, Mark served as Associate Dean and as chair of every committee known to the law school. In all these roles, Mark governed with consideration and patience.³

Mark's teaching is similarly admirable. For many years he has taught a writing section of American Public Law Process (now Administrative Law). Many months before the class begins, his search for the perfect new problem is launched. Mark hunts among the myriad archives of administrative agencies, looking for a proposed rule that is at the right stage of development—far enough along to provide ample room for engagement but not yet fully resolved. The issue must be complicated enough to provide twists and turns for writing, but not so complicated as to be inaccessible to first-year students who might, for example, have trouble following the ins and outs of electronic trading of commodities futures contracts. Once that perfect problem was found, Mark lavishes equal care and attention on the various memoranda and arguments prepared by his students over the course of the semester. Mark could have chosen an easier path, for example by using the same materials each year. But Mark's sense of responsibility and care for students leads him to go the extra mile.

Mark's scholarship also reflects his character and sense of responsibility and justice. Mark's work on administrative law and labor and employment law is deeply imbued with his belief that the government can and should be a force for good in lives of its people, particularly ordinary working folks.⁴ It is no accident that a New Deal era poster has pride of place in his office.

Finally, on a personal note, I feel blessed to have such a mensch as a friend and colleague.

Over the years, I have sought Mark's advice on every difficult decision I have had to make. He has helped me work through problems and concerns related to students and colleagues and has been steadfast in his support, from the moment I arrived in Lexington through my stressful tenure year and all the years that

3. See Judith Pineau, *What Does it Mean To Be a Mensch?*, QUORA (Mar. 10, 2016), <https://www.quora.com/What-does-it-mean-to-be-a-mensch> (last visited Mar. 28, 2018) (“A mensch [is] also something of a calm peacemaker”) (on file with the Washington and Lee Law Review).

4. See Jarvis, *supra* note 2 (“A mensch must also be an optimist.”).

have followed. Mark's friendship and support has made this law school and the Lexington community a better place for countless people. We have all been fortunate to have a real mensch among us.

The Wisdom of Mark Grunewald

Barry Sullivan*

I am delighted to participate in this celebration of my friend Mark Grunewald on the occasion of his retirement from Washington and Lee and to pay tribute to the many ways in which Mark has contributed to the success of the School of Law over the past four decades. There are many ways, of course, in which a law teacher may leave his or her mark on a law school and its students and faculty. He may be a dedicated and resourceful teacher—always searching for new ways to make his subjects come alive for students, to impress upon them the importance of the work that lawyers and judges do in a democratic society, to help them see the connections between what they are doing as students and what they will be called upon to do as lawyers and judges, and to help them develop the habits of heart and mind that are essential to that work. A law teacher may also make his mark through scholarly work, furthering the common good and the ends of justice by contributing to the growth of the law and to our understanding of law's significance for our social, economic, and political life. He may also leave his mark by being a good citizen of the law school and the university, successfully undertaking responsibilities that are essential to the good health of the institution, but frequently provide little if any individual benefit to the doer, and often come at a significant cost to his own work. He may also leave his mark by being a generous friend and mentor to students and colleagues, or simply by the force of his or her example, by standing out as a person of genuine integrity, sincerity, and authenticity.

* Cooney & Conway Chair in Advocacy and Professor of Law, Loyola University Chicago. Dean of the School of Law, Washington and Lee University, 1994–1999.

To make one's mark in all of these areas is rare indeed. In each of these ways, however, Mark Grunewald has left his mark. As a teacher, Mark was always searching for more effective methods of pedagogy. It was no accident, for example, that Mark was first to see the pedagogical benefits of building the student research and writing component of American Public Law Process around an actual rulemaking proceeding that the Department of Agriculture was conducting in real-time on the internet. Because of Mark's restless curiosity and careful planning (to say nothing of his fearless embrace of technology), first-year students were able to experience the realities of notice-and-comment rulemaking in a way that few law students do. In addition, Mark's teaching of APLP was always informed by an understanding of its importance, not just for those who would practice public law in one way or another, but also for those who would follow entirely different paths. With respect to the latter group, Mark wisely recognized that a solid understanding of American public law—the law governing government—was essential to their future roles as citizens and civic leaders. His teaching of labor and employment law was equally inspired and equally committed to making sure that students appreciated the reality of the social and economic contexts that give those subjects their meaning and vitality.

Mark has also left an enviable record of achievement as a scholar. For proof, one need look no further than the broad array of casebooks available for the teaching of administrative law. They are all different in important respects, but one thing that virtually all have in common is the prominent place they give to Mark's now-classic article on the National Labor Relations Board's first rule-making proceeding.¹ But that classic article is merely the most well-known of Mark's scholarly works. Only recently I had occasion to re-read Mark's thoughtful contribution to the *Law Review's* festschrift in honor of Justice Powell.² I found it to be as fresh and relevant and compelling as ever; its profound insights into the rhetoric of the debate about discrimination and

1. See generally Mark H. Grunewald, *The NLRB's First Rulemaking: An Exercise in Pragmatism*, 41 DUKE L.J. 274 (1991).

2. See generally Mark H. Grunewald, *Quotas, Politics, and Judicial Statesmanship: The Civil Rights Act of 1991 and Powell's Bakke*, 49 WASH. & LEE L. REV. 53, 57–59 (1992).

affirmative action cried out for citation.³ I wanted others to read it too.

In terms of institutional service, Mark has had no peer, serving as Associate Dean (1992–1996),⁴ as Interim Dean during two challenging periods (1999–2000 and 2010–2012), and as a hard-working chair or member of countless university and law school committees. Mark has modeled those attributes that we take to exemplify excellence in lawyering: careful listening, close reading, clear thinking, precise expression, hard work, and a deep concern for others and the common good.⁵ He has also been a friend and mentor to countless students and colleagues, and a model of civility, integrity, and authenticity. In everything that he has done, Mark has shown an extraordinary generosity of spirit. While others have been content to “talk the talk,” Mark has chosen to “walk the walk.” And I know that I speak for many when I say that I have never had a truer or more unselfish friend.

But the greatest of Mark’s contributions to Washington and Lee has been the wisdom and humility that he has brought to every endeavor. My personal knowledge of Mark’s contributions in that regard naturally stems from the time that we worked together, first during the two-year period that Mark’s service as Associate Dean overlapped with the first two years of my deanship, and, subsequently, during the three years that he was a trusted advisor “without portfolio.” Mark had served as Associate Dean during the last two years of Randy Bezanson’s deanship, and one of the best

3. See generally Barry Sullivan, *The Power of Imagination: Diversity and the Education of Lawyers and Judges*, 51 U.C. DAVIS L. REV. 1105 (2018).

4. As Associate Dean, Mark followed Ned Henneman and preceded Shaun Shaughnessy. Washington and Lee was exceptionally fortunate to have the services of three such outstanding Associate Deans, and I was fortunate to benefit from the wisdom of each of them.

5. It is not surprising that Mark should exemplify excellence in lawyering. After all, he began his career at Arendt Fox, one of the great Washington firms of the time, and then moved on to the Office of Legal Counsel (OLC), the division of the Department of Justice responsible for advising the president and executive branch officials as to the constitutionality and legality of legislation and administrative action. OLC is both the legal nerve center of the federal government and the most distinguished government law office in the country. See, e.g., Arthur H. Garrison, *The Opinions by the Attorney General and the Office of Legal Counsel: How and Why They Are Significant*, 76 ALB. L. REV. 218 (2012). Prior service in OLC is rightly regarded as a mark of distinction among administrative and constitutional lawyers.

bits of advice that Randy gave me when I became Dean was that I could always count on Mark for sound advice. That was an understatement. Whether the matter was big or small, highly consequential or not so in the least, Mark always gave me the best possible advice. And it was always delivered in the gentlest and most off-hand way. I remember, for example, an early tenure recommendation (the so-called “Dean’s Letter”) that I had to write. It was for a very able colleague whose record clearly met the standards for tenure at Washington and Lee. My draft letter was filled with superlatives and fairly dripped with enthusiasm. When I asked Mark to read the draft, he came back with a number of insightful editorial suggestions, as usual—but he also gently suggested that I might wish to consider toning it down a bit. Mark noted that the colleague’s superb record spoke for itself. More important, he pointed out that this was not likely to be the last tenure or promotion letter that I would have to write, and that readers might be inclined to interpret subsequent letters in light of this one. Another tenure or promotion case might not be so easy: the candidate might well deserve promotion or tenure, but I might not be able in good conscience to repeat such superlatives. It would not do to have readers of that hypothetical letter draw an adverse inference from its more reserved tone. The message was gently given, but loudly heard: Better to write a more formulaic, but persuasive letter in every case. As usual, Mark’s logic was irrefutable.

During Mark’s time as Associate Dean, we had our fair share of the normal student and faculty personnel matters, admissions questions, budget and fund-raising issues, and other matters that normally take up the days of university administrators. In addition, the decade of the 1990s was a challenging time for legal education in general and for Washington and Lee in particular. Under Dean Bezanson’s leadership, the law school had made great strides academically,⁶ and it had also achieved a new level of national recognition, as evidenced by its inclusion in U.S. News & World Report’s list of the top 25 law schools.⁷ Many of Dean

6. Together with President John D. Wilson, Dean Bezanson led the law school through a period of significant change. *See, e.g.*, John W. Elrod, Mark H. Grunewald, Lewis H. LaRue, J. Hardin Marion, Doug Rendleman, and Allan W. Vestal, *A Dedication to Randall P. Bezanson*, 52 WASH. & LEE L. REV. 707 (1995).

7. In 1994, Washington and Lee tied for the twenty-second spot in the U.S.

Bezanson's initiatives had come to fruition during his tenure, while others were yet to be realized. But the law school's success also created a number of new challenges. Like most law school deans, I thought that the U.S. News rankings were somewhat suspect, but Washington and Lee's reputation benefitted greatly from its position in those rankings, and I knew that a drop in the rankings would be a serious blow. We were the smallest law school on the list and clearly fighting above our weight, but we could not afford for our newfound prominence to be dismissed as a "flash in the pan." At the same time, not everyone approved of the path on which the law school had embarked. Some constituencies thought that the law school was "good enough" and need not improve further; others thought that the law school's focus on building a national reputation—and a national student body—was untrue to its Virginia roots; others recognized that having a national student body presented new challenges for our career services efforts, which needed to be addressed; some thought that our admissions standards were too high (or too low) or too driven (or not driven enough) by metrics; some thought that too much (or too little) emphasis was being placed on teaching, while others thought that too much (or too little) attention was being paid to faculty scholarship; and others thought that too much (or too little) attention was being given to concerns about student and faculty diversity. An especially serious challenge was presented by those who thought that the university should "simplify its business model" by focusing exclusively on undergraduate education. But looming above all these challenges was a force largely beyond our control: a precipitous national decline in the number of law school applicants.⁸

It would be no exaggeration to say that I never took a step through this thicket of challenges without seeking the benefit of

News and World Report rankings. See U.S. NEWS & WORLD REPORT 116:11 at 72 (March 21, 1994). While mindful of their practical importance, I always resisted entreaties to brag about our standing when the rankings were released each year. I did not do so out of false modesty; I simply wished to avoid having to comment in the event that we fell out of the top 25. Fortunately, that was a contingency I did not have to face.

8. See LAW SCHOOL ADMISSION COUNCIL, LAW SERVICES REPORT: NEWSLETTER OF THE LAW SCHOOL ADMISSION COUNCIL No. 2001-3 at 1-2 (August 2001) (showing fall in law school applicants from 99,327 in 1991 to 71,726 in 1998).

Mark's wisdom and good judgment. Indeed, some may have thought that we were joined at the hip. Although we were candid with the faculty with respect to many of these issues, some were not amenable to transparency or broad consultation; and it was necessary to deal with those within a close circle, largely limited to those within the law school administration. Given what was then a strong emphasis on "lean administration" at Washington and Lee, that meant that those matters fell mainly to the Dean and the Associate Dean. (An accreditation report of the time praised the law school for accomplishing so much with such a "lean administration," which Mark found humorous because the adjective did not exactly describe either of us at the time.) Often I would come into the office in the morning, having been awake most of the night, turning over and over in my mind a problem that seemed to defy solution. When I would mention that to Mark, he would often cheerily say, "Well, you should have called. I was up all night thinking about it too." In Mark's case, unlike mine, the sleepless night often resulted in the identification of a path forward. In any event, Mark and I faced many challenges together. Fortunately, we did so with the confidence and strong support of the faculty. But the challenges that we faced required all the judgment that we could bring to bear. It was invaluable to me—and to Washington and Lee—to have a partner in whose judgment and discretion we all had the greatest possible trust.

Finally, I would be remiss if I did not mention the wonderful hospitality that Mark and Sally extended to my family and me—and to countless others—during our time in Lexington. Our family has many fond memories of the time we spent with the Grunewalds. In addition, one of the high points of our return to Lexington in 2005, when my wife Winni was invited to deliver the Tucker Lecture,⁹ was a wonderful brunch that Mark and Sally hosted at their home so that we could visit with many of our Lexington friends.

I have tried not to tell tales out of school, or to dwell too much on the past, but I must emphasize that Mark's good judgment was critical to whatever success the law school had during my tenure as Dean. I suspect, though, that that statement grossly

9. See generally Winnifred Fallers Sullivan, *Comparing Religions, Legally*, 63 WASH. & LEE L. REV. 913 (2006).

understates the case: much of the law school's success during the past four decades has doubtless been due in one way or another to Mark's wise counsel and leadership, and particularly so during the three years that he served as Interim Dean. I have lived most of my life among practicing lawyers, academic lawyers, and judges. I have known thousands of smart, skilled, dedicated, and hard-working lawyers, but I have known very few who are truly wise, and Mark is amongst the wisest of the wise. I have known even fewer who combine such wisdom with humility and gentleness. Most important, Mark's wisdom has always been put in selfless service of the common good. He has cared deeply about Washington and Lee, and those of us who have been lucky enough to be associated with Washington and Lee have cared deeply for him.



Tribute to Mark Grunewald

John W. Vardaman*

As a member of the University Board of Trustees and Chairman of its Law School Committee, I worked with Mark Grunewald from 2010 to 2012 while he served as Interim Dean of the Law School. Normally the head of the Law School Committee and the Dean would meet a few times a year, prepare for Committee and Board meetings and do what little else someone in my position needed. But these were not ordinary times. During those two years the legal world faced the deepest recession I had witnessed in over 40 years at the bar. Between 2008 and 2010 over 25,000 jobs were lost from law firms. Corporate spending on legal matters declined sharply. Large, well-known law firms on the east coast and west coast simply dissolved.

There was an inevitable impact on law schools. The number of students taking the LSATs dropped precipitously as did applications to law schools. Recent graduates had difficulty finding employment. All of this spawned a cottage industry of articles,

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essays and books questioning the value of a legal education, perhaps best summed up by the 2012 book *Don't Go to Law School (Unless)* by Paul Campos, a professor at the University of Colorado Law School.

It was against this background that, in early 2010, the Law School once again turned to Mark to serve as Interim Dean. One could well understand it if he had said once is enough, as he had served in that position from 1999–2000. But the Administration chose wisely and Mark accepted unselfishly.

Mark had to contend not only with the shrinking legal market and the uncertainty of how to adapt to it, but also with issues close to home. There had been considerable turnover in the Dean's office since he last served as Interim Dean, thus depriving the school of continuity and stability. The new path-breaking third year program was not yet fully implemented and there remained uncertainty internally and externally whether this was the correct path for legal education. The school had slipped in the rankings. And the University administrators and Board of Trustees wanted answers as to how the Law School would meet these challenges.

I will never forget how, in the midst of this chaotic time, with faculty and students wondering about employment and the Board wondering about the Law School's future, Mark, with his calm and deliberate manner, projected a confidence that was contagious. I am not sure that I ever heard him use the phrase "this too shall pass," but that was the sense of what he communicated. He saw that this downturn, deep though it may be, was cyclical and, if the Law School could hold its own, things would improve.

To the Law Committee and the Board, Mark assured us that the strength and quality of the Law School—its history, its traditions, its faculty, its students and its alums—would see it through these tough times. I know first-hand, because I saw it, that all of the Law School constituencies looked to Mark for direction and took great comfort from his leadership.

He and I, along with several other members of the Board, made a close examination of all aspects of the Law School—the number and quality of the applicants, the dreaded rankings and what moved them, the finances—and we assured the Board that the school had the strength to weather the bad times.

Things did improve, and in at least one instance too much so. I vividly remember that in the summer of 2011 Mark called to say

that we had far more acceptances (222) for the class entering that fall that we could possibly accommodate. But Mark, with his magic, somehow made it happen. Some deferred and although we took a class of 50 more than we expected, the school expanded to accommodate the large class. So overnight we went from worrying about too few students to worrying about how to handle so many.

In looking at the rankings, which were disliked but could not be ignored, Mark faced the issue of how to respond to them without changing our programs and without playing games that were prevalent at competing schools. Once again Mark's steady hand was what was needed and the slide in the rankings reversed itself. By the time Mark turned over the keys to the office, the school had risen to 24th.

Mark saw the big picture, but he never lost sight of the little things—those that can make a difference. Mark discovered that a factor that led to the slide in the ranking one year was that a number of students had failed the Virginia Bar. So the next summer, Mark personally supervised those graduates who remained in Lexington after graduation to prepare for the Virginia Bar. He made sure they took a bar review course, that they worked, and he had continuous contact with them. His work had a remarkable impact. I believe that all of his charges passed and that, of course, helped in the following year's rankings.

Now it is true that not all of the good things that happened during these two years can be attributed to Mark. Many others at the Law School played important roles. But Mark was the leader and he set the tone.

It is also true that the cyclical nature of the legal market would continue and the Law School would face more challenges. These included a sharp decline in the rankings and more questions from the Board. Financial restraints, "a strategic transition," were placed on the Law School. But once again the Law School has weathered the storm and it has risen in the rankings, it is strong financially with enrollment up. This latest success post-dates Mark, but I firmly believe that Mark's presence in the Dean's office during the worst of the recession and the approach he took then played a role in the way the Law School met the next challenge and stands on such a sound footing today.

In 2011, when it came time for the search for a new Dean, I had my candidate. It would have saved time, money and effort to

simply strip Interim from Mark's title. But, alas, he said no. And so he returned to full time teaching and now retirement.

While much will be written about Mark's long time teaching career, it should not be forgotten the pivotal role he played in the Law School's history during his tenure in the Dean's office. It was a great personal and professional pleasure for me to work closely with him and to see him play such an important role at the Law School and the University.

A Tribute to Professor Mark H. Grunewald

Mark A. Williams*

It is a great honor and privilege to participate in this tribute to Professor Mark Grunewald.

The Law School Class of 1981 was extremely fortunate to have many outstanding professors. Dean Steinheimer guided us through the intricacies of the UCC. The late Roger Groot expertly interrogated us into understanding Criminal Law. Ned Henneman helped us solve the riddles of Future Interests. Sam Calhoun brought the interaction of debtors and creditors to life in Creditors' Rights. Uncas McThenia showed us the folly of trying to "nail jelly to the wall" in Contracts. Among all these exceptional teachers, Mark Grunewald had a special impact on our class that continues today.

After earning his J.D. with highest honors from George Washington University where he served as Editor-in-Chief of the Law Review, Mark worked at a large Washington, D.C. law firm and later served as an attorney in the United States Department of Justice. He began his teaching career at W&L in 1976, two years before our arrival.

In their study, *What the Best Law Teachers Do*, Hess, Schwarz, and Sparrow identify thoughtfulness, passion, and authenticity as characteristics of outstanding law professors.¹ Professor

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Grunewald embodies all of these qualities. Mark was one of the most thoughtful teachers I have ever had. Among first year courses that included the terror of “cold calling” and trying to answer what sometimes seemed to be random Socratic questions, the logic and clarity of Mark’s classes stood out. With his skillful and precise questioning, he was one of the first professors who made us realize that it was the questions, not the answers, that were the real point of the exercise. While firm and demanding, he always maintained a professional and respectful classroom manner. He clearly respected not only his students but what he was doing and how he went about it. Instead of preparing out of fear, Mark’s obvious intellect and thoughtful manner made you want to actually learn the material.

Professor Grunewald is a nationally recognized scholar in the fields of labor and employment law as well as administrative law. Among his students, however, Mark’s hallmark is his passion for teaching. Not only does he thoroughly prepare for class, he spends as much time after class as his students need to answer questions or review difficult concepts. He treats all his students equally. His office door is always open.

Mark’s authenticity and character are obvious. His calm, confident manner combined with his commitment to teaching makes students want to respond with their best efforts. An example of how highly our class thought of Professor Grunewald occurred during our first year. One morning as we waited in the hall to enter Professor Grunewald’s Constitutional Law class, we realized that a faculty review panel was waiting with us to observe and evaluate Mark’s performance. We immediately huddled and conspired to be on our best classroom behavior. For the next hour, we made what was probably an overly conscious effort to be extremely attentive, ask only questions that were on point, and do our best to help the review panel understand how much we were learning from a great professor.

As we progressed through law school and into our careers, Mark made the transition from teacher and mentor to colleague and friend. He has provided us with career advice, responded to calls for help with difficult legal issues, and even opened his home to our class for reunion gatherings. Jackie Robinson said, “A life is

not important except in the impact it has on others.”² Mark Grunewald has had an immeasurable impact on the thousands of law students that he has taught, mentored, advised, and befriended. We will always be grateful.

Thank you Professor Grunewald.

2. ED HENRY, 42 FAITH: THE REST OF THE JACKIE ROBINSON STORY 281 (2017).