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A TRIBUTE TO RICHARD O. KUMMERT

Dwight Drake*

Since 1965, the Washington Law Review has had forty-three Editors-in-Chief, roughly ninety executive editors, more than seven hundred and fifty student members, and one faculty advisor—Professor Richard Kummert. As extraordinary as any period of service extending more than four decades may seem, those who know Professor Kummert consider it business as usual. As one former dean recently stated in describing Professor Kummert, “in the history of the law school, no person has been entrusted with so much responsibility by so many deans.” Beyond his perennial service to the law review, Professor Kummert has single-handedly governed the school’s all-important admissions program for decades, chaired every major committee in the school, served as an associate dean on four occasions, and been a trusted advisor to many law school deans and countless students and faculty colleagues. But this tribute is not about the quantum of Professor Kummert’s service to the law school community (something others are more qualified to discuss), nor his length of service to this law review (forty-three years pretty much says it all). The focus here is my personal experience with Professor Kummert and how he helped me many years ago. I am certain that any of the other forty-two Editors-in-Chief who had the pleasure of working with Professor Kummert, if given an opportunity to reflect and comment, could share comparable experiences that illustrate the quality of his efforts and the impacts of his contributions.

During my tenure as Editor-in-Chief of the law review (and I suspect that of many others), certain conditions made Professor Kummert’s job particularly challenging and essential. I came with no experience. I knew only that I would manage a group of bright, unpaid student colleagues to produce four issues of the Review. The sheer scope of the effort took a toll and stressed many relationships. Some of my colleagues, thankfully, worked tirelessly and brilliantly to make it happen. Others did little more

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than routinely announce to anyone within earshot that they had “made law review.”

As the year wore on, doubts regarding the value of the entire effort occasionally surfaced. My thoughts would wander to a crude cost/benefit analysis to assess the totality of the experience, often concluding that the burdens and opportunity costs of the effort trumped any definable benefits.

All these doubts disappeared when the experience ended and I tackled the challenge of becoming a competent practicing lawyer. And, surprisingly, the potential benefits that I had always factored into my cost/benefit analysis were not the basis for this enhanced appreciation of my law review experience. The experience had not made me a significantly better writer or enabled me to secure a better job. And as for the value of what we actually published, I still wonder whether anyone ever read volume forty-eight. My belated appreciation for my law review experience was triggered by a realization that my association with Professor Kummert and certain other people over many months under trying circumstances had taught me some valuable personal lessons. I had no real awareness or appreciation of these lessons during my law review tenure, but I soon discovered their value as I struggled to develop my skills as a professional. Following are two examples.

Example One. As a young lawyer, I quickly discovered that many attorneys, including those with great reservoirs of legal knowledge and years of experience, were lousy with clients. Some could not make any connection; their role was limited to serving the needs of their professional colleagues. Others, who I dubbed “Recyclers,” had mastered the challenge of making a strong first impression with clients, but overtime they would disappoint as the relationship never measured up to the expectations created up front. As a result, they were forever recycling clients just to keep their plates full. In contrast, I observed a few who knew how to build client relationships that continually strengthened overtime—who had, what I called, “Escalating Credibility.” The benefits of these relationships were profound—greater stability, real independence, the luxury of selectivity, interesting work, and higher fees. Even as a budding lawyer I appreciated the importance of this escalating credibility because it is exactly what I had experienced with Professor Kummert. My need for his counsel did not diminish as I learned the ropes of an Editor-in-Chief—it continually evolved into broader matters.

As I pondered the challenge of developing advisory skills that would enable me to build this type of escalating credibility with clients, I realized that Professor Kummert's example had taught me what I needed to know. All I had to do was identify the factors that made him effective and then incorporate those factors into my routine. The identification effort was easy; it just took some thought to spot the eight key factors. The incorporation challenge was something else; I have struggled with it for decades. Although my skills as an advisor never rivaled those of Professor Kummert, I know for a fact that the power of his example helped me immeasurably in developing strong, lasting relationships with many clients. Here is my list of the eight key factors:

1. *Require an invitation.* Professor Kummert went out of his way to be available, but he always required that I seek his advice and counsel. He never forced his presence or demanded a right to be heard. The result was that his words were always welcomed, and their perceived value continually increased.

2. *Do nothing to usurp the client's ultimate authority.* In working with Professor Kummert, there was never any question that the ultimate decision was mine to make. He offered valuable insights and always pushed the thought and analytical process, but did nothing to undermine or subordinate my role. He helped me do my job better; he did not do my job. As a result, my confidence grew, and I became more effective over time.

3. *No artificial hype.* A professional advisor is not a coach or a cheerleader. There was no "rah rah" with Professor Kummert. He was not there to fire us up or to manipulate us into acting a particular way. There were no emotional outbursts. His demeanor was always calm, thoughtful, and analytical.

4. *Never force a conclusion.* The advisor's challenge is to facilitate the analytical and decision making process, not be an advocate for a particular conclusion. Of course, Professor Kummert would acknowledge and share his biases and preferences, but he never did this in a way that precluded consideration of all options, preempted the analysis, or intimidated others who thought differently.

5. *Do not finesse tough facts.* Often a difficult decision triggers a temptation to understate or slight the ugly facts that complicate a convenient solution. This was never an option with Professor Kummert. All facts, especially the ugliest, were on the table and given their due. His demeanor and style compelled an intellectual honesty that made it impossible to duck any tough stuff.

6. *Avoid all hip shooting.* Poor advisors often like to talk about things they know little or nothing about. It is a temptation many lawyers cannot resist. Since they know a smidgen more than the client, they cannot resist the opportunity to create the illusion of a mammoth knowledge gap. Of course, the deception eventually takes its toll as ill-advised decisions expose the hoax. This, perhaps more than any other factor, is why so many are suspicious of lawyers. With Professor Kummert, this temptation was not a possibility. He would naturally confine his dialogue to matters that he had thought about and understood, always giving the listener confidence in the value of what was being said. There was no winging it—no hip shooting.

7. *Challenge the thought process.* Perhaps Professor Kummert's most admirable quality is his ability to elevate the thinking of everyone involved. Quality thinking is not easy; often it is trumped by a leap to the obvious. As the advisor, Professor Kummert ensured that the thought process was not short-circuited. By insightfully drawing from prior experiences and all existing conditions, he would compel a consideration of factors that required all to think harder. No doubt this ability is why his participation in important law school matters has been so highly valued for decades.

8. *Make words count.* Many advisors mistakenly assume that more words are better. They try to impress with the quantity of their output while they often communicate nearly nothing. Useless words can dilute the value of all that is said by an advisor. The challenge is not to speak more, but rather to speak with more impact. Here, less is usually more. Professor Kummert was the ideal example. He knew when to speak and how to have the greatest impact with the fewest words. Often his silence would create an anticipation that ensured the attention of all when he spoke. He avoided useless adjectives and convoluted sentences. His words were always measured for impact.

Example Two: An ugly dispute arose during my tenure. We had solicited a well-known attorney to write a short book review for our final edition. When the book review showed up on my desk, I quickly determined that we had a problem. Although I could not then or now articulate our minimum standards for publication, this piece did not come close to meeting them. It was that bad. When I informed the author of our rejection by phone, he threatened to sue me personally for damage to his reputation and many other things. He made good on his threats by filing a suit in King County Superior Court.

So I started my legal career as a defendant. But I had plenty of company. In an obvious attempt to get the attention of everyone, the plaintiff sued everyone, including the Dean of the law school, the President of the University, the Regents of the University, the Law Review Association, the Law School, the University, and even the famous librarian Marian Gould Gallagher. The state attorney general was soon involved and pressure began to build. Many in my midst, including school administrators, law review colleagues, friends, and relatives, encouraged me to “lighten up” and consider options for “getting rid of the mess.” As one colleague stated, “this will all go away if we just slap a little lipstick on the thing and stick it in the back of the book.”

Our evaluation of the case only added to the pressure. As hard as we tried, we could not find any law review law that helped. There was no question that we had actively solicited and encouraged the author without ever mentioning any publishing standards or the possibility of rejection. Plus, a member of our board, personally embarrassed by the mess, actually suggested to the plaintiff that the real basis for our rejection was our unanticipated receipt of a book review authored by United States Supreme Court Justice William O. Douglas. Although a complete fabrication, this Douglas allegation fueled the plaintiff’s bad faith claims and his passion to force the issue.

I turned to Professor Kummert for counsel. We did not discuss the merits of the piece, and to this day I do not know if he ever read it. As usual, he did not tell me what to do. We both acknowledged the expense, hassle, inconvenience, and potential embarrassment of moving forward with the suit and the possibility of losing. Then Professor Kummert reminded me of two basic facts—that the quality of the law review was important to the law school and the university and that, as Editor-in-Chief, I had been entrusted with the responsibility of maintaining its quality. He then admonished me to carefully consider what impacts the lawsuit and all its potential negatives could have on my exercise of that trust. I easily concluded that we would not publish the piece, no matter the fallout.

The trial lasted a few days. After all the testimony was in, the court ruled that we had discharged our only duty to the plaintiff by making a good faith determination that the piece was not fit for publication. My memory of victory quickly faded, but the import of Professor Kummert’s advice has lasted to this day.

The valuable lesson I took from that experience is that, in practice, often it is very difficult to pursue a course of action that is not the easiest, safest, or most practical from a legal perspective. I soon discovered that, for many, the path of least resistance, coupled with an obsession with practicalities, always trump any notions of right and wrong. There is always tough talk and the requisite saber rattling, but often never the will to look beyond the practicalities of the dispute. As I look back on my career now, the toughest and most memorable moments are those where I, acting in an individual or fiduciary capacity, chose to pursue a course that was not the legally safest or most practical. In each of those situations, I reflected on that silly law review case and was strengthened by the counsel I had received from my advisor at that time.

Professor Kummert's service to the law review has come to an end. My hope is that he will pass the torch with a real confidence and a sure knowledge that his decades of service and the power of his example have positively influenced and enriched many young people at that critical moment where they left the protected confines of the University and entered a tough profession with a desire to serve others. I cannot imagine a better legacy.