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Jack Marshall, the Elmer Gantry of Ethics

April 8, 2010 By **Mark Bennett** **12 Comments**

Ethics “**expert**” Jack Marshall **conceded that he was wrong** about Eric Turkewitz’s April Fools’ Day hoax. Which was good. Better, I thought, to sometimes be wrong and realize it than always to be right. A very simple apology should have followed: *Dear Mr. Turkewitz, I was wrong. I screwed up. I have no idea what I was thinking. I cannot overstate the magnitude of my error, and hope you will forgive me. If you would like me to remove the offending posts, I am willing to.*

But . . . no.

Instead Marshall writes a muddled post (I challenge you to understand what he’s saying on the first reading; I read it twice, and I’m still not sure) purporting to explain how he “**Became an April Fool and an Ethics Dunce**.” In the lengthy post beginning, “I’m not going to spin this,” he tries to spin it: his error (alleging publicly that another lawyer’s April Fools’ Day prank violated that lawyer’s state’s ethical rules) “was the product of a toxic mix of factors, prime among then being that I didn’t review my own files.”

His own files?

In his email to his critics announcing his flipflop Marshall had written:

> Let me say, as if anyone will believe me, that I’m not doing this because I have been beaten into submission. I finally was able to check my facts the way I should have in the first place. I had a theory, and stated it as an assertion, and that was just wrong.

His facts?

Jack Marshall didn’t just state his theory as an assertion; he belligerently tried to defend it against all comers. I asked Marshall via email, “What facts made the difference?” and got no response.

A less charitable blawger than me (if one exists) might suggest that Marshall is taking advantage of his newfound interpretation of 8.4. The answer isn’t in *his own files* or *the facts*, which were uncontested. It’s in his own brain and gut. At least, it should have been.

Marshall explains his epiphany:

> The swift kick that got my alarms ringing all at once were my own words in response to my least favorite participant in the thread, who asked if it was just possible that I was wrong. My snap answer was, “Of course I could be wrong!”

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Here's an idea, from a guy who's not shy about publicly calling out lawyers for their misconduct: the time to ask yourself if it's possible that you are wrong is *before you make the allegation*. Oh, wait: Marshall had already written, in the second paragraph of his **second post on the subject**:

> As those who visit here frequently know, I state strong positions with the full recognition that I may be wrong.

So before patronizing Scott, Eric, and Carolyn, as well as every commenter who disagreed with him, Marshall had already articulated the possibility that he could be wrong.

Part of Jack Marshall's problem, as **Mike has suggested** at *Crime and Federalism*, is that Marshall apparently had no friends willing to cut him down and, as a **pathological narcissist**, if he ever had any such friends he wouldn't have listened to them anyway. Instead of people who will challenge him, his writing attracts **ignorant sycophants** like **Glenn Logan**, who even now thinks that Marshall was right and has been treated unfairly.

Jack Marshall had falsely and publicly accused an ethical lawyer of violating a disciplinary rule. He had been corrected by **Carolyn Elefant**, **Scott Greenfield**, and **Eric Turkewitz**, and had written **another blog post**, sneeringly condescending:

> Some fellow lawyer-bloggers rushed to his side, collectively applied their full ethics comprehension and rhetorical skills and proved beyond a shadow of a doubt…..why so many lawyers are desperately in need of ethics training

Then Jack whined about receiving handling much gentler than he should have expected. Even now, in comments to his spin-apology post, he minimizes his wrong:

> You are deluded if you think that the suggestion that a lawyer violated a Rule automatically imparts some kind of infamy. Most, if not all, lawyers violate parts of rules at some point, and they know when it matters. Do you take more work than you can handle? Rule violation. Ever use delay as a tactic? Violation. Fight to keep your client from rejecting a good settlement? Violation. . . . I listen to lawyers talk all the time about how they may have technical violations. Accusing someone of a substantive violation is something else.

Jack didn't accuse Turk of a *technical* violation: he accused him of a violation that, by definition, involved dishonesty. To an unethical lawyer, making unfounded allegations of dishonesty might be no big deal, but to the rest of us such accusations are a very big deal indeed. Them's fightin' words.

We could go on for pages (see **Greenfield**, **Popehat**, **Tannebaum**, **Pribetic**, **Source 4 Politics**)—Jack's posts are a target-rich environment.

> **I'm not crazy about having to go on my own blog and announce that I have been careless, obtuse and unfair. Before I got into the ethics field, I don't think I would have done it.**

> **I am not in an armchair, and having abandoned the practice of law precisely because I found wrestling with the ethical conflicts and dilemmas too stressful, I have more respect for practicing lawyers than you could imagine.**

Now, I'm not "in the ethics field" except in the sense that a) we're *all* (humans, lawyers, criminal-defense lawyers) in that field and b) I like wrestling with problems of ethics. But I'm pretty sure *making excuses* isn't what people are supposed to do when they're wrong.

So this is a guy who, admittedly lacking the ethics to come clean for his mistakes, abandoned the practice of law and set himself up as an ethics "expert," "defining what is unethical," "letting lawyers know what is and isn't ethical" "because [he] found wrestling with the ethical conflicts and dilemmas too stressful."

Gil Altom on **2015.49: Unlawful Disclosure of Intimate Visual Material in Texas**

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If you don't enjoy wrestling with ethical conflicts, you shouldn't be trying to define what is unethical. And maybe there should be some intermediate phase between "I'm not going to admit I'm wrong" and "I'm an ethics expert."

But Mr. Logan says that Jack Marshall is a **recognized expert**:

> I think it is important to note that Jack is a recognized expert on the matter of ethics. His reputation is not "a little suspect" in any way.

I don't know where he's so recognized. Certainly not in my neighborhood of the practical blawgosphere.

If I've learned one thing from this incident, it's that Jack Marshall is an expert only in the Adrianos Facchetti "**you are what Google says you are**" sense.

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Mark Bennett got his letter of marque from the Supreme Court of Texas in May 1995. He is famous for having no sense of humor when it comes to totalitarianism.

apologies, **Clintonesque**, **Ethics and Professionalism** **Jack Marshall**

12 Comments

Rickey Moore
April 8, 2010 at 10:30 pm

They have GREAT ethics classes in prison. Most sex-offender programs are based on teaching empathy and ethical conduct within social settings. These topics are not dwelled on, to any great length, in our modern two working spouse families nor traditional schools. Learning ethics in prison has one great advantage, you're bored out of your skull and have few distractions.

Mark, maybe lawyers who center on their ethical learnings could augment their studies by dropping in on a prison session or two. They might gain new perspectives and see what happens when an attorney fails to do his job. I can but hope!! Ric

★ Like

Reply

Mark Bennett
April 8, 2010 at 10:35 pm

Ric, I think that's a great idea, but one that would probably be rejected by most lawyers. "Legal ethics" experts are usually exegetes of the rules rather than deep feelers and thinkers.

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Reply

Andrew MacKie-Mason
April 8, 2010 at 11:06 pm

First of all, thanks for the link: I appreciate it! I've been reading here for a few weeks now and I like what I see.

As to the substance of the post.. I'm tempted to say that you're going a little to harsh on Marshall at this point. It's true his apology leaves a lot to be desired, but this is probably a fight that isn't worth starting up again, especially because it's heading more into the personal rather than the intellectual.

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Reply

Mickey Fox
April 9, 2010 at 6:45 am

…pick the mote our of thy brother's eye without first removing the beam from thine own…

I seem to recall this pseudo-quote from somewhere and it strikes me as strangely appropriate with respect to many of our so-called ethics "experts." I am not an expert. I have devoted a good deal of time studying ethics (both the philosophy and application of) and a good deal of time working etihcs (as you correctly pointed out, it's just a large part of our job as lawyers and human beings – some argue the two are separate species.)

Interestingly, despite the apology (or maybe because of it) his words are possibly actionable in tort – besmirching another's professional honesty is not somethign to be taken lightly. However (as something of a social commentary), I will npote in his defense that this trend of "talk first, apologize if you get called out later" appears to be the norm in this era of the 24-hour news cycle and the world of the talking heads. I am certain that he would be able to lean on the "but everyone does it" explanation.

But if he does, I might suggest he needs a refresher course in ethics.

(Unfortunately, I am not practicing because I can't find a job, not because I find it difficult to "wrestle" with the ethics of being a lawyer.)

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Reply

Colin Samuels
April 9, 2010 at 11:07 am

Marshall's "apology" may be (and probably is) less than sincere, but I think two things need to be said about it. First, if it's less sincere or succinct or… well, apologetic than it could've been, his apology is also more comprehensive and unequivocal than some. For all the ridiculous "consulting my files" bullshit, it's still an "I was wrong and he and all the many others were right" rather than the usual "my comments were misconstrued and I'm sorry if anyone took offense" dodge or, even worse, simply going dark and deleting his blog and all the commentary, as has been done elsewhere.

Second, his sincerity is (I think) inconsequential here. He wasn't known before, he'll not be respected afterward, and no one (except perhaps his cheering section) is interested in his personal spiritual growth or professional rehabilitation. His post, therefore, is useful in putting an end to this farce and clearly indicating to anyone and everyone who might have even a passing interest who was in the right, both factually and morally.

In this sense, his post is less like a true apology and more like a losing candidate's concession speech — insincere and bitter though it may be, it puts an end to the process and gives the prevailing party the moral high ground from which to continue. It's not a great analogy, granted, as here it wasn't simply a subjective choice between two candidates but a principled analysis of important legal ethics issues in which one person was clearly in the right and the other was just as clearly in the wrong. Imperfect analogy though it is, however, like a concession speech the genuine sincerity of Marshall's post is of (distant) secondary importance to the unequivocal "I was wrong" which remains on the record.

I agree that the fluff around the apology diminishes it — his files are made out to be an oracle of ethics, which is nearly as ludicrous as him suggesting that his own knowledge is authoritative on all ethical issues — but in the end, the apology serves its purpose. I don't know that I'd say that continuing to pursue him on the details of his statement is "beating a dead horse", but it seems clear enough that we know all we need to know about Marshall's own knowledge, methods, and ethics. Whether that horse is alive or dead now, he deserves a trip to the glue factory rather than your time or anyone else's.

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Reply

Colin Samuels
April 9, 2010 at 12:38 pm

I comment here that it's to Jack Marshall's credit that he didn't delete the offending posts and now he seems to have done just that to the most offensive of the lot (and with more than a hundred comments). Tremendous. Before you say anything, I'm going to write my "I was wrong about Jack Marshall and you were right" apology post. First, though, I need to review my files.

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Reply

Patrick
April 10, 2010 at 6:40 am

He has now deleted the offending posts, and the comments.

★ Like

Reply

Antonin I. Pribetic
April 9, 2010 at 3:09 pm

“Sorry, the page you are looking for does not exist” message should be amended to read:

“Sorry, the ethicist you are looking for does not exist, never existed and will never exist, but never fear, CLE courses in existentialism are now available at 1/2 price.”

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Reply

Malcolm Kyle
January 11, 2013 at 2:15 pm

jackmarshallize

(verb) to write, pontificate or act in such a manner that resembles unconscionable, sadomoralistic douchebaggerry of the very highest order.

Jack Marshall is a self-proclaimed champion of ethics, but he is actually just a lawyer who is invariably very rude, dismissive and intimidating.

In attempting to defend the indefensible (most often his beloved policy of drug prohibition) he does so mainly from the power of his own extreme prejudicial convictions – by blatantly ignoring fact and historical precedent he has achieved the highest form of cognitive dissonance and suffocating bigotry.

Mr Marshall’s convictions are most definitely not based upon the ethics he purports to champion, but are the ‘ethics’ of utter malice towards all who dare to disagree with his particular form of stifling, authoritarian hypocrisy.
Usage: “Do you honestly believe you can just march in here and simply jackmarshallize us?

http://www.urbandictionary.com/define.php?term=jackmarshallize

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Reply

Mark Bennett
January 11, 2013 at 2:21 pm

Don’t jackmarshalize me, bro!

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Reply

Malcolm Kyle
January 12, 2013 at 3:44 pm

🙂

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