



MARQUETTE
UNIVERSITY

LAW SCHOOL

August 25, 2009

Dear Future Marquette Lawyer,

It is a great privilege for me, on behalf of my faculty colleagues and all others associated with Marquette University Law School, to welcome you to a new academic year. These others especially include your predecessors as Marquette law students, who today are Marquette lawyers. For more than a century, this law school has had as its primary mission to help men and women form themselves into competent beginning legal professionals. The burden has been on them—which now is to say *you*—to take advantage of the opportunities that we make available. The faculty can highlight, clarify, and, at times, even inspire; only you can cause yourselves to learn. My words at graduation to some of your forbears are relevant here: the baton is in your hands, and it is you who will determine the course of the future. In the meantime, permit me to describe a few of the ways in which we intend to help in the coming days.

1. Sensenbrenner and Eckstein Halls. This is the final year in which you as students and we as faculty will walk the hallways trod by every living Marquette lawyer. After the opening in 1924 of the building that came to be known as Sensenbrenner Hall, through the addition of the law library in 1967, to the construction in 1984 of the area now connecting the earlier buildings (and adding classroom and office space), Marquette University Law School has operated from 1103 West Wisconsin Avenue for decades. This ground has proved fertile, for it has nurtured in thousands of students of fine intellect and warm heart the capacity for greatness as lawyers and public citizens. To those who will graduate this year, the final class of Marquette lawyers to graduate from Sensenbrenner Hall, I can say only that the legacy of which you are the final heirs should be a matter of immense pride to you, as it is to us on the faculty who have labored in this great hall for five or ten or thirty or fifty years.

A year from now we will be just a block away, at 1215 West Michigan Street. Those of you who have honed your ability to “issue-spot”—as characterizes both good law students and, then, good lawyers—will immediately appreciate that the “1215” aspect of the address is a nod to one of the most famous dates in legal history—indeed, in human history. I refer to the date of the Magna Carta, the document signed by England’s King John in a meadow where, according to no less a legal authority than Kipling, “[y]our rights were won.” That is a bit of poetic license, to be sure—we Americans might well regard the American Revolution, the adoption of the Constitution, and the Civil War and its aftermath as having had something to do with the winning of our rights—but it is probably not too much to say that the Magna Carta is where it started in our political tradition. How fortunate we are, then, that the city’s plat and our location on the south side of historic Michigan Street (and some lobbying of city officials) enabled us to secure this street address.

Eckstein Hall will be the best law school building in the country. That is a bold statement, but it is one that the evidence increasingly supports. From the innovative design of the Eckstein Law Library (a “library without borders,” flowing on each floor seamlessly into the rest of the

school) to superb classrooms (conducive to all sorts of pedagogical techniques) to outstanding amenities (such as the café on the first floor and the fitness center on the fourth) to the underground parking (especially designed to attract alumni and members of the community to programs at the Law School), with the four-story Zilber Forum at its center, Eckstein Hall will offer us and others in the University possibilities for knowledge, learning, and service that dramatically outstrip what we can do in our current facility. But Eckstein Hall should be of interest even to students who will be Marquette lawyers by the time of its opening—i.e., those of you who will graduate this year. The building is a sign of an advancing law school and of a university that recognizes the importance of this school to the Jesuit educational mission of helping to develop *homines pro aliis*—men and women for others. Less symbolically and more practically, I very much hope that it will be a place where, as alumni, this year's graduating students will wish to come because of the quality of the programs and resources available there—and to tell their successors how hard they had it, facilities-wise, "in the old building."

2. Visiting Faculty. We are joined this year, not by any new full-time faculty (we have incorporated seven new full-time faculty in the previous two years), but by several visiting faculty who will help enrich our curriculum and teaching. Two such faculty will be here as Boden Visiting Professors of Law, so named after one of my predecessors, the late Robert F. Boden, who served as dean of the Law School from 1965 to 1984 and whose estate left funds to the Law School. Specifically, James A.R. Nafziger, the Thomas B. Stoel Professor at Willamette University College of Law, and Professor Michael R. Smith, the Winston S. Howard Distinguished Professor of Law at the University of Wyoming, will be with us during the fall semester. Each Boden Visiting Professor has a substantial expertise and reputation in an area important to Marquette Law School: sports law in Professor Nafziger's case and legal writing in Professor Smith's. We are joined as well by two other visiting faculty: Nora O'Callaghan, a tenured faculty member at Ave Maria School of Law, and Shelley Smith, a former partner at Jenner & Block in Chicago and an experienced commercial litigator. These faculty will be with us both semesters. I wish also specifically to welcome Rev. Thomas S. Anderson, S.J., as the Law School's new chaplain. Father Anderson most recently served as associate pastor at Gesu Parish, just two doors up the block, and is a part-time faculty member in the Theology Department. I am delighted to welcome all of these individuals to our community, and I hope that you will do the same. We will be sure to welcome other new employees in various upcoming announcements.

3. Grading Scale and Other Academic Regulations Matters. The Law School has adopted changes to its grading scale. The essence of the changes is that we have (a) departed from the A, AB, B, BC, etc. scale in favor of an A, A-, B+, B, B-, etc. scale and (b) adopted in essence a required *mean* of B in all first-year classes and in all other classes with enrollments of 24 or more students (as opposed to the previously prevailing policy of a required *median* of B applicable to classes with more than 30 individuals). Those are material changes, indeed.

The grading scale and other important information, of course, are available in the Law School's Academic Regulations, a link to which is available on the Law School's internet homepage (under Student Life in the right-hand column and also via the Current Students tab). This other information includes material setting forth the Law School's academic-misconduct policies—both substantive principles setting forth obligations of students and the process to be followed for alleged violations. This past spring the Law School's Judicial Committee, which consists of three faculty and two students, determined that two students had violated a professor's instructions concerning the extent of permissible collaboration between students on assignments in a course. The sanction imposed by the committee was that, although they had not specifically intended to violate the instructions, the students would receive no credit for the assignment. I set forth this matter pursuant to Section 902(7)(e) of our Academic Regulations, whose intent no

doubt is to underscore for other students the importance of adhering to the Law School's policies concerning academic conduct and whose approach in terms of publicity bears some similarities to the rules governing the profession upon which you are embarking (although in lawyer-discipline cases the person transgressing the rules is typically identified).

4. Important Upcoming Events. In addition to your course work, the Law School makes so many opportunities available for you (and us) to learn things. Our distinguished-lecture series is increasingly extensive and impressive. On September 24, Michael Klarman, the Kirkland & Ellis Professor at Harvard Law School, will deliver the Boden Lecture, entitled "Why Was *Brown v. Board of Education* a Hard Case?" John F. Duffy, the Oswald Symister Colclough Research Professor of Law at George Washington University, will deliver the annual Nies Lecture on Intellectual Property Law on October 21. Other events abound. Together with the University's History Department, we will host a conference on October 1 and 2, "Legacies of Lincoln," to mark the bicentennial of President Abraham Lincoln's birth and the sesquicentennial of his visit to Milwaukee on September 30, 1859, to speak at the Wisconsin State Fair, on the present-day Marquette campus. Mike Gousha already has lined up an impressive roster of newsmakers for our "On the Issues" series, beginning next week with Senator Herb Kohl. The Speakers from Practice Committee will once again ensure that we provide examples of lawyers in the profession and the community about whose undertakings you may wish to hear; so, too, will our Career Planning Center, Office of Public Service, and (not least) various student groups, among still others. I hope that you will make the time to attend some of these events, which can so enrich a law school education. And even all of this is not to mention the numerous possibilities available to you—to us—as part of the larger Marquette University. The University especially plans some celebrations of the centennial of the undergraduate college's admission of women (Marquette was the first Catholic college in the United States to admit women into its regular undergraduate program), and some of you already are planning how the Law School can contribute to this series of events (an example of student leadership).

5. Volunteer Opportunities. Legal education in the United States is graduate professional education. In these circumstances, in addition to your course work (and to the various means of learning within the building but outside of your course work, a few of which I have just touched upon), we hope that you will also avail yourselves of some of the school's opportunities for you to use your developing legal education and skills in service of the community even while you are in school. In addition to academic clinical opportunities, there are numerous volunteer possibilities. From our flagship program, the Marquette Volunteer Legal Clinic, to more-recent innovations, such as our Service Members and Veterans Legal Assistance-Wisconsin (SAVLAW) program, we seek to provide means whereby you can "do good" (as my predecessor, the late Dean Howard B. Eisenberg, used to say) within the context of the profession even before receiving a law license. Our most recent initiative, announced over the summer, is a mortgage-foreclosure mediation program at the Milwaukee County Circuit Court, drawing on both our public-service office and our dispute resolution program. While all of this public-service work has its own rewards (including both the provision of service to others and the opportunity to refine some of your skills), I should note that membership in our Pro Bono Society is available for students (and faculty) who do a certain amount of qualifying work. Joining the society would certainly be a worthy aspiration. In all events, there is much information available about these opportunities in our semiweekly student announcements.

6. Diploma-Privilege Case. You are likely aware that, last month, the United States Court of Appeals for the Seventh Circuit reversed the decision of the federal district court in Madison that had dismissed a constitutional challenge to the diploma privilege. This means *not* that the diploma privilege has been struck down, but rather that the plaintiffs should have an

August 25, 2009

Page 4

opportunity to develop evidence in support of their claims. Although it is not a party, the University (led by the Law School) continues to monitor this case and will cooperate with the Attorney General's office as it seeks to develop an evidentiary record. Those wishing a more specific sense of this matter may wish to consult my post on the faculty blog this past July (<http://law.marquette.edu/facultyblog/2009/07/09/diploma-privilege-case-continues/>), which itself contains a link to the Seventh Circuit's opinion. This seems as well a good opportunity to commend the faculty blog generally to your attention: we are nearing our one-year anniversary of launching the blog, and I am impressed by—and grateful for—the way that not only faculty but students (in particular through comments) have used the blog to advance civil debate and discussion within our law school community.

7. The Essence of Your Work. In several instances in this letter, I have referred to things that are “in addition to your course work.” I referred to these matters—speakers, volunteer opportunities, and the like—because they are important. Let no one think that they are as important as your course work. Indeed, the most important things that you should do in law school are to read and to think. There was a day when that might have seemed unnecessary to say, but in this age of Facebook, Twitter, texting, e-mails, etc.—potentially useful things, all—it is perhaps important to exhort you to make sure that you are not so distracted that you do not read and reflect. Here is one way of capturing the matter, taken from the introduction to a bygone casebook that a colleague brought to my attention:

. . . Jurisprudence—the examination into the method by which law is derived and the forces by which it is affected—is the essential grist of your intellectual mill for the entire period of your law study; and that means from now until the end of your professional career. It must be clear that we would not ask you to study wild animal cases for a few precious hours in order to prepare you to try wild animal cases or advise upon them, any more than the neophyte in medicine is given a cadaver to dissect in order to learn how to dissect cadavers. No, both you and the medical student are given these things to work on in order to see how they are put together. And, in the law, this is the essence of jurisprudence. What considerations moved this court to this result? Were the true factors in the situation properly urged upon the court by counsel? Is the law doing a good job for the community in establishing the rule in this case? These are some of the questions upon which you should constantly be reflecting.

Casner & Leach, *Cases and Text on Property* 10 (2d ed. 1969). Indeed you should. For out of your reading and your reflection can emerge the basic qualities of a good lawyer, which the authors just cited admirably enumerated as (1) fact consciousness, (2) a sense of relevance, (3) comprehensiveness, (4) foresight, (5) lingual sophistication, (6) precision and persuasiveness of speech, and (7) “finally, pervading all the rest, and possibly the only one that is really basic: *self-discipline in habits of thoroughness*, an abhorrence of superficiality and approximation.” *Id.* at 5.

I wish you much good luck—which you will likely have if you work at the matters at hand—in our coming year together.

Sincerely,



Joseph D. Kearney
Dean and Professor of Law