



marquette lawyers on the seventh circuit

If you ask Dean Joseph D. Kearney how it has come to pass that there are no Marquette alumni on the Wisconsin Supreme Court, he is ready for the question. “They’re all on the United States Court of Appeals for the Seventh Circuit,” he says with a smile.

With due allowance for hyperbole, there is merit to the point. When it comes to that federal appellate court, Marquette lawyers have filled the last three Wisconsin vacancies. Judges John L. Coffey, Terence T. Evans, and Diane S. Sykes all graduated from Marquette University Law School. Coffey and Evans also conducted their undergraduate studies at Marquette. No other law school today has three alumni on the Seventh Circuit; only one other even has two.

After serving on the court for 22 years, Coffey, 82, took senior status last year, cutting his caseload in half. Evans, 64, has served on the court since his appointment in 1995. The Senate confirmed Sykes, 47, as Coffey’s successor last June, and she was subsequently sworn in as a federal appellate judge.

Coffey graduated from Marquette Law School in 1948, Evans followed in 1967, and Sykes is a 1984 graduate. Although the judges come from different eras, their careers have some similarities. In addition to the Marquette connection, each of them served as a trial judge in Milwaukee County. Two of them—Coffey and Sykes—served on the Wisconsin Supreme Court before heading to the federal appellate bench. At one point, the newly graduated Sykes clerked for Evans when he was a federal trial court judge. In fact, Sykes has temporarily taken up residence in her mentor's former chambers at the federal courthouse until her new chambers are ready.

Judge John L. Coffey

Coffey's high school, undergraduate, and legal education all took place at Marquette. During an interview in his chambers, he credited the high school and university with instilling in him and other students a strong sense of ethics. Those moral convictions have guided the decisions he has made throughout his life. He praised Marquette Law School for providing a legal ethics focus while he was a law student.

"We were taught legal ethics, which I believe to be very important to the profession," Coffey said.

The veteran judge blames some of the problems that the legal profession has seen on a lack of grounding in ethics. "In my day, your word was your bond," Coffey said. "If you said you were going to settle the case for X number of dollars, that's what you would do. . . . There weren't the angles and the curves that are practiced today."

Between earning his bachelor's degree and attending law school, Coffey served four years in the U.S. Navy during World War II. After graduating from law school, he spent one year running a general practice law office before joining the city attorney's office in Milwaukee. He spent his first three years there prosecuting cases, but went on to handle labor issues and write legal opinions for a variety of departments.

Following 20 successful jury trials and appeals, Coffey successfully ran for a spot on the Civil Trial Court in Milwaukee in 1954. After six years there, he spent two years on the Municipal Court. From 1962 to 1978, he sat on the Circuit Court bench,

part of the time in the Criminal Division and two years in the Civil Division.

During his more than 50 years as a member of the judiciary, Coffey has always been a man of clearly defined and strongly held convictions. His years on the trial bench in Milwaukee showed him to be a law-and-order judge even when that meant rooting out corrupt members of law enforcement. In 1962, he commissioned a three-year John Doe investigation into corruption in the City of Milwaukee Police Department and the Milwaukee County Sheriff's Office. Despite attempts to intimidate him, the investigation removed more than 30 police officers and sheriff's deputies from their positions.

In 1978, Coffey successfully ran for the Wisconsin Supreme Court, where he spent several years until President Ronald Reagan

appointed him to the Seventh Circuit in 1982.

Always ready to voice his convictions, Coffey was not persuaded by an early pep talk from Seventh Circuit Court of Appeals Chief Judge Walter J. Cummings, who encouraged unanimity of decisions and discouraged dissents. Coffey responded, "You know that a dissent helps make a good court, too. You don't want someone who would march in goose step just to achieve that end. I believe the law is developed by having an interchange of ideas and different thoughts. If I believe my position is more accurate, I feel that I have an obligation to point out why it is."

Throughout the years, Coffey has done just that. Several decisions released even within the last year have contained his lengthy dissents. This past October, for example, in a case originating in Milwaukee, Coffey wrote a 76-page dissent in response to the majority opinion written by one of his colleagues. Coffey dissented from the majority's dismissal of a police officer's false-arrest lawsuit.



COFFEY for SUPREME COURT

Coffey strongly espouses the principle of *stare decisis*. When considering constitutional issues, he says, “The court should look at the law, look at the past decisions of the court, and be guided by the facts presented—not try to make new law, but construe the law as best we can to accomplish what the framers of the Constitution intended.”

Coffey has maintained his connection to the Law School over the years. He notes with pride that during his 23 years on the federal bench he has had numerous Marquette Law School graduates as law clerks and interns.

Coffey was the first Marquette Law School alumnus to sit on the Seventh Circuit Court of Appeals. At the time that he was appointed to succeed Judge Thomas E. Fairchild, Coffey recalls being told by a Madison law professor that it was a “University of Wisconsin seat.”

How times have changed.

Judge Terence T. Evans

Evans joined Coffey on the federal appellate bench when President Bill Clinton appointed him to succeed Judge Richard D. Cudahy in 1995. Prior to that, Evans spent 16 years as a United States District Judge for the Eastern District of Wisconsin.

However, Evans did not start out practicing law. After attending Marquette University on a track scholarship and graduating with a bachelor of arts degree in 1962, he taught at North Division High School. When his girlfriend’s brother took the LSAT, Evans decided to give it a shot. The teacher went on to law school, the girlfriend’s brother did not.

But Evans went on to marry the girlfriend, Marquette student Joan Witte, and they will celebrate their 40th anniversary in July.

Evans credits Marquette for all that he has achieved, noting that he grew up poor and lacked direction in high

school. His mother was divorced and worked in one of the kitchens for Milwaukee Public Schools.

“We didn’t have two nickels to rub together at any point in our life,” Evans recalls. “It was getting the athletic scholarship in track at Marquette as an undergraduate and going on from there to law school that just fell my way.”

During his second semester of law school, Evans received the Marquette Class of 1939 Scholarship. Eventually, he also received the St. Thomas More Scholarship.

Beyond the financial assistance, Marquette Law School also provided the support and environment he needed to succeed. Initially, Evans felt he did not belong in the law school setting, but in the end, he felt well-trained and instilled with a sense of confidence which had not previously existed.

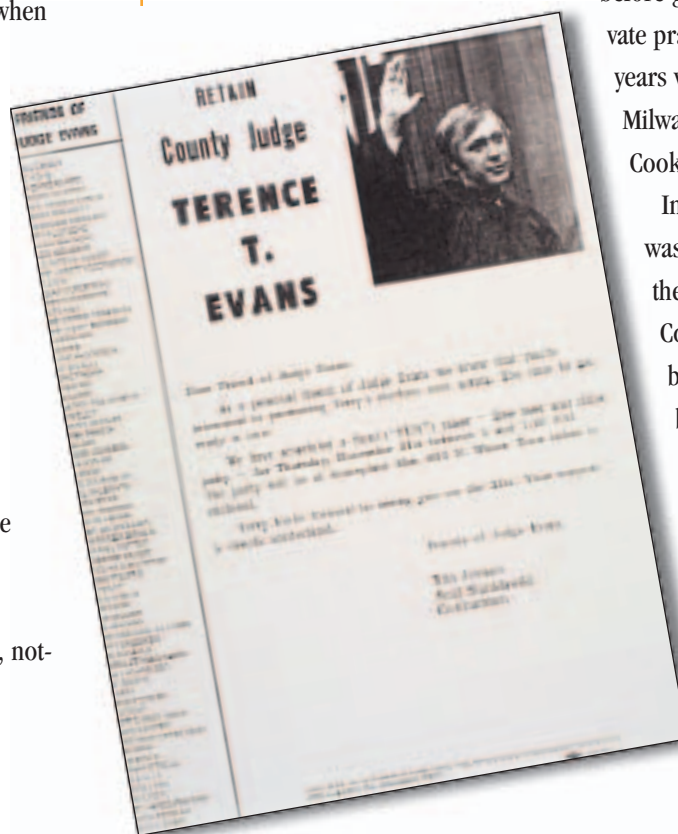
“Marquette held my hand for that first year,” Evans recalls. “I think it gave me a much better start than I would have had if I had been at some huge state law school.

“I wasn’t sure I belonged in law school when I began. That feeling had left by the time I graduated. I think that was part of having good professors and small classes.”

Once he graduated, Evans spent a year clerking for Justice Horace W. Wilkie on the Wisconsin Supreme Court. He spent the next two years as an assistant district attorney in Milwaukee

before going into private practice for four years with the Milwaukee firm of Cook & Franke.

In 1974, Evans was appointed to the Milwaukee County Court bench, which became the Circuit Court in 1978. He was elected to the



position in 1975 and stayed there until President Jimmy Carter appointed him to the U.S. District Court. He took the federal bench in the beginning of 1980.

Evans joined the trial court in Milwaukee during a time of transition, as it shifted from a system of specialized judges to one of judicial rotation. Under the former system, judges handled civil, criminal, family, or other cases based on the benches they were elected to serve. The implementation of judicial rotation changed things, making judges generalists who moved from division to division.

"I think the proof has shown over time that judges being able to move from one area to another is good," Evans reflects. "And it prevents judges from developing little kingdoms."

The move from a state trial court to a federal one brought new and interesting cases. "My first year here, I had a case involving the Army's decision to discharge a woman who was a lieutenant or a captain, because she was a homosexual. I ruled in her favor and ordered the Army to reinstate her."

Joining the judges of the Seventh Circuit has been a "dream job" for Evans, who views colleagues such as Judges Richard A. Posner and Frank H. Easterbrook as "intellectual giants." He also points to the "great common sense" of judges such as Joel M. Flaum and William J. Bauer. Working with them has provided an enjoyable challenge for him.

"You don't want to be a slacker on a court like this," Evans says. "You want to work hard and put out a good product because your colleagues are working hard and putting out a good product."

How does he approach his role as an appellate judge?

"I look at myself as more of a pragmatic judge. I don't see myself as an intellectual giant, but I think I have good common sense," Evans says. He goes on to note, "We want to expand rather than restrict rights in different areas of the law. I think the Constitution ought to be read that way."

Judge Diane S. Sykes

The newest member of the Seventh Circuit, Sykes was raised in a family that valued public service. Her father served as the Village Manager in Brown Deer and the Director of Public Works for Milwaukee County. Her mother was a high school guidance counselor.

Although she initially thought about a career in law, Sykes

studied journalism at Northwestern University's Medill School of Journalism. She interned at several newspapers, including the *Milwaukee Journal* where she ended up working for one year after she graduated. Her exposure to the courts as a reporter rekindled her interest in studying law.

In 1981, that interest drew Sykes to Marquette Law School, where she appreciated the school's emphasis on black-letter law, trial advocacy, and basic Wisconsin common law. She also connected with the Jesuit philosophy that focused on using her legal skills to serve the community.

When she graduated in 1984, she was not sure whether her public service would come from serving as a prosecutor or on the bench. Her one-year clerkship with Evans clarified the direction she would take.

"I started out my legal career in the best possible way, which was with a clerkship with one of our very best judges," Sykes recalls about Evans. "I learned a great deal. He has a marvelous way of handling lawyers, litigants, witnesses, and jurors. I came away from watching him work with a very strong sense of how to do that. That helped me a great deal when I went on the circuit court bench."

Sykes spent the next seven years as a lawyer at Whyte & Hirschboeck, where she worked in the firm's litigation department, handling commercial cases in both the federal and state courts. That experience also gave her the opportunity to handle some pro bono cases, including a class action lawsuit regarding the conditions of confinement at Taycheedah Women's Prison.

In 1992, Sykes ran for a newly created seat on the Milwaukee County Circuit Court. She won that race and was assigned to the Misdemeanor Division. Within 15 months of taking the bench, she was assigned to the Felony Division. Sykes also spent one year in the Civil Division before Governor Tommy Thompson



appointed her to the Wisconsin Supreme Court in 1999. The following April she won a statewide election for that seat.

Sykes notes that she enjoyed working with the other members of the court and the cases they handled during that five-year period.

“I approached it with a view to making the process as collegial as possible, so that the final outcome—the court’s opinion—would keep the focus on the relevant rule of law emanating from the opinion, rather than any other tangential disputes that might exist on the court,” Sykes explains.

Dean Kearney, for one, views this as an important legacy. “Justice Sykes came to the Wisconsin Supreme Court at an exceedingly difficult time: it was just a few months after the court had fractured badly and publicly over Chief Justice Abrahamson’s successful bid for reelection. While I am not privy to the inner workings of the court, my sense is that during her tenure Justice Sykes helped to ensure that the arguments inside the court were about the important matters—the merits of the cases.”

But Kearney does not think that this is Sykes’s most important legacy in Madison. He views her as having been a strong and moderating voice on matters ranging from development of the common law to statutory interpretation. “It seems to me that, even in only five years on that court, she managed to leave a legacy that will affect the court’s discussions and decisions for many years to come.”

Asked about the differences between her two appellate court experiences, Sykes observes, “Getting to a decision among seven has more challenges than getting to a decision among three. Holding together a four-vote coalition or a five-vote coalition on an issue and stating it in a way that preserves that majority rule of law is different from doing so on a panel of three.”

The newest member of the Seventh Circuit acknowledges that this year is an educational experience.

“I will have to learn the intermediate appellate court triage that has to occur in terms of the allocation of my time to the higher-consequence cases,” Sykes says. “That will come with experience.”

Marquette Law School is fortunate to number these three judges among its graduates. •

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The following are the remarks of Dean Joseph D. Kearney at the investiture of the Honorable Diane S. Sykes as a United States Circuit Judge. The ceremony occurred in the United States Courthouse in Milwaukee on October 29, 2004.

Chief Judge Flaum and May It Please the Court.

The back of the program for this ceremony refers to the foundational act that structured the federal appellate judiciary and occasions today’s investiture ceremony. This is Congress’s passage of the Evarts Act in 1891, which among other things created this United States Court of Appeals for the Seventh Circuit.

The next year, in 1892, another institution was created, closer to home but also, I believe, of some significance. Two lawyers and eleven students joined together to form something that they called the Milwaukee Law Class and that four years later was named Milwaukee Law School. A few years after that, the school became known as Marquette University Law School. Today the school consists of some 600 full-time and part-time students and more than thirty faculty. It remains the only means of formal legal education in Milwaukee. As both a fact and an aspiration (albeit not an entire aspiration), it can still be called Milwaukee’s law school.

But it is not the size of the enrollment or some local monopoly that gives us any special pride. For those of us who remain behind in the academy every year, it is, more than anything else, the undertakings and contributions of our graduates. That these are rich and impressive is a view shared by many. On the most recent two occasions when the President of the United States has named a new judge to a Wisconsin seat on the Seventh Circuit, he has turned to a Marquette Law School grad-

remarks

uate. I refer, of course, to Judge John Coffey, Marquette Law School Class of 1948, and Judge Terence Evans, Marquette Law School Class of 1967, appointed by presidents from different political parties.

The appointment of Judge Diane Sykes, from our Class of 1984, continues the trend—I dare not call it a tradition or, far less, as we used to say in Chicago, a three-peat. I had the privilege to get to know Judge Sykes when she was a member of the Milwaukee County Circuit Court and I was a new and untenured member of the Marquette Law School faculty. We had a mutual friend in the late Dean Howard Eisenberg, and I recall meeting Judge Sykes at a Law School event in the fall of 1997 during my first semester at Marquette.

From this and subsequent conversations, from experiences before the Wisconsin Supreme Court, and from my work as a student of sorts of that court, I learned two things that I wish to note here about Judge, then Justice, now again Judge Sykes. One is that we will miss her service as a Justice of the Wisconsin Supreme Court. Her opinions are thoughtful and incisive. Justice Sykes's contributions to the common law of Wisconsin have been especially notable.

The other is our certainty of her contribution to this court. Permit me to share an anecdote, as I think is part of my charge. I have had the privilege of practicing and working with some truly extraordinary lawyers, in Chicago, in Milwaukee, and in other places, and it has always struck me that continuing curiosity, investigation, and self-education are shared characteristics of those I have considered to be the best models of the profession—humility and industry, if you wish a summary.

I was struck this past spring when we happened to be walking from opposite directions down 11th Street and met in front of the doors of Marquette Law School. I learned that then-

Justice Sykes, whose confirmation as a federal judge at that point seemed certain, was there because she wanted to do some research in *Sutherland on Statutory Construction*. I inquired no further, but I must admit that I did a computer search among this summer's Wisconsin Supreme Court cases as I prepared for my remarks today. It became clear that the point was not merely to read Sutherland, but, to judge from the way the treatise was invoked, to engage, quite directly, on an important matter with the Chief of the Wisconsin court—perhaps even to score a point against the Chief (or, as Chief Justice Abrahamson has already spoken today, it would be more sporting of me to say that Justice Sykes's effort was *to seek* to score a point against the Chief). Anyone who has been the beneficiary of a Jesuit education—of the old sort, at least—will not doubt that a little competition can spur on both humility and industry.

And so, admiring her talents as a judge and her underlying attributes of humility and industry, I consider it a privilege to congratulate Judge Sykes on this notable occasion. I can even claim some special authority to do so. If you return to that back cover of the program, you will see that the first holder of the seat now occupied by Judge Sykes was Judge James Jenkins. At Marquette, we remember him instead as *Dean* James Jenkins, for after stepping down from the Seventh Circuit, Judge Jenkins became the first Dean of Marquette University Law School.

So, Judge Sykes, as, like you, a successor of James Jenkins, and on behalf of all those who are associated with Marquette Law School today, I congratulate you, and I wish you well. The people of Illinois, Indiana, and Wisconsin will be well served by the actions of the President and the Senate of the United States in appointing you a judge of this court. •