

Marquette Lawyer

Spring 2005

Marquette University Law Alumni Magazine



**Marquette Law School and the
United States Court of Appeals for
the Seventh Circuit**

Marquette Lawyer

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On the cover: Marquette University Law School is well represented on the Seventh Circuit by (across the cover) Judges Terence T. Evans, L'67, Diane S. Sykes, L'84, and John L. Coffey, L'48, photographed at the United States Courthouse in Milwaukee. The story begins on page 4.

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the physical future of marquette law school

When the doors of Sensenbrenner Hall opened to receive students in 1924, there was much satisfaction. The editor of the *Marquette Law Review* reported that the new building—which replaced Mackie Mansion just off 11th Street and Grand Avenue as the Law School's home—fulfilled the “earnest desire of our dean and every student and alumnus” for a suitable forum for formal legal education in Milwaukee.

That day in 1924 is no longer even a memory. While there have been subsequent modifications and additions to Sensenbrenner Hall in the more than eight decades that have ensued, these have scarcely matched the growth of the Law School's student body, the expansion of its library collection, the proliferation of information technology, or the evolving nature of legal education.

The fundamental problem, irreducibly stated, is this: Marquette Law School does not have enough space. This is not some idiosyncratic view or a mere intuitive feeling. The objective evidence is inescapable. Whether measured among the 14 Jesuit law schools, the 13 law schools at other Catholic universities, the 12 law schools at Big East universities, or the 20 private law schools in the upper Midwest, Marquette Law School ranks last or second-to-last in the standard measure of physical resources (net square footage per full-time equivalent student).

Lest there be any incorrect suggestion that these numbers were in any way gamed—e.g., that that we selected groups of schools against which we expected to fare poorly—permit me to note that we studied as well schools whose names begin with the letter *M* (another category into which we fall). There are fifteen such schools—Maine, Marquette, Maryland, McGeorge, Memphis, Mercer, Miami, Michigan, Michigan State-Detroit College of Law, Minnesota, University of Mississippi, Mississippi College of Law, Missouri-Columbia, Missouri-Kansas City, and Montana. Marquette comes in last.



Joseph D. Kearney
Dean and Professor of Law

So is this introductory note an announcement? Only of this: that I have identified the physical future of the Law School and, in particular, the size of our facility as challenges to our educational future and thus as matters that must be tackled. I have begun the complicated and uncertain process of working with those in the larger University (i.e., outside the Law School) to capture the extent of the problem and to work toward one of a number of possible solutions. Gone are the days of the early 1920s when, the annals suggest, a few conversations between the Dean of the Law School and the President of the University sufficed to settle upon a solution.

Nonetheless, the initial signs are encouraging, and the President remains the central figure of the University. Thus, I (and others) took it as significant that Father Wild, in his State of the University Address last fall, acknowledged the Law School's severe space constraints and adverted to one possible solution. To be sure, almost in the same breath, Father Wild stressed that any major building-related decision must consider the needs of the entire school and will require the participation of others in the University. These undoubtedly will include Madeline Wake, the Provost, and Greg Kliebhan, the Senior Vice President, and ultimately of course the Board of Trustees.

Father Wild also has underscored to me that the involvement of law alumni will be critical to any law school building project. I frankly acknowledge that my intent in this column is to start a conversation with alumni on this matter. My longstanding comment about answering my own phone and e-mail (the information for each being listed on the page opposite here) remains true, and I welcome any comments, suggestions, or reactions.

You will nonetheless find nothing further in this magazine about the building. Why is this? It is because the building is a detail (albeit an increasingly difficult and important detail) and the great work of Marquette Law School—its alumni, students, faculty, staff, and friends—goes on all the while.

Some of this work is sketched out in this magazine. I hope that you share our pride in the magazine, which I believe is among the best law school magazines in the country. We increasingly set this goal of self-consciously seeking excellence for our other, more-important undertakings as well.

In all events, we are sharing this issue of *Marquette Lawyer* not only with alumni and friends nationwide but with all members of the Wisconsin bar. For do not all lawyers—indeed, all individuals interested in the legal system and justice in the State of Wisconsin and beyond—have a stake in Marquette Law School?

J.D.K.



Hon. Diane S. Sykes
Hon. Terence T. Evans
Hon. John L. Coffey

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.

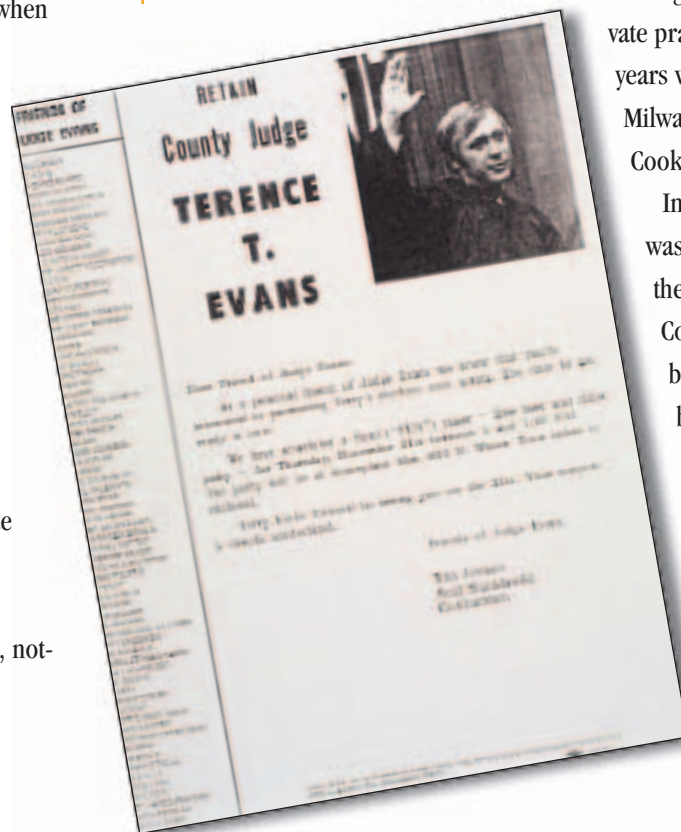
“Marquette held my hand for that first year,” Evans recalls. “I think it gave me a much better start than I would have had if I had been at some huge state law school.

“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. •

dean's

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. •



sports law and much more

by Christine Wilczynski-Vogel

The 1977 edition of “Who’s Who Among American High School Students” lists Matthew J. Mitten’s career aspiration as being a university professor. Mitten comes from a family of teachers, including those who have taught in elementary, physical therapy, and medical schools. But he achieved the objective by a different route: the first and only lawyer in his family, Mitten became a law professor. And after ten years of teaching in Texas, Mitten joined the Marquette law faculty in August 1999, while also being appointed as the Director of the National Sports Law Institute (NSLI). He teaches courses such as Amateur Sports Law, Professional Sports Law, Comparative Sports Law, and a sports law seminar.

Looking back in a recent conversation, Mitten says that, although he did not know any lawyers as a youth, he liked to read books with law-related themes. He initially became interested in being a lawyer after reading *To Kill a Mockingbird* in elementary school. Thereafter, as a student at St. John’s Jesuit High School in Toledo, Ohio, Mitten readily embraced the Jesuit educational philosophy of fully developing one’s talents and using them to benefit others. He loved learning and developed substantial respect and admiration for his teachers. But Mitten says that he remained uncertain about a career in law or teaching because he was afraid of public speaking.

Despite this lingering concern, Mitten attended the University of Toledo College of Law, after earning his undergraduate degree in economics from Ohio State University. By this time, his interests in

law and teaching were coalescing. Mitten relates that, even during his first week of law school, he talked to Professor Ronald Raitt, his civil procedure teacher, about his interest in becoming a law professor. Mitten credits Professor Raitt for encouraging him to pursue his dream.

Mitten first practiced law. After graduating from law school, he began his career as an attorney with Kilpatrick & Cody (now Kilpatrick Stockton LLP) in Atlanta, Georgia. Mitten practiced antitrust, trademark, and unfair competition law as well as general commercial litigation. Although he will not go so far as to say that it contributed to his future move into sports law, Mitten recalls his first assignment with a smile: "It was to obtain federal trademark registration of the mark 'Old Timers Baseball Classic' for an annual baseball game played by former Major League Baseball players at Fulton County Stadium in Atlanta." Mitten's work at the firm also included representing three members of the band known as the Monkees (Davey Jones, Peter Tork, and Mickey Dolenz) in a dispute with Coca-Cola over the legal right to use that name.

One of his most satisfying experiences in Atlanta was providing pro bono representation to indigent clients as a volunteer with the Atlanta Legal Aid Society. In a benefits eligibility dispute, he remembers convincing the Veterans Administration that an elderly woman should continue receiving her deceased husband's benefits. Mitten observes that in his law practice most of the clients were large corporations that could afford to pay his firm's fees and even bear the cost of losing a case. "This individual, on the other hand, had no other means of economic support and could not afford the cost of asserting her rights, but really needed help," says Mitten.

Despite five years of successful law practice and the likelihood of a future offer of partnership from his firm, Mitten felt that something was missing and chose to pursue his interest in law teaching. In 1990 he joined the faculty at South Texas College of Law in Houston, Texas. In addition to teaching torts and antitrust law, he began teaching sports law (a course he did not take in law school) at Dean Bill Wilks's urging. Dean Wilks told Mitten that South Texas law students had submitted a petition demanding a sports law course, but that no one else on the faculty had the background and interest to teach it.

Originally planning to focus on antitrust or torts scholarship, Mitten found that sports law presented a fertile ground for legal scholarship. "This was around the same time as Hank Gathers's death while playing in a 1990 college basketball game for Loyola Marymount," notes Mitten. "That tragic incident stimulated my interest in the intersection of law, medicine, and sports."

The interest has endured. Over the past fifteen years, Mitten has published numerous interdisciplinary articles in law reviews and medical journals on a variety of sports medicine legal issues, including a team physician's legal and ethical duty of care, an educational institution's duty to protect student-athletes' health and safety, and the participation rights of disabled athletes. In August 2003 he testified before a congressional subcommittee about the need for federal regulation of over-the-counter products used by athletes to enhance their performance despite significant health risks. Mitten currently serves as chair of the National Collegiate Athletic Association's Competitive Safeguards and Medical Aspects of Sports Committee, which is responsible for formulating guidelines and recommendations to protect intercollegiate athletes' health and safety.

After ten years at South Texas, Mitten was recruited to become a Marquette Law School faculty member. "I wasn't looking to leave South Texas," Mitten recalls, "but I had to seize the opportunity to return to the Midwest and teach at an excellent law school that is part of a Catholic, Jesuit university." Upon Mitten's arrival, Dean Howard Eisenberg charged him with making Marquette's sports law program the best in the country. With substantial assistance from the Law School's administration and faculty, the National Sports Law Institute's Board of Advisors, and the Institute's Associate Director Paul Anderson, this goal was quickly achieved.

Now the nation's most comprehensive sports law program, Marquette's program attracts students from all over the country. Mitten sketches out some of the program's goals: "Marquette's sports law curriculum gives students the opportunity to study how several bodies of law interrelate in regulating one of the nation's largest and most popular industries. Our program provides students with a readily transferable package of legal knowledge and skills that is valuable regardless of whether they ▶



ever practice sports law. It also gives them an interdisciplinary perspective since economic, sociological, and historical factors have a significant influence on the development of this area of the law.”

Mitten recently completed a two-year term as Associate Dean for Academic Affairs. Serving as the school’s second-in-command is a challenge at any time, and Mitten’s term covered an important transitional period for the Law School. Dean Eisenberg originally asked him to succeed Professor Shirley A. Wiegand and to work with him as Associate Dean, but Eisenberg died a month before Mitten was to assume this position. Mitten thereupon served as Associate Dean for both interim Dean Janine P. Geske and Dean Joseph D. Kearney. He deeply regrets not having had the opportunity to work with Dean Eisenberg in this capacity, but is very enthusiastic about the Law School’s future based on his experiences as Associate Dean. He says with confidence, “There’s no doubt that both Janine and Joe share Howard’s philosophy regarding the future direction of Marquette Law School.”

Now able once again to focus his attention on Marquette’s sports law program and the National Sports Law Institute, Mitten is eager to

develop the growing national and international reputation of the program and the NSLI. This rapidly growing area of law with global implications attracted sports law professors and lawyers from six continents and 14 countries to the NSLI’s 2003 sports law conference in Milwaukee. Mitten currently is coauthoring a sports law casebook that will be published by Aspen in early 2005; one of its unique features is that it devotes an entire chapter to Olympic and international sports law issues. Having recently participated in an international symposium on Sino-American sports law at Huaqiao University in the People’s Republic of China, Mitten is looking forward to teaching a course on American sports law at the University of Melbourne in Australia in February 2006.

Mitten long ago overcame his fear of public speaking and credits careful preparation and now a lot of experience for his having developed the ability to become a law professor who teaches both inside and outside the Law School. He frequently speaks throughout the country before groups of law professors, lawyers, physicians, and athletic administrators on a variety of sports law topics. His peers elected him to the Sports Law Association’s Board of Directors, and he formerly served as chair of the Law and Sports Section of the Association of American Law Schools.

Mitten brings much to Marquette Law School. It is evident that he enjoys using sports law to help provide the school’s students with a well-rounded, interdisciplinary legal education which develops a variety of transferable legal skills. It is equally evident that he provides them an example of how they should strive fully to use their talents, knowledge, and skills to serve others, even if it may be necessary to overcome some personal obstacles in order to do so. •



buddhist scholar and law school chaplain

by Sonya Bice, 1L

Eight years into retirement, Father Richard Sherburne, S.J., is still going to work every day. Sherburne's office these days is the student lounge in the basement of the Law School. His office hours coincide with the busiest times of the day, when the lounge is filled with the chatter of students, the drone of the TV, the clicking of laptop keyboards, and the occasional ding of a microwave.

Dressed in gray slacks, sensible black shoes, and a cardigan, the unassuming Sherburne brings to mind the gentle Mr. Rogers. One might not immediately guess that he is a priest, much less an erudite scholar of Latin, Greek, Sanskrit, and Tibetan, who has met and corresponded with Thomas Merton and the Dalai Lama and traveled widely in India, Nepal, Bhutan, and Tibet.

Sherburne is chaplain of the Law School, although he sometimes confides, dryly, that he doesn't know exactly what a law school chaplain does, or how, exactly, a doctorate in Buddhist studies prepares one to do it.

Professor Janine Geske, who sought his appointment while serving as interim Dean of the Law School, had an idea of what she wanted when she decided to revive the longstanding tradition of having a chaplain.

"The Jesuit identity of Marquette and Marquette Law School is an important aspect of our legal education," she says. "I wanted someone who would mix well with students, who was a good listener, somebody who's not dogmatic."

She had not yet met Sherburne and could not have known how accurately she was describing him. But her

experience working with him has only confirmed her opinion that his low-key, Buddhist-influenced, and nondoctrinaire approach makes him the right person for the job.

“He loves being here. There’s an energy in his work here,” Geske says. “I think he really does epitomize the Marquette Law School Ignatian mission.”

Professor Alan Madry agrees. “Besides being available to students, he comes to faculty meetings, to faculty colloquia and workshops, and is a very important part of the faculty reading group,” Madry says. “When Dick first arrived, he made a point of seeking out faculty and inviting each of us to lunch. He’s really become an important part of the law school community.”

Milwaukee born and bred

At an Ignatian retreat for alumni that Geske organizes annually at a Wisconsin retreat center, Sherburne was seated at the table with other attendees when one of the nuns approached the table, looking in vain for someone wearing a clerical collar. When Geske pointed her to Sherburne, dressed in his St. Robert’s sweatshirt, the nun asked whether she should prepare the chapel for Mass.

“He said, ‘I prefer giving coffee table Masses,’” Geske relates. “And so that’s what we did. Our Mass was over a coffee table in the lounge. It’s so typical of him.”

Born and raised in Shorewood by devoutly Roman Catholic parents, Sherburne attended parochial schools all his life, graduating from Marquette University High School in 1944. (The class recently gathered for its 60th high school reunion.)

He went to sign up for the Marines but was turned away because he had two brothers already serving. He looked into joining the Canadian forces and almost pulled it off—until he tried to obtain the requisite parental permission. It was only then that he considered the priesthood.

“I wanted to get into some kind of uniform,” he says, half-joking about his reasons for joining the Jesuits. “At 17, what do you know?”

His decision was influenced by his admiration of the young seminarians who had taught him Latin and Greek at Marquette High. And there was his devout French-Canadian mother, who, when it came to her youngest son, was understandably more enthusiastic about a career in the church than a career in the military.

“I’m sure a lot of it had to do with my mother, who I knew would be delighted,” he laughs. “She was convinced I’d be pope someday.”

So he went to St. Louis University to begin his studies in the classics, philosophy, and theology.

Back to Milwaukee, and then beyond

It was a case of chicken pox that kept Sherburne from shipping out to the Caribbean in 1950 to teach the classics in the Jesuit schools in British Honduras (now known as Belize). He had completed his philosophy studies and was slated to travel south with a group.

“I was left sitting behind in a tub of epsom salts and someone else took my place,” he recalls. “I was very disappointed.”

So instead of the Caribbean, his destination was slightly less exotic locales: rural Kansas, Nebraska, and Missouri.

After completing bachelor’s and master’s degrees in the classics, and after his theology studies and ordination at Gesu Parish in 1956, Sherburne wound up his Jesuit training in Decatur, Illinois. Then he learned he would be moved again.

“To my great surprise, I was assigned to Marquette,” he says, noting that priests were usually placed far from their hometowns. “That sort of thing did not happen in those days.”

At Marquette, Sherburne taught classics, advised foreign students, and even served a three-year stint as dean of students. His work during that time with foreign students, many of them educated at Jesuit schools abroad, sparked an interest in Asian culture and religions. *The Early Jesuit Travelers in Central Asia*, a book given to him by Father George Ganss, fanned the flames.

So in 1968 he left Marquette to embark on what would be a distinguished thirty-year career in Asian and Buddhist studies. “And that,” he says, “was a whole new life.”

He spent a year with Canadian Jesuits in Darjeeling, India, an experience he now recalls as the happiest of his Jesuit life. He earned a second master’s degree and a doctorate at the University of Washington, studying twice weekly with Buddhist monks. For two decades, he taught in the religious studies department at Seattle University, retiring in 1996.

Sherburne’s published works range from Latin teaching texts to biographies of Jesuits in seventeenth-century Tibet. He has also produced a series of teaching videos on Asian religions.

The culmination of his scholarly work is a 300-page annotated translation of a Tibetan holy text by Atisha, an eleventh-century teacher revered by Tibetan Buddhists. The Dalai Lama, with whom Sherburne has met in the United States and in India, wrote in the foreword, “The translation of the text into English here by the noted Christian scholar Richard Sherburne, S.J., illustrates cooperation between religions that enhances mutual understanding and draws the world together in recognition of the common goal of bettering humankind.”

Back to Milwaukee, again

Following his retirement in 1996, Sherburne reluctantly left the Northwest, where, on Vancouver Island, he had for years found solitude in a cabin he had built by hand. He returned to Milwaukee yet again to be near his family. (One sister joined the School Sisters of Notre Dame and taught English at Mount Mary College; other siblings went into nursing, teaching, architecture, and engineering.)

Like many newly retired people, he looked forward to travel. Unlike most, Sherburne immediately set out on a punishing six-week journey through Mongolia, China, Tibet, Cambodia, and Java. Travel had been a passion since his first trip abroad in 1961, when he spent a summer at the American Academy in Rome as a Fulbright scholar. He has spent time in India, Nepal, Tibet, and Bhutan on several occasions, most recently in 2000.

Since Sherburne became the Law School’s chaplain in 2002, weekdays find him at Sensenbrenner Hall, where he spends several hours a day among the students, usually around the noon break and again before the evening classes.

His day begins early. He typically rises at 4 a.m. and spends a couple of hours e-mailing family, colleagues, and friends in far-flung places: Cameroon, Singapore, Calcutta. Around 6 a.m., wearing a gray St. Robert’s sweatshirt, he heads out for a meditative walk, sipping a cup of black coffee and smoking a cigarette. As he walks across the quiet campus, he greets the other early risers—the grounds staff, security guards, and runners. His morning stroll is timed to end when the *New York Times* lands on the steps of the Jesuit Residence. He reads the *Times*, the *Chicago Tribune*, and the *Milwaukee Journal Sentinel* before breakfast.

Sherburne says that he prefers reading newspapers to watch-

ing television news. This is in the interest, he suggests, of “avoiding spontaneous combustion”; a fierce pacifism and sense of outrage in the face of social injustice have intensified as he has gotten older. Sherburne suggests that it is unclear whether that is because there is more injustice or because he just has less patience.

Nancy Gettelman has been a friend of Sherburne’s since they worked together at Marquette in the 1960s. She and her late husband, Tom, and their daughter traveled in Asia with Sherburne on several occasions. She and Sherburne collaborated on a five-volume video series, one of which, “Bhutan: Himalayan Cultural Diary,” won a bronze Telly in 1994 in the national video and film production competition. She speaks warmly of Sherburne, who she says “would have made a good psychiatrist.”

“He’s very kind and sensitive, not because you’re supposed to be as a priest, but because that’s who he is,” she says.

She pauses.

“At the same time, he also has very strong opinions, so if he doesn’t like something, he’s not *necessarily* sensitive.”

A reminder of the Jesuit ethic

Whether talking with students in the lounge, meeting alumni at social functions, or having lunch with faculty members, Sherburne sees the chaplain’s presence as a visible reminder of the Jesuit ethic of the school.

“I do feel it’s worthwhile just being there,” he says. “They’re already on the right track; they have a sense of public service. I couldn’t improve on that. People who are motivated from a sense of public service, whatever religious tradition they come from, that is encouraged here.”

And others agree.

“Dick’s presence at the Law School represents what to me is the great and noble Jesuit spirit and the Jesuit intellectual tradition,” Madry says. “You’re not going to find a more intellectually vital, dynamic, interested, and interesting person than Dick.

“That’s one of the most wonderful things he contributes here—just having someone among us with his spiritual and intellectual stature and having him available to faculty and students. It enriches the school for all of us.” •



Patrick Flaherty is a second-year law school student with a full-time course load, a wife, a home—and a vision for his fellow law school classmates. As president of the Student Bar Association (SBA), he has committed himself to the mission of the association. Flaherty's involvement with SBA began only weeks into his first year of law school when he ran for class rep. He was elected and placed on a committee that planned cultural and social events for students. He then ran for SBA president last April and was elected to a one-year term.

"I became involved in SBA in large part due to the influence of an upperclassman during my own orientation. He said great things about the organization, and I thought it would be a nice way to become involved in the school," says Flaherty.

All Marquette Law School students are automatically members of the Student Bar Association. There are no formal dues, but a \$25 fee per student comes out of tuition to fund the programs.

Flaherty says that the objectives of the Student Bar Association at Marquette University Law School are fourfold:

- **sponsor ethical, academic, professional, social, and cultural activities for its members**

"For example," says Flaherty, "we brought in a well-known speaker, Professor Charles Whitebread of USC, to speak to the first-year students about exam-taking strategies and preparation, helping them to relax and organize." The SBA also hosts the Malpractice Ball that more than 400 people attend; it is a joint undertaking along with the Marquette Dental School and the

patrick flaherty

Student Bar Association president

Medical College of Wisconsin. In the spring, the SBA sponsors the popular Follies and in the fall a Halloween party. Other social events organized by SBA include a student-faculty softball game and possibly a tour of the Milwaukee Art Museum.

- **represent student ideas and concerns to the faculty and administration**

The SBA recently invited the entire student body to an open forum, held during the lunch hour, to discuss concerns, questions, and suggestions about and for the school. "It was a very informal, fairly well-attended gathering of students, facilitated by the SBA, in which students shared their ideas, which were, in turn, shared with the administration," says Flaherty. "We talked about what is working and what can be improved upon." For example, through the SBA's effort last year, a proposal for a faculty advising program for first-year students was presented and has since been implemented by Associate Dean Peter K. Rofes and the faculty.

- **serve as a communication link between students and the faculty, administration, alumni, and the Milwaukee community**

"This goes hand-in-glove with the previous objective," says Flaherty. "We don't have a real need to act as liaisons because the Dean and faculty have great open-door policies and are very easy to have conversations with. But if the need arises, we are happy to take the initiative."

- **represent the American Bar Association to the student body**

"This is done through Shanna Conner, a third-year law student," explains Flaherty. She lets the Student Bar Association at Marquette know what is going on at the ABA, and vice versa. This also affords students an introduction to the ABA, which Flaherty believes can be a useful resource for networking, professional development, education, and support.

The SBA was chartered in 1952 and is a good introduction to state and national bar associations and what they have to offer their members. "The SBA at Marquette Law School," says Flaherty, "is a great group of people with a fabulous work ethic, who are reflections of the Law School itself." •

sean reilly

Assistant Dean for Admissions

Sean Reilly's job, as the new Assistant Dean for Admissions, is clear. "We want to enroll the strongest, most diverse class we can," he says. This is not to say it is easy. In the past three years, there has been a significant upsurge in applications to Marquette and other law schools. Last year, for example, Marquette Law School received more than 1,800 applications for some 200 spots. Competition among schools for top students has increased as well.

Reilly attributes the general upswing in applications to a confluence of factors, including the economy, technology, and the media. "The people who went back to college many years ago when the economy started to falter are now ready for graduate and professional school," he suggests. "And with the advent of electronic applications and the Internet, the information-gathering and application processes are much more accessible." Those aspects, coupled with many television shows that reflect on the positive aspects of lawyering as a profession, all contribute to the significant increase in inquiries and applications and interest in the legal profession.

As for the record number of applications to Marquette Law School, Reilly thinks it also has something to do with how the Law School has distinguished itself. "It is the strong sense of community that is pervasive among the faculty, staff, and students here," he says.

This is the same quality that drew him to accept the position this past fall when he was appointed the new Assistant Dean for Admissions. "There was an outpouring of interest and helpfulness from everyone," he says. Reilly, a New York native, was recruited by Marquette from New York University School of Law, where he was Associate Director of J.D. Admissions. Having arrived this past September, he wants to tap into the good will of the faculty, students, administration, and alumni to continue outreach to applicants and to keep the Marquette Law School community strong and growing.

This past fall, Marquette enrolled 168 full-time students and 56 part-time students. Only 40 percent of this year's incoming full-

time class came directly from undergrad schooling. And to a greater degree, the part-time class includes many people who are coming to law school from another profession.

The school starts reviewing applications on October 1, on a rolling-admission basis. "Each and every application is reviewed," explains Reilly. The Admissions Committee, consisting of seven faculty, takes into account a variety of factors when considering applicants, including undergraduate grade point average, how the student performed relative to his or her peers, trends in grades, LSAT score, involvement in extracurricular activities, and whether the applicant displays leadership skills. Also considered are work experience, letters of recommendation, and writing ability. "We are looking for talented people who will contribute to the law school community and the profession in a positive way," he notes.

Reilly says that he is enjoying his first year at Marquette and in the Midwest. This is not to suggest that he does not miss aspects of New York City. He gives one example: "I wouldn't mind finding a place that sells pizza by the slice." •



kathleen mcmanus

A Pioneer in Legal Writing

Professor Kathleen H. McManus, L'85, retired this past spring after serving the Law School for many years as a legal writing professor and as director of the legal writing program. In a recent interview, McManus shared her reflections on the Law School and legal writing.

A role model for nontraditional students, McManus started law school when she was already a wife and the mother of four daughters. Law was her second career; her first career was as an elementary school teacher. Recalling her student days, McManus is grateful for the constant support and encouragement her husband Hugh McManus, L'65, and her children gave her at home. At school, McManus enjoyed the intellectual game her classes presented. “A Marquette education spoils a person for life,” McManus says. “Students are challenged and inspired intellectually by professors who are completely accessible and who care about teaching.”

According to McManus, one of the other distinguishing characteristics of a Marquette education is that its students learn in an environment guided by the Jesuit mission. The Jesuit mission, to be a person for others, is pervasive at the Law School, McManus believes. She says that Marquette law students learn they are privileged to practice law as a means to serve others.

After working briefly in private practice, McManus was offered a position as the director of the Law School's legal writing program. In those early years, legal writing programs were in their infancy across the country. McManus undertook to develop Marquette's program. Initially, McManus was assisted by adjunct faculty. Later, she helped to develop the program into one staffed by full-time legal writing faculty, like herself. McManus also gained some national attention for the Law School's legal writing program through her own scholarship and leadership in professional organizations.

Dean Joseph D. Kearney recalls Professor McManus's influence. “When the Law School determined a few years ago to go entirely with full-time legal writing faculty—we now have six such faculty—it was in many respects a tribute to Katie,”

Kearney says. “Our adjuncts were wonderfully talented, but we could see, through Katie's example, how much more time full-time faculty could give the students, particularly in one-on-one meetings to discuss the students' writing.”

McManus applauds the emphasis the Law School places on legal writing. Students now study legal writing and research in their first year of law school, but they may also take advanced legal writing and research courses in their second and third years. These courses take legal writing and research one step further to reinforce established skills and expand on them. Professors in other areas of the law are aware of the connection between legal writing and their disciplines, so that legal writing is taught across the curriculum. Students can explore legal writing outside the classroom by writing in law journals or participating in moot court competitions.

Asked why legal writing is such an important component of a law school education, McManus is quick to point out the connection between legal reasoning and writing. McManus explains that the writing process actually facilitates a person's thinking process. Good writing can therefore lead to better legal reasoning.

McManus's legacy is without question a commitment to, and a celebration of, legal writing at the Law School. The Law School will always remember the spirit with which she has contributed to legal writing and to the education of countless Marquette lawyers. McManus is an enduring inspiration to her former colleagues and students alike. •



jessica price

Dedicated to Pro Bono Work

An attorney enjoys legal writing so much that she leaves the practice of law to teach the subject. But how to stay in the game herself? “Pro bono appeals,” Professor Jessica Price answers. “Staying engaged in challenging legal writing projects of my own through pro bono projects has been a perfect complement to teaching writing.”

Price was guided by her practice experience. When Price joined the Marquette law faculty in 2002, she left Foley & Lardner’s litigation department, where she had done a substantial amount of appellate work. She also had served as a law clerk for Wisconsin Supreme Court Justice Jon P. Wilcox during the 1999–2000 term. “My clerkship was a fantastic experience, and appeals work was always my favorite part of practice,” she explains. “I appreciate the entire process of working on an appellate case—scouring the record, researching the law, developing a strategy to attack the decision, and forming that argument into a compelling appellate brief.”

Price put her name on the list of attorneys willing to take cases through the pro bono program of the Wisconsin State Bar’s Appellate Practice Section. In March 2003, Appellate Practice Section Chair Colleen Ball contacted Price to ask whether she would be interested in taking an appointment as an amicus curiae representing the interests of a debtor in a Fair Debt Collection Practices Act claim, in the Seventh Circuit.

“I quickly realized,” Price says, “that the main issue in the case, and the issue the court probably was most interested in, was a rather interesting one—whether a lawsuit filed to collect a debt can constitute an initial ‘communication’ with the debtor under the Fair Debt Collection Practices Act.”

In addition to researching and writing a new brief supporting the plaintiff’s side of the

argument, Price had the opportunity to argue the case before the Seventh Circuit—twice. After a 2-1 victory for Price’s side, the development of a split with another circuit prompted the Seventh Circuit to rehear the case en banc. Price admits that she was pleased to have the unusual opportunity to argue before the full Seventh Circuit. But she may not be finished: she recently prevailed before the full Seventh Circuit, by a 6-4 vote, and Price therefore is waiting to see whether the losing party seeks review of the circuit split in the Supreme Court.

Price has found her work on a second pro bono case—an appeal on behalf of an asylum seeker—to be even more personally rewarding. Price first became interested in refugee and asylum law during law school. As part of her course work at the University of Minnesota Law School, she worked at the Refugee and Immigrant Program of Minnesota Advocates for Human Rights, a Minneapolis human rights organization which assisted certain asylum-seekers. “Before my work at Minnesota Advocates, I had an abstract understanding—from reading news stories and human rights reports—that people in other parts of the world lived through civil war and suffered through persecution or even torture at the hands of their own governments,” Price explains. “But it was quite a different thing to actually sit across a table, face-to-face, and hear the story of one person’s individual experience.”

When Price was looking for pro bono appellate work in 2002, several years after leaving Minnesota, she contacted the program director, who was happy to give her one of the program’s many pro bono cases, a case involving a woman from Africa who fled from severe persecution several years ago. Putting her legal skills to work on behalf of this woman has been immensely gratifying for Price. “My client’s strength astounds me. Her ability to maintain her patience, dignity, and hope, despite years of suffering and uncertainty, is an inspiration. There are no words to express the satisfaction I experience in trying to help this client find a safe place to live her life in peace.” •



alumni notes



Mike Guerin, L'74, Gimbel, Reilly, Guerin & Brown

and decided to complete his undergraduate degree. In 1970, Guerin earned a bachelor's degree from Marquette University and, when he was in his thirties, went on to Marquette Law School. "I was of that era," he explains, "that you went to the lecture on the first day to be told, 'Look to your left, look to your right—one of you isn't going to be here!' I was pretty sure I was going to be the one." But through the personal attention afforded him by Dean Boden and Associate Dean Mentkowski, as well as Professors Ghiardi and Aiken, he graduated in 1974. "They took time to work with all of us and make us better lawyers," says Guerin.

He is grateful for his Marquette education and has done his best to make a difference. "I thought I received a good education in the 1970s, and it's an even better law school today," says Guerin. "The commitment to both rigor and *cura personalis* was articulated by my dear friend Howard Eisenberg and is being carried on with even more aggressiveness by Dean Joseph Kearney," says Guerin. "We are blessed with Joe, and the Law School's future is very bright."

Although he always thought he was going to be a prosecutor, Guerin's career took a much different turn. "That's the wonderful thing about life," he says. "Opportunities present themselves, and if we are in a position to take them, we do!" He joined the firm of Frank Gimbel, L'60, after graduating from law school and is now a partner in Gimbel, Reilly, Guerin & Brown in Milwaukee. The focus of Guerin's practice is in the areas of personal injury, criminal law, and general civil litigation. He has taught various courses at Marquette, including trial skills. Guerin has been active in the Law Alumni Association, serving in the past as its president, and is a member of the Woolsack Society. He and his wife have three children.

All of this scarcely leaves much time for other matters. But when time permits, Guerin says he plays "bad golf" and rides his Harley motorcycle.

Guerin was recently elected by lawyers statewide to serve as the next President of the State Bar of Wisconsin, a position that he will assume on July 1. He is looking forward to it. "I love being a lawyer," Guerin says. "I am also very proud to be one and take my responsibilities as a lawyer very seriously."

Without a doubt, D. Michael Guerin took a rather unconventional path to his partnership in the firm of Gimbel, Reilly, Guerin & Brown and to his leading role in the state legal community.

After an initial rough start in college following high school, Guerin decided to abandon the educational effort and instead to join the Milwaukee Police Department. For many years, he worked on the tactical enforcement squad during the late shift. Guerin later went on to work as a special agent investigating organized crime in Milwaukee and Madison for the Wisconsin Department of Justice. Throughout his career in law enforcement, Guerin recalled in a recent conversation, he was encouraged by the many lawyers with whom he interacted to pursue his dream of becoming an attorney.

His journey was restarted when he was in his twenties

1 9 5 0

John Cahill, age 80, a resident of Salt Lake City, ran the Virginia Beach Rock 'N' Roll Half Marathon in September 2004. He began running at age 62 and now has run more than 30 marathons, including the New York City Marathon eight times, as well as races of varying distances in places from Moscow to Barcelona to Berlin.

1 9 5 6

Claude Kordus recently started Kordus Holding, LLC, a real estate venture capital firm based in San Diego. He is the president and manager, and his wife, Bobbie Hilkert Kordus, is the finance director.

1 9 5 8

Harry G. Holz has been recently elected a Fellow of the American Bar Foundation. He is a retired partner of Quarles & Brady LLP in Milwaukee.

1 9 6 1

Richard C. Ninneman, an attorney with Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*, with specific reference to the practice of business litigation.

1 9 6 8

Frank J. Daily, senior partner at Quarles & Brady LLP, has been elected to the Board of Directors of the

University of Alabama School of Law Foundation for the term 2004–2008. He serves as chairman of the Cherry and Bart Starr Endowed Scholarship Fund at the law school and has tried numerous product liability cases in state

and federal courts in Alabama. Frank has also been appointed by Wisconsin Governor Jim Doyle to the Governor's Advisory Council on Judicial Selection.



William A. Jennaro, Judge (ret.), of Cook & Franke S.C., was selected by the Southeast Wisconsin

Professional Baseball Park District to do a "fairness-assessment" of the proposed settlement between the District and Mitsubishi Heavy Industries of America as well as other parties to litigation in Milwaukee County Circuit Court.

1 9 6 9

Patrick M. Ryan, an attorney with Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*, with specific reference to the practice of corporate, mergers and acquisitions, and securities law.

1 9 7 6

Thomas L. Frenn recently completed a two-year term as Chair of the Business Law Section of the State Bar of Wisconsin and was elected to the State Bar Board of Governors for the term 2004–2006. He currently resides in Brookfield with his wife Marilyn Frenn, an Associate Professor at Marquette University College of Nursing. Daughter Sara graduated from Marquette University College of Communication in December 2004, and daughter Kristen is a senior at the University of Minnesota, majoring in child psychology.

Eric J. Van Vugt, an attorney with Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*,

with specific reference to the practice of business litigation.

1 9 7 7



Jim Caraway received the U.S. Coast Guard Distinguished Public Service Award (the highest award granted

to civilians) for his patriotic response to the 9/11 terrorist attacks. He served as director of the Coast Guard Foundation since 1989 and took over the chairmanship in 2002. After three consecutive terms, he will be retiring to a more leisurely pace of life on an island off the coast of Florida with his wife, Bobbi.

1 9 7 9



John R. Lagowski has joined DeWitt Ross & Stevens in the firm's Intellectual Property Practice Group. He is a

registered patent and trademark attorney, and his practice is focused on drafting, filing, and prosecuting patent applications, primarily in the electrical and mechanical arts. John works out of the law firm's Metro Milwaukee office in Brookfield. Prior to joining DeWitt Ross & Stevens, he practiced independently in Milwaukee and at an intellectual property firm in Chicago.

John A. Rothstein, an attorney from Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*, with specific reference to the practice of business litigation.

1 9 8 1

David B. Bartel, an attorney from Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*, with specific reference to the practice of environmental law.

1 9 8 3

Thomas P. McElligott, an attorney with Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in *The Best Lawyers in America 2005–2006*, with specific reference to the practice of environmental law.

1 9 8 5

Mike Marcil has been named the Commissioner of the Sunshine State Conference as of September 2004. Since its inception in 1975, the SSC has risen from a men's basketball conference to one of the nation's premiere NCAA Division II athletic conferences; it currently sponsors championships in 14 sports.

1 9 8 9



Christine Liu McLaughlin is now a new shareholder at Godfrey & Kahn S.C. She is a member of the firm's Labor and Employment

Practice Group in the Milwaukee and Waukesha offices.

1 9 9 1



Jynine Schmidt Strand joined Godfrey & Kahn S.C. to work in its Real Estate Practice Group in the Waukesha office.

alumni notes

1 9 9 2

Jay Urban and **Scott Taylor** are the principal shareholders in the firm of Urban Taylor & Lee, S.C. The firm is located in the historic Collins Elwell Mansion on Prospect Avenue in Milwaukee.

1 9 9 3

David L. Coon recently formed a new partnership, Wimmer & Coon, LLP. The office is located in Waukesha.

1 9 9 4

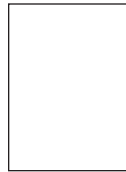
Scott Richardson of Richardson Financial Group, Inc. announced the formation of a new entity, Richardson Capital Management, LLC. The new firm was formed as a result of the continued growth of Richardson Financial Group's investment advisory practice. The formation of the new entity also coincides with the completion of the firm's new office facility in Menomonee Falls.

1 9 9 5

Paul Anderson, Associate Director of the National Sports Law Institute at Marquette Law School, has been elected Chair of the Sports & Entertainment Law Section of the State Bar of Wisconsin.

1 9 9 6

Alexander R. Kuszewski recently moved from Milwaukee to Shaker Heights, Ohio, to work for Rockwell Automation as Intellectual Property Counsel at its suburban Cleveland location.



Sara J. MacCarthy has joined von Briesen & Roper, S.C., as an associate in the appellate and litigation and risk-management sections.

Bill Miller is the Past Chair for the Sports & Entertainment Law Section of the State Bar of Wisconsin.

1 9 9 7

Robert E. Webb, a criminal defense attorney with the Wisconsin State Public Defender since 1997, was promoted to Manager in July 2003. He is currently serving on active military duty as a Judge Advocate General in support of Operation Enduring Freedom and was promoted to the rank of Major in July 2004. He has been awarded the Army Commendation Medal and Global War on Terrorism Service Medal in connection with his wartime service. He resides with his wife, **Sherry Terrell, L'95**, and their three children in Milwaukee.

1 9 9 9

Jon E. Fredrickson has been elected shareholder in the law firm of Kravit, Hovel, Krawczyk & Leverson, S.C. He resides in Milwaukee and continues to concentrate his practice in the areas of complex business, insurance coverage, bad faith, toxic tort, products liability, and real estate litigation.

2 0 0 0

Bridget Slaght-Krause currently works at the Milwaukee Public Defender's Office. She married Andrew Krause in May of 1999. Son Andrew "Drew" J. Krause was born on January 31, 2004.

Bernie and Erin Grall share more common bonds than most fathers and daughters. They are both proud to be Marquette Law School graduates, and they practice law together.

Bernie, a 1975 graduate, came to Marquette after earning an undergraduate degree in political science from the University of South Florida and then serving in the U.S. Marine Corps. He attended law school in Louisiana at Southern for a year and transferred to Marquette. "I believe God sent me there," says Bernie. "That's where I met my wife, Marge." Together, Bernie and Marge (Dental Hygiene '69) have eight children, one of whom is Erin.

The most important calling in the Gralls' lives has been to raise their children—five daughters and three sons. They are all involved in athletics, and Bernie has been right there throughout. He has taken his daughters to state championships in girls' softball and shares lots of pleasant memories with them. "When you are involved with your kids," says Bernie, "your kids *and you* stay out of trouble!"

Bernie is also very involved in his community, serving on many volunteer boards. He enjoys a successful and fulfilling legal career, which began in the mid-1970s when he worked for an insurance defense firm in Vero Beach, Florida. He clerked with the firm during summer and Christmas breaks while in law school and then accepted a full-time position. He stayed until 1979 when he established his own firm, today known as Grall, Fanaro & Glenn.

Bernie and his partners have been practicing together for more than 20 years. Throughout the years, he has most





Erin K. Grall, L'03, and Bernard F. Grall, Jr., L'75

emphasized the value of honesty and consistency.

“Despite the many bumps in the road, people who work with me, as well as against me, know that I mean what I say,” says Bernie. “It offends me when people say they are going to do something and then don’t follow through.” He

has sought to pass these virtues on to his daughter Erin, who entered Marquette Law School in 2000, twenty-five years after Bernie graduated.

Erin’s law school experiences show that those virtues have indeed been passed along. Erin followed in her father’s and her maternal great-grandfather’s footsteps in attending Marquette Law School. While a student, she served as both the Student Bar Association president and president of the Public Interest Law Society and led many of the groups’ initiatives. She also clerked for the U.S. Attorney’s Office, did some criminal defense work with the late Dean Howard B. Eisenberg, and worked for Westlaw. Dean Joseph D. Kearney says that he frequently recalls her example. “Erin was the heart and soul of the school during her three years here,” Kearney says. “Both her fellow students and many of us on the faculty learned a good deal from her.”

After graduating in 2003, Erin joined Bernie’s firm as its fourth attorney. “I am the only woman—and the youngest lawyer, by far!” she quips. “Dad and I work very well together and really complement each other’s styles.”

With just over a year and a half of legal work under her belt, she is happy to be exposed to a number of litigation experiences that, she suspects, she would not enjoy for a number of years at a larger firm. “My dad has great confidence in my ability and allows me to do a lot. He is a fabulous lawyer, and I’m

learning from the best,” she says. Despite the professional relationship, however, their family relationship takes precedence. “He signs memos to me ‘Pops,’” Erin laughs.

She is very proud of her dad, who won the largest-ever personal injury verdict in Indian River County (Vero Beach), Florida. This was a \$19.6 million award to a woman who was hit head-on by a state trooper, suffered brain injuries, and now requires 24-hour care. To Erin, this is public service of the sort she learned at Marquette. “We provide representation for people who don’t have the ability to stand up for themselves. Without our championing their rights, they wouldn’t receive the compensation that is necessary, as was the case with the victim of the head-on crash.”

Erin is grateful for her education at Marquette. “Service, leadership, and excellence were the goals instilled in us,” she says. “The entire experience—professors, administration, and curriculum—worked together to help me become the best attorney, the best person, that I can be.”

As close as Bernie and Erin are, Bernie has one pastime in which Erin declines to participate. Every year, Bernie puts tens of thousands of Christmas lights and decorations outside and inside the law office. The display is a local tourist attraction and has gotten to the point where Bernie has two separate garages to hold his decorations in the off-season. Erin does not do the same at her new house, which is a few miles away. In fact, she says, “My mom and I tried to discourage him this year, arguing that along with the rest of Vero Beach we were still cleaning up from the hurricanes.” Bernie demurred. “We need it more than ever,” he told Erin and Marge.



The Gralls' law office at Christmastime

alumni notes

2 0 0 0 (cont.)

Robert Teuber and Brookellen (Dulin) Teuber were married on September 5, 2004, in Waukesha.

2 0 0 1

Kristi Schoepfer has been elected Vice Chair for the Sports & Entertainment Law Section of the State Bar of Wisconsin.

2 0 0 2

Ben Menzel has been elected Treasurer for the Sports & Entertainment Law Section of the State Bar of Wisconsin.

2 0 0 3

Kathleen Healy is an associate with Urban Taylor & Lee S.C. in Milwaukee. The practice is exclusively plaintiff's-side personal injury and employment rights litigation.

Andrea B. Niesen (formerly, Andrea B. Kriegel) was married on June 5, 2004, in Wausau to Adam D. Niesen. They reside in Milwaukee, where she is an attorney at Kmiec Law Offices.

Jeff Tanner has been elected Secretary for the Sports & Entertainment Law Section of the State Bar of Wisconsin.

2 0 0 4

Henry M. Abromson is an attorney with the firm of Ober, Kaler in Baltimore, Maryland. He resides in Cockeysville, Maryland.

Andrew J. Bezouska has joined the Milwaukee office of Davis & Kuelthau, S.C., as an associate on the Labor and Employment team. He will focus his practice on general employment, school, and municipal law.

Sharon M. Horozaniecki has joined the Messerli & Kramer P.A. law firm in Plymouth, Minnesota, in the Credit and Collections

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do-gooders do great!

The Twelfth Annual Public Interest Law Society Auction—also known as the “Howard B. Eisenberg Do-Gooders Auction”—took place at the Pfister Hotel on Friday evening, February 18. The event surpassed its previous record and raised more than \$30,000 to support stipends for students participating in the PILS summer fellowship program for students working in public interest law.

The evening began with the silent auction, where more than 120 items, ranging from jewelry to baby-sitting services to tickets to events, commanded more than \$6,000. Two dramatic events occurred at the beginning of the live auction. First, Dean Joseph D. Kearney introduced Phyllis Eisenberg, who was attending her first auction since the death of her husband, Dean Howard Eisenberg, in 2002; she received a spontaneous standing ovation. Second, Dean Kearney announced that

the Law School would match, from the dean's discretionary fund, each dollar spent in the live auction.

The 20 items in the live auction—which included a Cajun dinner for 10 prepared by Professor Gregory J. O'Meara, S.J.—commanded some \$11,000 and more than \$22,000 when doubled.

More than 300 people attended. The event was organized by the PILS executive board, which consists of Elizabeth Conradson Cleary, Jess Johnson, Renee Mehl, Melanie Persich, Corinthia Van Orsdol, Doug Raines, and Jenni Spies. They were assisted by other members of the Law School community, including Jane Eddy Casper, Carol Dufek, and Christine Wilczynski-Vogel.

See you next February! Precise date to be announced.

The Woolsack Society is the premier donor-recognition society for Marquette Law School. Membership in the Woolsack Society is available to those who donate \$2,000 or more to the Law School on an annual basis or, in the case of recent alumni, an amount that is correlated to their year of graduation. The much-appreciated generosity of these and all other donors helps to ensure that Marquette Law School has sufficient funds to continue to build upon both its historic strongholds and its recent gains.

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wisconsin tax policy colloquium

by Prof. Michael K. McChrystal, L'75

State and local government funding is subject to intense pressures nationally and in Wisconsin. The fierce gubernatorial race in 2002, the politically polarized process leading to the current biennial budget, and the failed special legislative session in the summer of 2004 demonstrate the central importance and partisan difficulties of state tax policy issues in Wisconsin. In this contentious environment, the Law School convened an extraordinary assemblage of persons whose knowledge, experience, and insight on these issues would be almost impossible to match. The Wisconsin Tax Policy Colloquium took place at the Law School on April 15 and 16, 2004, and papers from the colloquium now have been published in a special issue of the *Marquette Law Review*.

The colloquium was limited to twenty-five invited participants in order to foster high-level discussions and a published record that would be useful and important in improving Wisconsin tax policy. We included governmental leaders, including Marc Marotta and Michael Morgan, Secretaries of the Wisconsin Departments of Administration and Revenue, respectively. Mark Bugher, who was Secretary of both the Department of Administration and the Department of Revenue at different times during the administration of Governor Tommy Thompson, also participated, as did Joseph Czarnecki, whose resume includes service as Budget Director for the City of Milwaukee and as a Wisconsin state senator.

Papers were presented by Professors Richard Pomp of the University of Connecticut and William Fox of the University of Tennessee, preeminent scholars in the field of state tax policy, and by two distin-

guished tax policy scholars from Wisconsin, Professors Vada Waters Lindsey of Marquette Law School and Andrew Reschovsky of the University of Wisconsin. The colloquium also included prominent tax attorneys and leaders of key non-governmental organizations, including Jere McGaffey, a retired partner at Foley & Lardner and former chair of the American Bar Association Section of Taxation; James Haney, President of Wisconsin Manufacturers and Commerce and a former Department of Revenue deputy; Jack Norman, Research Director at the Institute for Wisconsin's Future; Michael Butera, Executive Director of the Wisconsin Education Association Council; and Edward Huck, Executive Director of Wisconsin Alliance of Cities. In sum, the colloquium included disparate informed voices who offered incisive diagnoses and prescriptions concerning what ails the Wisconsin tax system.

Four themes dominated the colloquium: first, the Wisconsin tax system has serious flaws; second, there are fixes for the problems; third, the "taxpayer bill of rights" (TABOR) is a proposal whose consequences would be dramatic, for better or for worse; and fourth, the politics of short-term self-interest too often circumvent the adoption of sound tax policies. •



Participants at the Wisconsin Tax Policy Colloquium (from left): Michael Morgan, James Haney, Timothy Schally, Diane Hardt, Tim Sheehy, Mark Bugher, Joseph Kearney, Joseph Czarnecki, Richard Pomp, Marc Marotta, Sujata Sachdeva, Vada Lindsey, Jack Norman, Patricia Bradford, Michael McChrystal, Andrew Reschovsky, Ann Murphy, Yeang Eng-Braun, Richard Maslowski, Michael Butera, Jere McGaffey, William Fox, Mark Skidmore

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The special issue of the Marquette Law Review dedicated to papers from the colloquium is sure to be required reading on Wisconsin tax policy. In organizing the colloquium, the Law School confirms its role as a vital resource in identifying, addressing, and resolving important legal and policy issues in Wisconsin, and throughout the country.

Why Marquette Law?

by William J. Mulligan and Nathan A. Fishbach

At its annual meeting on April 27, 2004, the Eastern District of Wisconsin Bar Association (EDWBA) presented its Special Service Award to Marquette Law School. The first item below is the commendation accompanying the award, in the form of an article by William J. Mulligan, President of the EDWBA and a partner at Davis & Kuelthau, S.C., and Nathan A. Fishbach, Past President of the EDWBA and Chair of its Awards Committee and a partner at Whyte Hirschboeck Dudek S.C. This is reprinted with permission from the Wisconsin Law Journal.

Following the article are Mr. Fishbach's remarks in presenting the award to Dean Joseph D. Kearney, who accepted on behalf of the Law School, and Dean Kearney's remarks.

Why is the Eastern District of Wisconsin Bar Association bestowing its Special Service Award on an institution rather than a human being, the traditional honoree? Isn't this a bit strange?

On its face, it might seem to be unusual. However, it is also unusual for a law school to have such close ties with the legal community in which it resides and of which it is an integral part. Certainly, this is not an instance where there is a defined demarcation between town and gown.

A review of some statistics provides context. Six of the current federal district judges and magistrate judges in the Eastern District of Wisconsin are Marquette Law School graduates. Two graduates are serving on the Court of Appeals for the Seventh Circuit. Moreover, ten of the lawyers in the United States Attorney's Office grad-

uated from the Law School. Indeed, one wonders how many of these attorneys, who now spend their days in federal court, started their litigation careers arguing in third-year mock trials at Marquette.

But Marquette's impact is felt far beyond these data. Over the years, the Marquette Law faculty has played an active role in some of the district's most significant activities. For over a decade, Professor Jay Grenig has served as a reporter for the Federal Rules Committee and held a similar role on the Civil Justice Reform Act Task Force, both of which promulgated the procedures for this district's courtrooms. Law School Deans Robert Boden, Frank DeGuire, Howard Eisenberg, and Joseph Kearney have chaired or co-chaired the merit commissions that evaluated nominees for federal judgeships for Wisconsin's United States Senators, as has Marquette Professor Peter Rofes. Marquette faculty, such as Christine Wiseman, have served as special masters in discovery disputes in federal court. Ralph Anzivino has played an integral role in drafting a Model Chapter 13 Bankruptcy Plan for the district.

In fact, Marquette is such a part of the Milwaukee legal community that one of its professors, Daniel Blinka, now serves as the President of the Milwaukee Bar Association and is probably one of the first members of a law school faculty in the nation to lead a metropolitan bar association.

Marquette Law students have also played a role in the federal courts. Through Thomas Hammer's efforts, Marquette students have had the great privilege of working in the chambers of the district's federal judges, which has provided the students with incredible learning opportunities.



William J. Mulligan, L'60, and Nathan A. Fishbach present Dean Kearney with a framed copy of the article concerning the service award to the Law School

Throughout the years, Marquette Law has instilled in its students the importance of providing pro bono legal services for the poor. It is impossible to count how many Marquette alumni accept appointments to represent the indigent in court, advise the needy at no or a reduced fee, or practice in public interest law firms. Importantly, last November, at its first banquet, the Equal Justice Fund named an award for pro bono service after Dean Eisenberg.

And Marquette Law has been instrumental in the founding of this group—the EDWBA. The Law School, under the leadership of Deans Eisenberg, Janine Geske, and Kearney, has provided and continues to provide strong support to the Association. The EDWBA is particularly grateful for Marquette’s generous contribution to the Eastern District Historical Project, the EDWBA’s signature undertaking, which is creating and preserving archives of our district’s past.

Marquette Law School is not just an institution or entity. Rather, it is living and dynamic—and through its faculty and students (past and present) has demonstrated an ongoing and dedicated commitment to the Eastern District of Wisconsin’s legal community.

And for that, we are quite grateful.

Remarks of Nathan A. Fishbach, Past President, Eastern District of Wisconsin Bar Association, in Presenting the 2004 Special Service Award

April 27, 2004

Shortly after it was announced that Marquette University Law School would be the recipient of the Eastern District of Wisconsin Bar Association’s 2004 Special Service Award, EDWBA President Bill Mulligan and I wrote an article, entitled “Why Marquette Law?,” for the *Wisconsin Law Journal*. In that article, we attempted to discuss the accomplishments and contributions of

Marquette Law School to the life of this district.

In writing this article, we discovered how difficult, indeed daunting, it was to summarize Marquette's contributions in 600-some words. It is no less difficult to do so during a three-minute presentation.

Perhaps I can best summarize Marquette Law's contribution to this district with the following observation:

For the almost quarter of a century of which I can speak with first-hand knowledge, as a litigator in the district (and, incidentally, as a non-Marquette alumnus), I cannot think of a single significant project in the courts of the Eastern District of Wisconsin in which Marquette Law School did not play a significant leadership role.

Here are two quick illustrations, particularly relevant today because they bear upon the life of the EDWBA.

Approximately three years ago, a small group—perhaps seven or eight of us—convened in Judge

Stadtmueller's chambers for the initial organizational meeting of an association that later became known as the EDWBA. The EDWBA did not even have a name yet! Dean Howard Eisenberg, of blessed memory, was one of

the attendees. During the meeting, there was a substantial amount of discussion—maybe even friendly argument—regarding the group's mission and purpose. There was a debate over whether there was a need for such a group. We even asked: "Would there be anything for such a group to do?" Dean Eisenberg did not say very much, just observing and taking it all in. Finally, toward the end of the meeting, Dean Eisenberg said

the following words: "It is still up in the air as to the form that this group will take. However, I can tell you that this is a good idea. Count Marquette in. Marquette will do whatever you need or want at any time. Period."

Fast forward almost three years later. The EDWBA is

**Remarks of Dean Joseph D. Kearney
in Accepting EDWBA Award on Behalf of the Law School**

Thank you, Nathan. Permit me first to congratulate the winners of other awards today. They include two of our alumni, Greg Conway of Green Bay and Judge Tom Curran—who I see is joined by his son, Bill Curran, himself an alum, and by others from Mauston. I shall have to avoid being too narrow in my geographical claims for Marquette.

This is a meaningful award for us. Marquette Law School is Milwaukee's law school. This is true as both a fact and an aspiration (even if it is not the extent of our aspirations). We have sought not only to provide legal education but to serve the city and the state in other ways as well. Thus, even in recent decades as we have sought to act more broadly, we have tried to maintain our historic stronghold.

Today's award is some evidence that our effort has been successful. So on behalf of my faculty colleagues, several of whom are here with me today—Dan Blinka, Irene Calboli, Janine Geske, Jay Grenig, and Tom Hammer—and our students and alumni, thank you. All of us associated with Marquette Law School will try to continue to merit the award.

up and running. We have over 300 members. Indeed, it is in the midst of developing its signature undertaking, the Eastern District Historical Project. This Project is archiving the district's history so that future generations can relive the work of its judges, attorneys, and litigants.

During the quarterly EDWBA Board meeting, our district's librarian, Mary Jones, and an archivist whom we retained, provided a report on the Project's progress. They provided great news. The Project's initial work was on target. They distributed a wonderful booklet, showing how the archives were organized, and discussed some of the little-known events and documents that were being discovered through this Project.

Unfortunately, they also had bad news. Apparently, the Project had just burned through its initial developmental seed grant from the State Bar. The EDWBA needed additional funding to finish the Project's first stage. The Board was not quite sure how to deal with this problem. The matter was left unresolved.

A few weeks later, an EDWBA Executive Committee meeting was held. One of the participants inquired as to the Project, stating, "What are we ever going to do about funding?" And Bill Mulligan, our President, casually replied that Marquette Law Dean Joseph Kearney, who serves on the EDWBA Board and who had attended the prior Board meeting where the discussion took place, made a generous donation to the Project so that we could continue.

The point of these stories is not to illustrate the importance of the work of the EDWBA, but rather to highlight the acts of leadership of Marquette Law School in contributing to the life of this district.

The events have a common thread. On both occasions, Marquette Law School acted quickly, quietly, and without hesitation to meet important needs.

And what is even more interesting is that these two illustrations are not isolated events. Rather, similar acts occur on an ongoing basis each and every day, where Marquette Law School contributes to the life of our community quickly, quietly, and without hesitation.

In fact, these two stories illustrate how Marquette Law School does more than simply contribute to the legal community here. Rather, Marquette embraces it.

Marquette sets an example—a benchmark—for all of us in demonstrating how we must fulfill our own obligations of service to our community. Quite simply,

Marquette is a very special place.

All of us who are fortunate to practice in this district are appreciative of the integral role that Marquette Law School plays here.

And for that reason, the Eastern District of Wisconsin Bar Association believes that the Marquette University Law School is truly deserving of its 2004 Special Service Award. •



Rev. Robert A. Wild, S.J., President of the University, with Professor Thomas J. Hammer, at the Alumni Memorial Union on the occasion of the 2004 Pere Marquette Dinner



This past year, Marquette University selected Professor Thomas J. Hammer of the Law School as the recipient of the University's Robert and Mary Gettel Faculty Award for Teaching Excellence. Professor Hammer had been nominated (quite unbeknownst to him) by several of his colleagues at the Law School, and his nomination was supported by letters from colleagues, students, and alumni.

The award was presented on May 6, 2004, at the University's annual Pere Marquette Dinner, an end-of-year gathering of faculty and administrators from across the University. Dr. Madeline Wake, Provost of the University, asked Dean Joseph D. Kearney to present the award on behalf of the University.

Remarks of Dean Joseph D. Kearney

in Presenting the University's Gettel Award for Teaching Excellence

Thank you, Dr. Wake. Permit me to begin by explaining why it is such a privilege for me to present this award to Tom Hammer. Tom was the Associate Dean for Academic Affairs when I interviewed and was hired as a faculty member at the Law School. To this day, I teach an unusual seminar that he helped me to design in the months before I came on board. So it was some disappointment to me that, by the next fall when I arrived, Tom had yielded the baton of the associate deanship to another of our colleagues. (At the Law School, the associate deanship is a position that rotates among the faculty—apparently just frequently enough that whoever holds the position yields it to another colleague right before he or she has permanently ruined all relationships with faculty colleagues.)

In any event, although he was no longer associate dean, it was nonetheless to Professor Hammer I turned most frequently as a new faculty member to discuss teaching. It was Tom Hammer I sought out, for example, when I was determining the best way to design a comprehensive final exam for my civil procedure course. It was Tom Hammer with whom I would speak when I was seeking to find the right balance between being demanding of our students and being understanding or patient. In fact, to this day it is with Professor Hammer more than with anyone else that I continue to talk about the central mission of the Law School, which is the teaching of our students.

I do not think that my experiences as Tom's colleague on the faculty are unique. The faculty letters in support of Professor Hammer's nomination are striking. They include an individual letter from each living faculty member of the Law School who has been privileged to win one of the University's teaching awards: legendary Professor Emeritus Jim Ghiardi, Marquette Law School class of 1942, Professor Jack Kircher, Professor (and this evening's Master of Ceremonies) Dan Blinka, and, someone whom many of you will recall, former Professor Christine Wiseman. But many—in fact, most—of Tom's other law school colleagues are represented as well in the dossier. It is evident that Marquette Law School faculty regard Professor Hammer as a model worthy of our emulation as a teacher.

And now that I serve as an administrator as well as a faculty member, I have an additional perspective on Tom's undertakings. I will pass over his extraordinary work with respect to the criminal law in Wisconsin and his service to the bar and public policy of this state—matters that are well reflected in Tom's dossier. I wish to recount instead his seemingly more mundane or less glamorous undertakings in rebuilding our clinical and externship program, which have impressed even national authorities in recent years. Simply put, Tom's work has been extraordinary.

Permit me to give some brief context: It has always seemed to a number of us that, as a Jesuit law school, we have a duty to ensure that our students have the opportunity during

their law school educations to get a direct sense of how they can use their developing professional skills actually to help people in society. Without providing excessive detail about them, it is enough to say that our clinical and externship programs are the primary means whereby we can give our students this opportunity. Unfortunately, for several years in the mid-1990s, these programs had fallen into some disrepair and neglect.

Professor Hammer then volunteered to take over the programs and, with his extensive connections in the Wisconsin legal community and with his deep dedication to our students, in short order has built up those programs to a point where I can feel comfortable in saying that I would match our programs against those of virtually any other law school in the country. Putting together these curricular offerings is an extraordinarily time-intensive venture: it requires making individual arrangements with such diverse entities as the Wisconsin Supreme Court, the Milwaukee County District Attorney's Office, the state and federal public defender's offices, and the AIDS Resource Center of Wisconsin. Tom does this essentially by himself and, far more importantly, does it extraordinarily well. The benefits to the Law School are incalculable. To me as dean, this last example of his work with respect to our clinical and fieldwork offerings best captures the essence of Professor Hammer's contribution to this urban Jesuit law school and university.

But ultimately of course it is not in the views or experiences of his faculty or administrator colleagues, either at the Law School or across the University, that we will find Tom Hammer's true measure as a teacher. It is in the views and experiences of his students. Consider some of the student commentaries on Professor Hammer's teaching, as summarized by my colleague and current Associate Dean for Academic Affairs, Matt Mitten: "Representative of student comments regarding [Professor Hammer's] teaching," Matt writes, "are: 'excellent preparation and organization of material'; 'an expert in th[e] area [of criminal law and procedure]'; 'inspiring to be his student'; and 'I can't imagine I'd have a better professor while I

[Professor Hammer] in short

order has built up [our externship]

programs to a point where I can feel

comfortable in saying that I would match

our programs against those of virtually any

other law school in the country.

am at Marquette.” The letters from alumni are perhaps even more striking, for the lasting mark that Professor Hammer has made is of course especially evident in those.

So what is it that students, past and present, have appreciated? As with so much good teaching, it is a mix of things. It is well stated by one of Professor Hammer’s former students, who wrote as follows:

My first impression of Professor Hammer in the classroom [in Criminal Procedure] left me somewhat intimidated. He randomly called on students, expecting them to be fully prepared. He asked students to stand when called on and to speak up to the class. Students were well-advised to be punctual, and not to wear baseball caps. Certainly, it was not good practice to open a soda can during his lecture. But Professor Hammer was well-prepared, knowledgeable, interesting, enthusiastic, and a wonderful storyteller, often weaving “war stories” into the discussion. His style of teaching caught my attention immediately, and it had a lasting effect. In each of the classes I took with him, he taught beyond the substantive material. He taught and reinforced skills that have been vital to my success both in law school and at work:

punctuality, respect, candor, the necessity of preparedness, and generally, how to speak up with confidence.

I concur in all of this. Indeed, the student’s comments recall to

my mind a story recounted to me by the greatest teacher I have known, my late mother, who for many years taught English at a local college in Chicago. Shortly after she graduated from Loyola University in 1952 and started teaching at an all-girls Catholic high school, she found herself particularly frustrated with her inability to explicate perfectly a difficult Shakespeare sonnet. When she recounted this to a wise nun at the school, the response of the seasoned teacher was, “My dear, haven’t you realized that it is *you* they are studying most?”

Professor Hammer plainly realizes that most important of points. He provides a model of excellence to emulate. All of us at Marquette University—Tom Hammer’s university, for he not only teaches here but also holds both his undergraduate and law degrees from here—all of us, administrators, teachers, and students, are the beneficiaries of his awareness and his commitment to teaching excellence.

Tom, would you please come to the stage? •

Remarks of Professor Thomas J. Hammer in Accepting the Gettel Award for Teaching Excellence

Thank you, very, very much, Dean Kearney. I do truly appreciate your kind words. Father Wild, Dr. Wake, Trustee Stollenwerk, Former Recipients of the Teaching Award, Dear Colleagues and Friends:

One of the perks of receiving a teaching excellence award is being able to invite your family to this special occasion. I am very pleased to be joined tonight by my dear wife, Patty, our son, Matt, who is just finishing up his freshman year as an undergraduate student here at Marquette, and our daughter, Lauren. I am also very grateful that my mother and stepfather, Edna and Vic Sprtel, could be here with me tonight. It is wonderful to be surrounded by family at moments like this.

I am deeply, deeply honored to receive this award. This is true for a couple of reasons that I would like to share with you this evening. The first, I suppose, is obvious. To be recognized for excellence as a teacher, in a room that is full of excellent

teachers, at a University that places a high premium on quality teaching, is, quite honestly, a humbling and gratifying experience. I am sure that every prior recipient of this award knows exactly what I mean.

The second reason I am so honored to receive this award is not so obvious and is deeply personal. I am what some refer to as a member of the “2M” club because I did both my undergraduate and law studies here at Marquette. Because of that I have had the great privilege of being the student of several prior winners of the teaching excellence award.

As an undergraduate political science major, I had my first exposure to the Constitution and the Bill of Rights under the guiding hand of the legendary Fr. Virgil Blum. Dr. Jim Rhodes so inspired me in his political philosophy courses that I seriously considered pursuing graduate studies in that discipline. I took courses from John Krugler, Tom Anderson, and Tony Kuchan when they were just junior members of the faculty—but already standouts in the classroom. At the Law School, my teachers included some of the legends of Sensenbrenner Hall, such as Jim Ghiardi, Jack Kircher, and the late Ray Aiken. I also had the great fortune, soon after joining the faculty, to participate in a graduate seminar on the Civil War, a subject of special interest to me, that was taught by an icon in our History Department, the late Frank Klement. These teachers were masters at their craft. I know that from personal experience. And that is why it is such a special honor for me to have my name permanently added to a list that bears theirs.

My gratitude tonight is extended to Dean Kearney and to my colleagues at the Law School. Not only did they generously support my nomination for this award, but on a daily basis join me in our mutual commitment of providing a



first-rate legal education to our students. Special thanks also go to my colleague Dan Blinka, our master of ceremonies this evening, who I am told coordinated the preparation of the dossier in support of my nomination. Not only is Dan a master teacher who himself has won the teaching excellence award, but as we have learned tonight, he is also quite a master “master of ceremonies.” Most importantly to me, though, Dan is a master friend whose friendship I have cherished since we first worked together more than 25 years ago as colleagues in the Milwaukee County District Attorney’s Office.

I would like to congratulate the other two winners of 2004 teaching awards who will be recognized momentarily, as well as all those whose names were placed in nomination this year. I thank the Gettel family for its support of this award, the committee that chose me to receive it, the Good Lord for whatever teaching talent He may have sent my way, my students who have made teaching such a labor of love for me, my family whom I cherish more than words can express, and last, though certainly not least, Marquette University for giving me the opportunity for almost a quarter-century to do what I love doing.

Thank you very, very much. •

graduation remarks of justice ann walsh bradley

Justice Ann Walsh Bradley of the Wisconsin Supreme Court spoke at Marquette Law School's commencement ceremony on May 15, 2004. Justice Bradley's remarks follow.

Graduates, Families, Educators, and Friends:
I am honored to be asked to speak to you on this important occasion. I congratulate all the graduates. You have traveled the road from the land of torts to the jungles of the Uniform Commercial Code—and survived. Your ability and hard work have brought you to this important day. On behalf of all of us, I say, “Well done.”

To the educators, let me say that as a former educator, I know some of the trials and tribulations involved in education. But it is on an occasion like this that those of you involved in education know that your work is worthwhile. On behalf of the graduates and their families, I want to say, “Thank you,” to the law school faculty, staff, and administration.

As for the families and friends—I know how you feel. I, too, have been present with my children at graduations and occasions of awards and recognitions. How proud I was. How proud you are.

I know the number of diapers changed, the number of loads of laundry washed, the number of trips to the doctor and dentist, the number of sleepless nights that you have endured over the years to bring these graduates to this ceremony today.

They could not have done this without your emotional and, in most cases, financial support. To the families and friends, I say, “Congratulations. Sit back, be proud, enjoy.”

The usual instructions for commencement speakers are to be erudite, inspirational, humorous and . . . brief. Brevity, I am told, is the most important quality, so brief I shall be.

A commencement such as this is an important event in the lives of the students and their families. It marks both a beginning and an end: the ending to your formal legal education, the beginning of your new life as an attorney.

You might characterize this commencement and your law degree as a ticket out of law school and into your future. I am reminded of an oft-told story about United States Supreme Court Justice Oliver Wendell Holmes, who, elderly at the time, was boarding a train in Washington's Union Station. The famous justice could not find his ticket. He searched his pockets in vain. The conductor, who had immediately recognized him, said, “Don't worry, Justice Holmes, come aboard. I know that when you find your ticket you'll mail it to the railroad.”

“Mr. Conductor,” Holmes quietly responded, “the question isn't, ‘Where's my ticket?,’ but rather, ‘Where am I supposed to be going?’”

The questions of where am I supposed to be going, what am I supposed to be doing with this law degree, are lifelong questions. Let me suggest that a beacon has been in your midst, lighting the way for your journey.

The person of whom I speak is former Marquette Law School dean, Howard Eisenberg. Howard died unexpectedly on June 4, 2002.

Since this is the last Marquette Law School class that knew our friend, Howard, as its dean, I thought it appropriate to share this platform tonight with Howard, and I think it an honor for me to give voice to his vision.

Since this is the last Marquette Law School class that knew our friend, Howard, as its dean, I thought it appropriate to share this platform tonight with Howard, and I think it an honor for me to give voice to his vision.

Dean Eisenberg taught us that the direction to go is forward. To listen to others. To have a vision and work hard to make that vision a reality. Through the example of his life and through his writings, he has given direction.

On the occasion of the thirtieth anniversary of his admission to the bar, Howard opined upon what it takes to be a good lawyer. After reflecting upon his professional experiences,



Justice Ann Walsh Bradley

he emphasized the importance of character. “What do I mean by character?” he asked. The answer he gave: character in our profession means honesty, judgment, and courage.

This evening I will focus on the last of those three qualities, courage. My message—Dean Eisenberg’s message to you—is that you be people of courage in the legal profession.

Dean Eisenberg wrote this: “A lawyer must be courageous. A lawyer must have the guts to tell people things they don’t want to hear; make decisions that will upset people; take positions that are unpopular; and assert claims and positions before hostile tribunals.”

So what does it mean today to be people of courage in your legal careers? I think that courage is a mindset, an approach to life. For those in the legal profession, it can mean:

1. That when you’re putting together a deal for clients and there is the wink and nod, you have the courage to say that, yes, you will be an aggressive advocate but will not shade the truth.
2. That you have the courage to embrace unpopular causes and to stand up for the victims, the poor, and the powerless in our communities.
3. That you have the courage to join in the public debate when an independent judiciary is being threatened. That you make sure that the voices that speak thoughtfully about the role of courts and the rule of law are not silent.

Courage means standing tall . . . and having your voice heard.

In preparing for my address this evening, I reviewed the 2002 special issue of the *Marquette Law Review* which was inspired by your current dean, Dean Kearney. As a colleague and friend, Dean Kearney collected a remarkable array of essays written in tribute to Howard Eisenberg and dedicated the special issue of the law review to him. He included in the collection several of Howard’s own writings, one of which was an address that Dean Eisenberg gave in 1999 at Marquette, entitled “What’s a Nice Jewish Boy Like Me Doing in a Place Like This?”

In that address, he spoke of courage, saying this:

“There is a great need in our society for people who have the courage to say that the Emperor is naked, and not only is he naked, he is also not very honest. Some things are considered ‘politically correct’ which are morally wrong or intellectually foolish. Neither Abraham, Moses, Jesus Christ, nor St. Ignatius was politically correct. None of those men were apologists for the status quo.”

He went on to say, “It is necessary—essential—to take moral stands and stick to them in the face of those who favor political convenience, relative truth, or a least-common-denominator code of ethics.”

Dean Eisenberg was right. I think that courage is the price that life demands for being at peace with yourself. It requires you to come to grips with who you are as a person and with what you value. In my experience, it is also a defining virtue of all truly great lawyers.

Remember, your diploma is not a mere piece of paper. It is an instrument for doing justice.

Graduates, let your voices be heard to protect and perfect our rights and responsibilities under the law.

All of you new graduates are talented people. All of you are bright people, or you would not be here today. My challenge and Dean Eisenberg’s challenge to all of you, as you embark upon this next stage of your life, is that you also be people of courage.

You will recognize my closing words to you also as Howard’s: “Do well and do good.” •

dean kearney's remarks on the wisconsin court system

The following are Dean Joseph D. Kearney's remarks to the Western District of Wisconsin Bar Association in Madison on May 27, 2004. This was the keynote address at the Association's annual meeting. All the members of the Wisconsin Supreme Court were in attendance.

Thank you. It is a privilege to speak to the Western District of Wisconsin Bar Association. I serve on the Board of Directors of the Eastern District of Wisconsin Bar Association. Our group is modeled on your organization and its successes. So I bring greetings not merely from Marquette Law School but also from the Eastern District of Wisconsin Bar Association, and I thank you for the leadership that this group has shown.

Among the things that I have learned since becoming dean a year ago is the usefulness of a flexible title for a speech. Last fall, at Justice Roggensack's invitation, Chief Justice Abrahamson buttonholed me concerning her then-upcoming visit to Marquette Law School as our annual E. Harold Hallows Lecturer. The Chief was interested in my views as to which of two topics she ought to address: one involving her experience as a circuit judge hearing small claims matters, or the other consisting of some reflections on the famous 1972 United States Supreme Court case of *Wisconsin v. Yoder*. I tried, as mildly as possible, to suggest to Chief Justice Abrahamson that she really ought to give whatever speech we were advertising, given that we already had sent out invitations with some title that she had given us. The Chief's response was something to the effect of, "Oh, I chose some vague but compelling title, which should have two advantages: it will help to attract some interest, and it will allow me to talk about whatever I want!"

I was rather skeptical, but I then found that the title was "An Uncommon Portion of Fortitude," which is a

phrase that the Chief borrowed from Alexander Hamilton, and when the Chief settled upon the small claims topic and gave a marvelous speech, you would have thought that the title had been exclusively designed for that speech. You would have thought that, of course, unless *either* you had been party to our conversation *or* you were familiar with the Chief's State of the Judiciary speech, delivered halfway between our conversation in early October and the Hallows Lecture in early November. That too turns out to have been entitled "An Uncommon Portion of Fortitude," and had nothing to do either with small claims court or with the *Yoder* case! I clearly had much to learn about entitling speeches.

I thought that I did a respectable job with my title for today's speech, "Some Observations on the Wisconsin Court System." True, it has nothing to do with the federal courts, and this is a federal bar association, but is it not the prerogative of the tenured academic to speak on whatever he or she wishes? The reference to my being tenured calls to mind a comment that my friend, Dean Ken Davis, made to me last summer when we were working on the Federal Nominating Commission for the Seventh Circuit vacancy that it now appears will be filled by Justice Sykes. When I made some remark concerning the political sensitivity of the matter between the Senators and the White House, Ken said, "Don't worry, Joe. You could be fired as dean tomorrow, but you're tenured in your good job. They'll still have to keep you on the faculty."

To the matter at hand: I have not made the study necessary to give some large-scale assessment of the Wisconsin courts. But I do have fairly extensive experience with the Wisconsin Supreme Court, and I have what strikes me as at least one important reflection that I wish to share. Before I do so, I should perhaps note that I have a somewhat unusual relationship with

the Court. In some instances, I am its appointee, as when I serve on its Board of Bar Examiners, currently as vice-chair. In other instances, I am an advocate before the Court, although like my predecessor Howard Eisenberg I do this in my capacity as a member of the Wisconsin bar (and through my p.o. box) and not through any affiliation with Marquette Law School. And in other instances still (and these are in my academic capacity), I am an independent observer and commentator concerning the Court. It is the third of these roles—that as an academic—that is my primary undertaking. It is, after all, what drew me to Wisconsin, and I would not have accepted the occasional case before the Court or even the position as Dean of Marquette Law School if I thought that either disabled me from reflecting on matters of public policy.

I think that it is important, by way of background to my specific observation, to recall very briefly the restructuring in the late 1970s of the Wisconsin appellate system. The intent in creating the Court of Appeals and in essentially eliminating mandatory review in the Wisconsin Supreme Court was not merely to lighten the workload of the Supreme Court. It was also (or even primarily) to preserve the ability of the Supreme Court to concentrate its energies on important cases posing substantial legal questions with implications for other cases or situations. In short, and to use phrases heard at the time, while the Wisconsin Court of Appeals was to be an *error-correcting* court, the Wisconsin Supreme Court was to be a *law-developing* court.

How has the enterprise gone, at the level of the Wisconsin Supreme Court? Two factors are especially important to any serious attempt to answer that question. One is the Court's inputs—the cases that it takes, in particular as measured against the cases it declines to take. The other is its outputs—its decisions.

The first matter is exceedingly difficult to measure. A few years ago I began to undertake a study reviewing each of the one thousand or so petitions for review that were filed in the Wisconsin Supreme Court in a particular year (this was 2001). The idea was to compare the cases that the Court accepted with those that it declined to hear. Just to review the petitions was quite an effort, and the vast bulk of the undertaking was conducted by one of my students, Maureen Lokrantz, who is now a lawyer here in Madison (and is present today). We got tremendous cooperation from the Wisconsin Supreme Court Clerk's office, both Cornelia Clark and her chief deputy at the time, Theresa Owens. Most of you would know Theresa (who also is here today) as the Clerk of the Western District of Wisconsin. Those of us who knew her at the Wisconsin Supreme Court have wondered whether it was not to escape this project of mine that she sought refuge in the federal courts. In any event, although I never formalized or published the results of the study, my lasting impression from this work was that the Wisconsin Supreme Court generally does a creditable job in selecting cases. There are from time to time exceptions to this rule, but I will stand by the general statement.

The question of the Court's outputs is more accessible. Here one need not go to the Clerk's Office to read them. Having accentuated the positive with regard to the Court's decisions of what cases to take, let me make a somewhat different observation concerning the Court's opinions—a constructive criticism, if you will.

[I]t is interesting to note that, between the [Wisconsin] Supreme Court and the Court of Appeals, the phrase "unique facts" has appeared in the appellate judicial decisions of this State far more times since 1977 than in the entire 130-some years previous.

Permit me to come to the point: Having read scores—indeed, hundreds—of Wisconsin Supreme Court opinions from the quarter-century since court reorganization, I have been struck and at times dismayed by what seems to me to be the Court's increasing tendency to say that it is limiting its decision to the allegedly unique facts in the case being decided. On the one hand, I am not quite certain what to make of these pronouncements. It seems to me that appellate courts almost necessarily announce (at least implicitly) principles of law when they decide cases. Thus, it remains available to litigants in future cases to argue that a Supreme Court decision that purported to speak only to the "unique facts" before the court in that case nonetheless, by logic or other principles of reasoning, is relevant to the new case. On the other hand, it should not come to this, and not only because of the costs that it imposes on future litigants.

Simply put, it is inconsistent with its role as a law-developing court for the Wisconsin Supreme Court frequently to announce that its decisions are limited to the unique facts of the cases in which they are made. Indeed, if this can be done, then perhaps it calls into question my praise a few moments ago, when I said that the Court generally seems to do a good job in sorting out the cases before it when accepting some petitions for review and denying others. More likely, such limitations *cannot* be announced consistently with basic principles of law, and the suggestion that a decision is limited to the unique facts of the case suggests that in that particular case the Court is interested in reaching a particular result but does not wish to embrace the implications of its decision for other, analogous cases. In all events, repeated statements to the effect that some or another judicial decision is (to borrow a phrase from Justice Roberts in a slightly different context) a "ticket good for this day and train only" suggest an unwise use of the scarce resources of a law-developing court.

This, too, is not entirely an impressionistic view on my part. Nor does it simply reflect some computer-based search for phrases such as "unique facts," although it is interesting to note that, between the Supreme Court and the Court of Appeals, the phrase "unique facts" has appeared in the appellate judicial decisions of this State far more times since 1977 than in the entire 130-some years previous. Even accepting that some of the uses of this phrase are in contexts that would not be germane to my basic point, that is some considerable prima facie evidence of the point. But I have not simply relied on that. I have conducted some reasonably substantial and broader research in the case law, and it supports my suggestion that the Wisconsin Supreme Court too often—and increasingly often in recent years—seeks to limit the effect of the opinion that it is announcing (or of some precedent) by stating that the decision is (or was) based on something unusual about the case. Of course, the criticism is especially strong with respect to cases where the Court states that there is something unique about the case before it but does not amplify adequately upon just what distinguishes the case from other fact situations that to many of us would appear to be analogous.

There is another whole area of unreason to limiting a decision to its unique facts. What, possibly, can the phrase (or similar phrases) mean? The facts of every case are unique. The way that a law-developing court undertakes its duty, I would have thought, is, in common-law fashion, by picking

In all events, repeated statements to the effect that some or another judicial decision is (to borrow a phrase from Justice Roberts in a slightly different context) a "ticket good for this day and train only" suggest an unwise use of the scarce resources of a law-developing court.

a case that seems to present issues that should be resolved and then deciding *that case*. When the next case comes along that differs in some respect, it is the advocate's role to persuade the court that the difference is (or should be seen as) material. It is possible that the real problem underlying the phenomenon that I am criticizing is a mistaken view that the Court should generally legislate (i.e., by deciding generally and "laying down" the law). This is not within the comparative advantage of courts. It is particularly difficult for a court which presides over a common-law body of law.

At bottom, the reason for the increasing frequency of the phenomenon that I have identified is difficult to assess. A relatively charitable possibility is that such limitations are prices that other Justices increasingly exact in exchange for joining an author's opinion. I do not know enough about the inner workings of the Court to determine the matter. All I can do, as a consumer of the Court's opinions in both my teaching and practicing capacities, is to make the observation and request that it be considered for whatever persuasive force it has.

Given these dual capacities, perhaps I would do well to make it clear that I am not engaged in special pleading. In the couple of cases that I have argued before the Court, the decision did not purport to be limited to some unique facts. In fact, one of the cases, a major products-liability case that I lost 5–2 in 2001, was a sweeping opinion on the substantive law of products liability. The opinion was so sweeping that it prompted an out-of-state legal academic to write an article (published in an out-of-state law review) entirely devoted to demonstrating the error that this commentator saw in the Wisconsin Supreme Court's opinion. In all seriousness, I mean this as praise of the Court's decision. Leaving aside my view of the merits, I must applaud the Court for having had the willingness to take the scarce resource of the lawyers' and the Justices' time invested in the case to write an opinion that will be useful to future litigants and courts in numerous cases and that is forthright enough with regard to the controlling principle of law that it enables others to assess and critique it.

I do not wish, by coming to Madison and making these remarks today, to create some impression that I am simply interested in criticizing others. Marquette Law School is itself interested in criticism. We ask rather constantly questions such as, "What do we do not so well, and how could we do it better?" We ask it not only of ourselves but of the bench and the practicing bar. And we get good suggestions. It is partly on the basis of these that several years ago we overhauled our entire legal writing program, now deploying full-time faculty to teach legal writing to our students. In fact, we have hired as three such faculty former law clerks to Justices Wilcox, Crooks, and Roggensack, and I am hoping to get some pointers from them because, although I have not prevailed in the cases that I have argued before the Wisconsin Supreme Court, I have managed to get votes from all the *other* members of the Court. (I number myself among the lawyers who have commanded a majority of the Court—just not in any single case!) In any event, I have no doubt that the current effort by my colleagues at Madison to examine their own legal writing program was, like ours of a few years ago, prompted by suggestions received from people such as you. Just as I feel free to make my observations, you should feel entitled, perhaps even obligated, whether you are a Marquette Law School alumnus or not, to pass along constructive suggestions or criticisms to me. I will welcome them—I answer my own phone and e-mail—and I thank you for the opportunity to appear before you today. •

orientation remarks by michelle behnke and paul connell

On August 19 and 20, 2004, Marquette Law School held its orientation for new law students. The two days are a mix of the practical and the high-minded. Students have a chance to meet some new classmates and faculty even before the first law class and to accomplish such tasks as getting a student ID card. There is also an opportunity to meet some lawyers and to be welcomed into the legal profession.

The following are the remarks that two lawyers shared with the new students, one at the beginning of orientation and the other at the end. Following the Marquette Law School tradition that he revived last year (as recounted in these pages), Dean Joseph D. Kearney invited the President of the State Bar of Wisconsin, Michelle A. Behnke, to share some of the time reserved for the “Dean’s Welcome and Address” the first morning of orientation. Ms. Behnke’s speech is reprinted here.

Dean Kearney and Professor Daniel D. Blinka also wanted to provide the new law students with an example of a fairly recent Marquette Law School graduate to whom the new students might listen with advantage. Accordingly, they asked Paul W. Connell, L’98, to give the concluding remarks at orientation—the closing argument, as it were—the following evening, before the Dean’s Reception at the Milwaukee Public Museum. Mr. Connell’s remarks follow Ms. Behnke’s.

**Remarks of Michelle A. Behnke
Marquette University, Johnston Hall
August 19, 2004**

It is my pleasure, as the President of the State Bar of Wisconsin, to welcome you to the legal profession. You may not think of yourself as part of the legal profession just yet, but you are. Your legal career does not begin when you become an associate with a firm or when you open your own law office or when you join the DA’s office. It begins here and now as a law student.

I thought I might share a few thoughts about how to have a successful law school experience. I was going to use the David Letterman “Top 10” format, but my friend Dean Kearney is ruthless about time limits! So you’ll get the top 5 things I think you need to do to have a successful law school career.

No. 5—Maintain ties with family and friends. This seems simple and obvious. But when assignments start rolling in, it is easy to forget an important date or to call to check in. Family and friends are a large part of what got you here today, and you need to maintain those ties. These are the people on whom you can depend when things get tough (and they will). These are the people on whom you can depend to keep you focused on your goals. These are the people on whom you can depend to lift you up and celebrate your victories.

No. 4—Respect the diversity that each of you brings. Naturally, when I say the word diversity, people automatically think about race. While the racial differences are certainly part of what I mean, I think of *diversity* as broader than that. Each of you already has had many different life experiences. None of those experiences is right or wrong or more perfect than someone else’s for the legal career on which you are embarking. This variety of experiences and backgrounds simply gives each of you a different perspective. It also gives you the chance to share those experiences and perspectives with others. Looking at things from several perspectives will make you a better lawyer.

No. 3—Be flexible. One of my favorite poets and authors is Maya Angelou. She once said: “Each of us has the right and the responsibility to assess the roads which lie ahead, and those over which we have traveled, and if the future road looms ominous or unpromising and the road back uninviting, then we need to gather our resolve and carrying only the necessary baggage, step off that road into another direction. If the new choice is also unpalatable, without embarrassment, we must be ready to change that one as well.”

You may have ideas of what law school and the practice of law will be like. Keep an open mind and be flexible. The road that you think that you will take may not in fact be the road that you travel. Be open to the possibilities around you. Be aware that



Remarks of Paul W. Connell, L'98

August 20, 2004

Milwaukee Public Museum

there is no one perfect way to make it through law school or to practice law. Don't be afraid to revise the plan.

No. 2—If it's worth doing, it's worth doing well.

Sometimes I find our society more concerned with the "quick fix," the easy solution. Look at the ads for cough medicine and headache remedies. If fast is good, faster is better. Throughout law school and your legal career you must remember that if it is worth doing, if it is worth your time, it is worth doing well.

No. 1—Remember who you are. You will be changed by this experience, but remember who you are and why you came here. Try to keep your perspective, but be open to other perspectives. Keep a sense of humor. If you can find humor in something, you can survive it. Law school is hard and it takes a great deal of time. If you don't keep a sense of humor and maintain some of your normal routines, you won't "survive" this experience. The things that you usually do—work out, talk to friends, read for recreation—are part of the things that made you who you are and the success that you are today. Don't give that all up today as you begin law school.

My top five suggestions for having a successful law school experience and legal career are my suggestions. I arrived at them in a very unscientific manner, but nineteen years ago, when I was sitting in a similar place, my father shared some of these tips with me. They are the tips that I rely on even today.

You will be changed by your law school experience. Try to enjoy it.

Good evening. Thank you, Professor Blinka and Dean Kearney, for the invitation to speak tonight. As you all know from Dean Kearney's address yesterday morning, Marquette University Law School has been around for many years, and there are hundreds of graduates who could be here speaking tonight, so I'm both honored and humbled to have this opportunity.

Before I begin my remarks let me say a few words about myself. Although I am not a big fan of talking about myself, I am told that one of the reasons I was asked to speak tonight was that my career path, even six years into it, has been somewhat varied.

I came to Marquette in 1995 with big dreams and with a plan. I knew that after graduation I wanted to clerk for a federal judge or at the Wisconsin Supreme Court, that I wanted to experience life at a large law firm, and that I always wanted the option of being a state or federal prosecutor at some point in my career.

Based on how my career has turned out so far, I guess you could say I've accomplished those goals. As I was preparing my remarks, I was discussing my speech with my wife (a Marquette Law School alum herself) and she said that, at least to her, even more interesting than the jobs I've had were all of the things that I did to get them. But more on that later.

Let me talk briefly about some of the jobs I've had since graduation in 1998. First, I had the privilege of clerking for a United States District Judge, J.P. Stadtmueller, here in Milwaukee. As almost anyone who has clerked for a judge will tell you, there really is no better job in the legal profession (except, perhaps, being a tenured law professor). Being a law clerk was everything I thought it would be, and in large part that was due to the fact that I got to work alongside a terrific judge. The clerkship was also useful because it allowed me to observe and review the work of the law firms that I always figured I would practice with, and it therefore helped me figure out where I thought I should seek a job as an associate at the end of my clerkship. ▶



Paul W. Connell, L'98

After spending two great years clerking, I actually decided to accept a job not in Milwaukee, but in Washington, D.C., with a large international law firm called Wilmer, Cutler & Pickering. At Wilmer, I defended corporate clients such as Enron, Worldcom, and Citigroup, and practiced in three areas of the firm: securities enforcement, general litigation, and a specialized area doing internal corporate investigations.

Being an associate at a large law firm is in many ways a great experience, but it is also very demanding on your time and personal life. So after spending two and a half years at the law firm and having lived through 9-11 and the D.C.-area sniper shootings, my wife and I decided to return to Wisconsin. I was fortunate enough to find a job as a federal prosecutor in Madison, where I handle a variety of cases ranging from drugs to fraud to computer crime.

In this present job I am not only lucky to have the greatest client in the world—the United States of America—but also lucky because my job is to seek one thing and one thing only: justice.

That is enough about me. Tonight should really be all

about you. And so I felt it would be most appropriate to focus my comments on the things that will impact you in the short run: first, what the first year of law school will be like; second, why Marquette was a great choice for law school; third, a few thoughts on building a career while you are still a student. All of these topics are certainly related in many respects, but hopefully I'll succeed in not intermingling them too much.

It was just nine years ago that I was sitting in your position, ready to start law school, wondering if I'd made the right decision, wondering how I would stack up against my classmates, and wondering if it was true that at least some of us would flunk out. As I stand here before you this evening, I can assure you that, as to that last question, none of us flunked out, although the number of hours spent at Hegarty's Pub on Wells Street and on Water Street on the weekends suggests that some may have tried.

Let me turn then to this first topic: what the first year of law school is like.

The first year of law school can be a daunting and ominous experience. There will certainly be days when you will not really understand exactly what is going on, and then just when it seems to make sense, it begins to puzzle you again.

There will be days when someone will answer a question and you'll think to yourself, "I never would have thought of that. What am I doing here?"

Or, even worse, a time when the professor asks a question and you have no idea what any answer is, much less the correct one.

I am here to tell you tonight, that in my experience, these occasions are normal, and while I hope they never happen to you, it should not be a surprise if they do.

Another difficult part of the first year is getting over the angst that your entire grade will be determined by one exam at the end of the semester. Generally speaking, it is this matter that I have found causes law students the most stress. To be sure, it is a grind to be responsible for read-

ing and understanding four cases for Prof. Kircher's torts class, five cases for Prof. Edwards's Contracts class, and five cases for Prof. Grenig's Civil Procedure class, and for completing a legal writing memorandum, all for the same day of class. But the more daunting fact is that there is no way of knowing how you are doing in your substantive classes until you sit down to take an exam in early December.

Which leads to my first big point tonight. All of you are here because you are smart and high-achieving college graduates. Generally speaking, all of you enjoyed substantial academic success as an undergraduate or presently enjoy success in your current occupation and are interested in furthering your education.

I'm certain that many of you had semesters in college where you got perfect grades. Yet one of the first things I would encourage you to accept is that many of you will simply not enjoy that same level of academic success that you had as undergraduates. And by that I don't mean that you will not get a great education here at Marquette, but the cold reality is that 90 percent of you are going to finish outside the top 10 percent of the class.

For some of you, this will prove very upsetting. But I found that my law school experience here was most satisfying after I accepted the fact that there is a substantial amount of subjectivity in grading (and there was nothing I could do about it), and when I figured out that grades have little bearing on how good of a lawyer I could become.

Ultimately, whether your report card shows an A or a B in any class will not matter to a judge and will be of little consequence the first time you step into court or try to

counsel a corporate client into not suing. What will matter is how much you really learned about the law when you were here, the principles of law that you take away from each reading assignment, and the other practical experiences you take advantage of as a law student.

And this is why, for at least some students, it is necessary to provide them models of the professional behavior of a lawyer that are rather more direct than a professor standing before a classroom.

Let me skip to my third point, and save my comments about Marquette for last.

I thought it would be appropriate for me to at least touch on the topic of career development and the opportunities available to

you to develop your skills as a lawyer while you are enrolled as a law student. I believe this topic is particularly important because, after all, each of you has chosen to dedicate the next few years and a substantial amount of money in this endeavor.

Your education here is obviously the first component to building your career. But the education inside of Sensenbrenner Hall is only part of it. One of the best parts of a Marquette education includes all of the opportunities such as internships and clinics in that place known as the real world. What I mean by that is that as second- and third-year law students at Marquette, by virtue of the fact that the law school is located in the largest metropolitan area in the State, you will have countless opportunities to develop very real skills as a lawyer while enrolled here.

Let me give you just two examples from my time as a student here. When I was a second-year law student, I had the privilege to intern at the Wisconsin Supreme Court for one of the finest Justices ever to serve on the Court. I'm not sure if she is here tonight, but it was my great honor to intern for Justice Janine Geske, who has since rejoined the Marquette faculty as a Distinguished Professor of Law. In the spring of my second year, I interned with the United

States Attorney's Office here in Milwaukee. And as a third-year law student, I took advantage of other opportunities such as interning for the federal judge for whom I would later clerk after law school, and serving on the editorial board of the Law Review, and so on.

I have found that all of these opportunities served me in my career in numerous ways. Though my studies and these outside opportunities kept me busy, I know I'm a better lawyer now, and I was more prepared for some of the challenges in the legal profession, than I would have been otherwise. Not only did these outside-the-classroom experiences introduce me to people whom I otherwise would not have had the chance to meet, but they were an integral part of helping launch my career in the direction that I wanted. As I look back now, I see that had I not interned with the U.S. Attorney's Office, I would not have been in a strong position to seek a judicial clerkship. And I know that had I not clerked for Judge Stadtmueller, I would not have been in a position to seek employment with my former law firm in Washington, D.C. And so on.

So my point is this: your legal education in the classroom is vital. But learning to put those legal principles into use while you are still a student is important as well. Therefore, I would strongly encourage you to seek out the opportunities that interest you while you are a student, for not only do they enhance your resume, you actually get to see the law in action, and this will serve you well throughout your career.

Let me turn to my final and most important point tonight: why Marquette is a great law school. As a trial lawyer, I would like to believe that it is rare that words fail me. But when I think about all that I owe to this wonderful institution, I really do find it hard to put my feelings into words. Nevertheless, I will do my best.

So what is it that makes this a great law school? I believe it to be a combination of two things.

First, Marquette is blessed with a great faculty—from a Dean who clerked at the United States Supreme Court, to a

nationally recognized expert in punitive damages, to professors who are widely published in the areas of negotiation, Indian law, and civil procedure, to name just a few. This place truly has some remarkable lawyers, who have so much to offer you.

However, I believe this faculty is unusual not only in its substantive knowledge and teaching abilities, but also in its accessibility to you, the student body. And it is on this latter point I'd like to focus for a moment.

There will be times in your career as a law student that the material just flat out won't make sense. It is at those times that you will be glad you are at a law school where the faculty not only cares enough to make itself available to the students, but also is willing to take the time to help clear up the material that you have found so confusing. There also will be times when you will need advice on something not directly related to anything in class, perhaps advice about a job opportunity. I have always found that there is not one person on the faculty who isn't willing to take the time to help you sort it out.

Second, this is a great place because Marquette is blessed with a wonderful location, and by virtue of that location the legal and business community here has many opportunities waiting for you upon graduation, and to take advantage of while you are a student. I've already mentioned some of these; whether it is a clinical opportunity with the district attorney's office, or an internship at the court of appeals, these real world opportunities are plentiful and go a long way toward making this law school more than just a place to read textbooks and take exams.

I've now reached the end of my remarks. I hope all of you can take away at least one suggestion from what I've had to say tonight. But mostly I'd like to welcome all of you to Marquette. And I look forward to each of you joining me in a few years, as a Marquette lawyer. Thank you. •

professor papke's remarks at the mid-year graduation

Professor David Ray Papke addressed the Law School's mid-year graduating class at the graduation ceremony and luncheon on December 19, 2004.

Dean Kearney introduced Professor Papke as follows:

"David Papke is a native Milwaukeean and a product of the city's public schools. He departed at age 18 to attend Harvard College, and by the time he completed his formal education, he had earned an A.B. from that institution, a law degree from Yale University, and a Ph.D. in American Studies from the University of Michigan. Even after all that, it took several more decades for Milwaukee to succeed in reclaiming David, which it did a few years ago when Marquette Law School lured him away from a tenured position at Indiana University. David is both an accomplished scholar and a popular teacher, and I am delighted to be his colleague in legal education and at Marquette." The following are Professor Papke's remarks.

It is a special treat for me to share a few remarks at today's graduation lunch. I realized in looking over the list of today's nineteen graduates that about two-thirds have studied with me. One took a course with me in the spring of 2002 and another course this past semester. Two took two courses with me just this past semester. One took three courses with me during law school and also worked as my research assistant. It is exciting to see each and every one of you finishing law school and to be a part of these graduation festivities.

When Dean Kearney asked me to speak today, he suggested that I limit my remarks to only five minutes. Asking a law professor to speak for five minutes is an outrageous request. It may

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in fact be genetically impossible for a law professor to limit his or her remarks on any subject to only five minutes. Please be patient as I exceed my time limit. I will not speak until the sun sets in the west, but I do have about ten rather than five minutes of comments.

I have heard a number of law school graduation talks over the years, and I would say in general they have concerned the great achievement of earning a law degree and the accompanying obligation to use that degree thoughtfully. I agree with both of those points. Earning a law degree is a demanding, draining experience, and the award of the degree carries with it important duties and responsibilities. However, with your indulgence, I would like in my remarks today to emphasize instead just what it is you have learned in law school and both the power and a few of the dangers of that knowledge.

What has law school been about? Some people go to law school assuming that they will learn the laws, and most friends and relatives of law students—at least those who did not attend law school themselves—probably believe law school is about learning laws. I think of this as the gas station vision of legal education. You drive your car into the gas station, pay your money, fill up your tank with laws, and drive away.

Fortunately, this is not what happens in law school. There are too many laws to learn them all, the laws keep changing, and even the ones that do not change are open to various interpretations. There will be times after law school when you will have to look up laws, but it will rarely be the case that you look them up in your law school notebooks or in those outrageous \$100 textbooks.

If it is not about learning laws, law school might be understood as learning "to think like a lawyer." This is a vener-

able notion, one familiar to all law school graduates in the room. I like the way it emphasizes a habit of the mind rather than merely reified laws per se, but, to be honest, I have never been crazy about the phrase. For one thing, law school hardly addresses all the ways lawyers think. We do not consider whether to take on a new associate, how to get a secretary to work harder, or even how much to bill a client. But certainly lawyers think about all of these matters. Also, many law school graduates do not become lawyers. Some become judges or legislators. Others have careers as educators, businessmen, or military officers. Indeed, some law school graduates use their legal educations simply to be better citizens.

Personally, I think of a law school education as the acquisition of a competence in or a mastery of the legal discourse. That is, a legal education provides a distinctive way of thinking, writing, and arguing in law and also a special ability to understand legal procedures and institutions. This discourse is extraordinarily important in our society. It is one of the ways, perhaps the most important way, our society gets from power and self-interest on the one side to fairness and justice on the other. The discourse is fundamental in the way we put ourselves together as a people.

But while a mastery of the legal discourse is an important and powerful thing to have, it should also be noted that there are dangers in and draw-

backs to this mastery. Allow me to share with you some cautionary words about the legal discourse from two successful lawyers turned writers. Being lawyers and writers, these two individuals might have a particular sensitivity to and

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distance on what I am calling the legal discourse. Having mastered a second discourse, they might see more clearly the one they mastered first.

The first is Arthur Train, and my guess is that most people in the audience have not heard of him. Train grew up in Victorian Boston, and his father was for a time the Attorney General of Massachusetts. Train graduated from the Harvard Law School and then practiced law in New York City for over twenty years. He was an assistant district attorney and a member of several small firms. He became famous, meanwhile, when right after World War I he began spinning tales of the fictional lawyer Ephraim Tutt. Train published no fewer than 86 stories about Tutt and his New York City practice in the *Saturday Evening Post* during the 1920s and '30s. The stories also appeared in various collections—my favorite of which is *Tut, Tut! Mr. Tutt*—and Train also authored a mock casebook and fictional autobiography for his alter ego. Ephraim Tutt was America's most famous pop cultural lawyer prior to Perry Mason.

Train eventually abandoned the practice of law, but he did not reject the legal discourse. He thought its greatest strengths were its exactitude of definition, its accurate use of words, and its reliance on logic, and Train liked to point out that it was, after all, a country lawyer who had written the "Gettysburg Address." But Train also had a warning. He wrote in his autobiography:

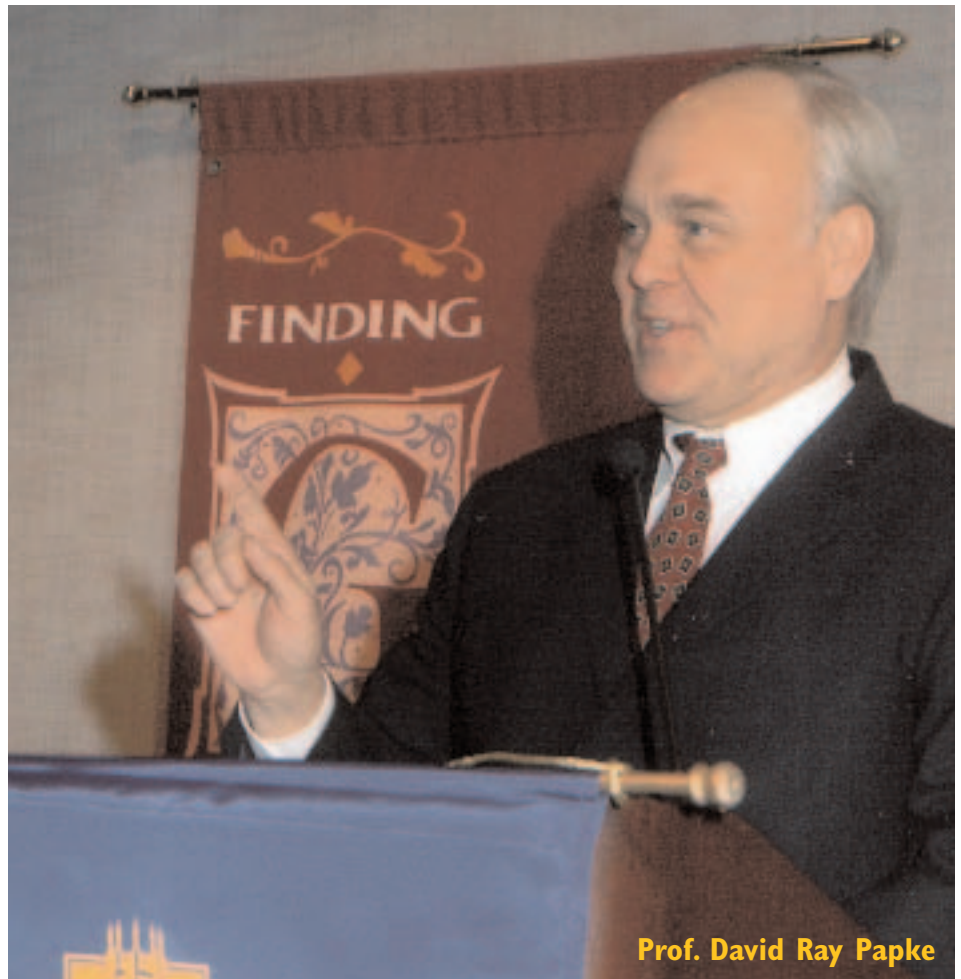
"Lawyers labor under the curse of vicarious solemnity. In order to satisfy a client's requirements an attorney must conceal all his natural high spirits and interest in the lighter and more available side of life. Once a client perceives a gleam in the lawyer's eye, the client vanishes

through the outer door. Hence, lawyers become unduly cautious, taciturn, and unenthusiastic.”

My second lawyer/writer with words of caution is Scott Turow—a more modern and familiar figure. Turow wrote *One L*, an account of his own legal education, in which he reported that the better he became at legal argument and the more he used it in discussions with his wife, the faster his sex life went south. After law school Turow went on to work as an Assistant United States Attorney in Chicago, where he participated in the Greylord investigations. He then joined the Chicago law firm of Sonnenschein, Nath & Rosenthal, where he still practices. Turow published the novel *Presumed Innocent* in 1987—the first of the modern blockbuster legal novels—and he has published another bestseller every two or three years since then.

What words of wisdom does Turow have to offer? While acknowledging that law is an admirable way to order human affairs, Turow expresses concern that the legal discourse broadly understood conveys “an ineradicable impression that it is somehow characteristically ‘legal’ to be hard and even brutal.” Turow also warns that the legal discourse is often disdainful of ambiguity and uncertainty: “Too much of what goes on in law involves strategies for avoiding, for ignoring, for somehow subverting the unquantifiable, the inexact, the emotionally charged—those very things which pass in my mind under the label ‘human.’”

I hope my reflections on the legal discourse and especially the words from Train and Turow are of some use and benefit to you in the future. The legal discourse is indeed something special in our culture.



There is nothing trivial or marginal about it, and a mastery of it can be a tremendous vehicle for personal reward and self-actualization. There are lives of meaning to be lived in the law. But as Train insists, do not lose touch with “the more available side of life.” As Turow warns, do not assume you have to be “hard” or “harsh” to be a lawyer and also do not start thinking everything is certain and unambiguous.

In conclusion, I urge you to proudly display your mastery of the legal discourse, but I remind you to be true to the full range of your humanity as well. I speak for every man and woman on the law school faculty when I say it has been a tremendous honor to be your professor. I extend the heartiest of congratulations on your graduation and wish you great success and happiness down the road of life. •

Class of 2004 builds on a legacy

Last year, despite having an average educational debt of \$76,000, members of the Class of 2004 raised more than \$6,000 for the **Howard and Phyllis Eisenberg Fund**.

The Class of 2004 was the last one here at Marquette who knew Howard Eisenberg as its dean. "We felt it only fitting for Dean Eisenberg's last law school class to join in the celebration of his life by leaving a class gift in his memory," said Tim Casey who, along with Jacqueline Chada, Joan L. Conrad, Sarvan Singh, Thomas Stuck, Mark Vap, and Amireh Zeyghami, formed a committee and sent out both letters and e-mails to fellow classmates.

The resulting gift of \$6,000 was added to the gifts of alumni and friends to help raise more than \$100,000 for the fund during the 2003–2004 academic year. Dean Joseph D. Kearney, on behalf of the Law School, then matched that amount with an additional \$100,000 from fundraised dollars committed to the dean's discretion.

The Howard and Phyllis Eisenberg Fund is a way of helping ease the burden of student loans for recent Marquette Law School graduates undertaking public interest work. The fund now has an endowment of more than \$360,000 to help support the public interest work of new Marquette lawyers.

"It is important to the future of the Law School that we build upon Howard's work as dean," notes Dean Kearney. "I am very grateful to the members of the Class of 2004 for their imagination, interest, and initiative in putting together a class gift to help ensure that we can do so, as well as to those other alumni and friends who have been very generous in ensuring his legacy." •



Looking into Eisenberg Memorial Hall at night



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