

JENKINS

# Moot Court Competition

*The Honorable Frank H. Easterbrook, Richard D. Cudahy, and Michael S. Kanne  
presiding at the Jenkins Moot Court Finals in the United States Courthouse in Milwaukee.*

Marquette University Law School's Jenkins Moot Court Competition is less than a year old, but the early returns are promising—and if the school is not silent about it, that is, in a sense, consistent with the competition. One of the goals behind the new moot court competition and the associated Appellate Writing and Advocacy class is to generate discussion about legal problems among the law students.

The Jenkins Competition and the new class have done just that. Marquette Law School administrators and faculty are pleased with the results of the new program, which unfolded over the past two years.



When Dean Joseph D. Kearney appointed his colleague Professor Peter K. Rofes as Associate Dean for Academic Affairs in the summer of 2004, one thing the two knew they wanted to do was create a substantial intramural moot court

competition.

“Initially, our desire was based as much on an intuition—that this was the sort of thing a law school

should do—as on an articulated sense,” Kearney said during an interview. “In working with the faculty during the 2004–2005 academic year, it became clear to all of us why we should do it and what it should look like.”

Kearney credits Rofes with persuading him that this needed to be a joint initiative between the administration and the faculty. “We have had intramural moot court competitions at the Law School in the past, including during my time,” recalled Rofes, who started teaching at the school in 1987. “But they have lacked staying power because they



*Moot Court Board Chief Justice Chris Brunson and Jenkins finalist Jason Kuwayama*

**T**he team of Joseph M. Peltz and John R. Rather took top honors in Marquette University Law School’s Jenkins Moot Court Competition. Peltz and Rather competed against Daniel J. Chapman and Jason E. Kuwayama in the final round of the competition, held April 4 in the Ceremonial Courtroom at the United States Courthouse in Milwaukee.

Rather also received the Klitzke Prize for Oral Advocacy for the top oral argument performance in the competition. The Best Brief Award went to Laura S. Platt and Lindsay M. Potrafke.

This year’s problem hypothesized a legal challenge brought by a middle-school student after his principal ordered him to stop wearing an anti-hunting shirt. The issues were whether the student’s discipline for wearing the shirt violated the First Amendment and whether his graduation rendered the case moot.

The Jenkins Competition, which involved both briefs and three rounds of oral argument, was limited to sixteen students:

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|------------------------|----------------------|
| Adam S. Bazelon        | Ana Lyn              |
| Daniel J. Chapman      | Joseph M. Peltz      |
| Joshua B. Cronin       | Laura S. Platt       |
| Wade C. DeArmond       | Lindsay M. Potrafke  |
| John J. Devins         | Benjamin W. Proctor  |
| William E. Keeler, III | John R. Rather       |
| Jason E. Kuwayama      | Sara J. Scoles       |
| Aliyah M. Lutfiyya     | Meaghan E. Weissbuch |

were the project of individual faculty or administrators rather than the Law School as a whole.”

### **Faculty Leadership**

To avoid that scenario, Kearney and Rofes created a Moot Court Committee in August 2004 to survey the matter and make recommendations to the full faculty. The committee was co-chaired by Professors Alison M. Barnes and Michael P. Waxman. Other members included Professors Edward A. Fallone, Melissa L. Greipp, and Jessica E. Price.

The committee met 14 times during the 2004–2005 academic year to review what the Law School had been doing in the area of moot court, and what it should be doing. One thing was clear: the school had many upper-level students participating in extramural (or interscholastic) moot court competitions, competing against students from other schools in various competitions focused on areas such as criminal law, constitutional law, and environmental law, among others.

Consensus emerged that several deficiencies resulted from an exclusive focus on competitions with other schools.

First, the rules of these interscholastic competitions prohibit faculty or others from providing much feedback on drafts of the students’ written briefs. This approach is designed to ensure that one school does not gain an unfair advantage over another by having its faculty essentially replace the students in the brief-writing process, but it limits the educational value of the extramural competitions. In addition, faculty and others can judge and critique practice oral arguments. All of this means that the students receive very little feedback on their writing in these competitions and may even get a misimpression that the oral argument is more important than the brief.

Second, when students participate exclusively in one of the extramural competitions, they have the moot court problem in common at their school only with the two or three other students participating in their particular national competition. By contrast, when students participate in an intramural moot court program, with all the participants working on the same problem, it tends to generate debate among the students—hallway discussions not merely about the Packers game the previous weekend,

as one participant in the Jenkins Competition noted, but concerning legal issues.

Third, the students representing the Law School in the extramural competitions did not have any formal training in appellate litigation beyond the first-year legal writing courses.

The Moot Court Committee sought to solve all of these problems. The result of its work, after approval by the full faculty in the spring of 2005, became part of the Law School's offerings during the 2005–2006 academic year.

### A Two-Pronged Program

One component was a new intramural moot court competition named for the Law School's first dean, James G. Jenkins. Jenkins, who served as dean from 1908 to 1915, previously had been the first member of the United States Court of Appeals for the Seventh Circuit from Wisconsin. He served on the court from 1893 to 1905 (his seat is occupied now by Judge Diane S. Sykes, L'84, and formerly by Judge John L. Coffey, L'48).

The Jenkins Competition was closely tied to another key initiative of the Moot Court Committee: the Law School's new Appellate Writing and Advocacy class. The course serves as a gateway to the Jenkins Competition and all extramural moot court competitions. The top students from the fall class are invited to participate in the spring Jenkins Competition, and any students who wish to participate in national competitions must first take the Appellate Advocacy and Writing class. Rofes asked committee members, Professors Greipp and Price, to teach the course in its inaugural year.

Faculty and administration agree that the new program has proved highly responsive to the committee's goals. These include getting students to talk about the law and legal issues, building on the educational benefits of the legal writing program, and enhancing legal communication skills.

During the Appellate Writing and Advocacy class, students submit a draft and final brief and receive comments and criticism on each. They also participate in both

The numerous and successful moot court activities at Marquette University Law School during the 2005–2006 academic year would not have been possible without the contributions of the students serving on the Moot Court Board. The Moot Court Board consisted of five Executive Board members and thirty-two General Board members working under the direction of the Executive Board.

Executive Board members, who obtained their positions through an application and interview process, worked closely with faculty supervisors to administer all of the moot court activities at the Law School this year, including the regional round of the National Moot Court Competition during the fall semester and the launch of the Jenkins Moot Court Competition during the spring semester. The following students made up this past year's Executive Board:

- Christopher D. Brunson, *Chief Justice*
- David D. Cherner, *Associate Justice of Competitions*
- Sara M. Davis, *Associate Justice of Education*
- Jessica L. Karls, *Associate Justice of Administration*
- Jessica D. Poliner, *Associate Justice of Coaching*

Under the direction of the Executive Board, the thirty-two students serving on the General Board carried out much of the legwork necessary to make moot court activities happen, such as drafting the rules for the Jenkins Competition, serving as bailiffs or timekeepers for oral arguments, and researching potential problems for next year's Jenkins Competition. The following students made up this year's General Board:

- Michael D. Aiken
- Amanda J. Ault
- Eric M. Aschenbrenner
- Eric A. Berg
- Jesse B. Blocher
- Kristin J. Eisenbraun
- Gareth K. Galster
- Randall H. Green
- Aaron E. Hall
- Kyle R. Hartman
- Aileen G. Henry
- Jeffrey F. Herbert
- Michael T. Hess
- Rex R. Holmes
- Carrie E. Lerand
- Kyle A. Lindsey
- Susan K. Menge
- Chad E. Novak
- Linsey R. Neyt
- Gina M. Ozelie
- Benjamin J. Qualley
- Michael D. Rust
- Joseph R. Sauer
- Mandy A. Schepper
- Sarah L. Schulz
- Jeremy P. Shapiro-Barr
- Jacob P. Short
- Jenni E. Spies
- Jessica M. Swietlik
- Joel N. Urmanski
- Stephanie S. Vincent
- Tricia L. Walker

a practice and final oral argument and receive additional feedback.

“We wanted to bolster the moot court program at the Law School,” Greipp explained. “We hope to make it into a program of national repute.”

Kearney noted that the Law School has taken significant steps to enhance the legal writing program in recent years and said that the new moot court program has fit in well with those efforts. Over the past five years, the school has gone from one full-time legal writing professor to six such faculty (including Greipp and Price). The revised moot court program moved those efforts forward even further.

“The moot court program extends the legal writing instruction into the upper-level curriculum to an extent greater than was previously the case,” Rofes said.

Greipp and Price were pleased by the response when 63 upper-level students signed up for the inaugural Appellate Writing and Advocacy course. More than two-thirds of the faculty volunteered to judge the final arguments in the class. More than 70 students have already registered for the course for Fall 2006.

### The Jenkins Moot Court Competition

The students in the class were evaluated on the basis of their brief and oral argument, and the top-ranking students were eligible for the 16 positions in the spring

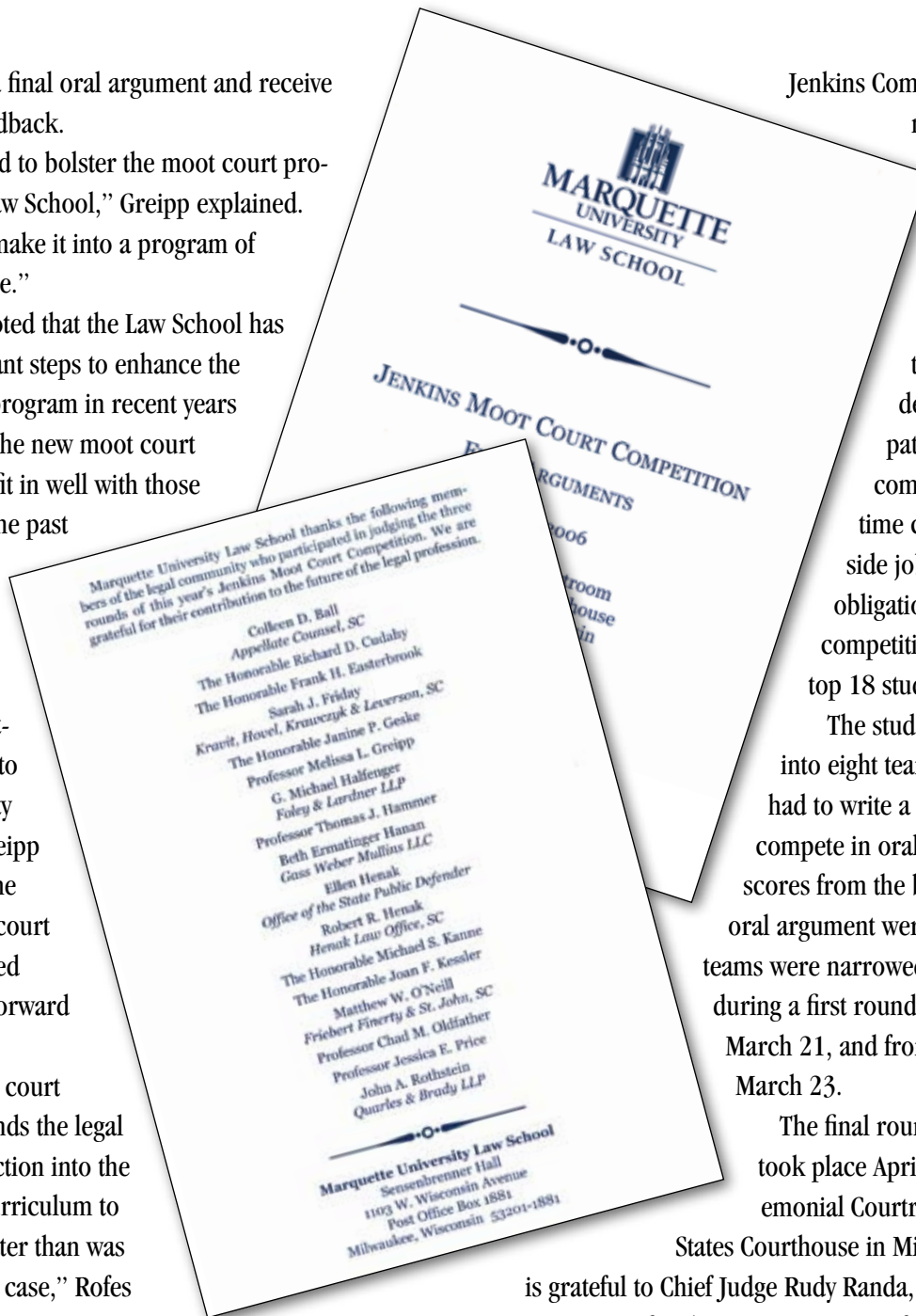
Jenkins Competition. Although no academic credit was associated with the Jenkins Competition, only two of the top 16 students declined to participate in the moot court competition, citing time conflicts with outside jobs and law school obligations. Therefore, the competition drew from the top 18 students in the class.

The students were paired into eight teams, each of which had to write a brief and then compete in oral arguments. The scores from the brief and from the oral argument were combined. The teams were narrowed from eight to four during a first round of competitions on March 21, and from four to two on March 23.

The final round of competition took place April 4 in the Ceremonial Courtroom at the United States Courthouse in Milwaukee. Kearney is grateful to Chief Judge Rudy Randa, of the United States District Court for the Eastern District of Wisconsin, for arranging for the school’s use of the courthouse. Three out-of-town Seventh Circuit judges came to Milwaukee to preside at the final round: Judges Richard D. Cudahy, Frank H. Easterbrook, and Michael S. Kanne.

Although teams had to write briefs on their own, they were allowed to receive feedback as they prepared for oral arguments. Greipp and Price noted that they received assistance from local attorneys who judged practice rounds. The result was some keen competition.

“I saw some very strong arguments during the Jenkins Competition,” Price said. Greipp, who like Price clerked



Front and back of program from final round of Jenkins Competition

on the Wisconsin Supreme Court and observed numerous arguments there, concurred.

Students who participated in the Appellate Writing and Advocacy class will be eligible to participate in national moot court competitions next year. Watching the students both in class and during the Jenkins Competition has Greipp excited about how they will do in national competition.

“Next year, we’ll really see the fruits of our work,” Greipp said. “All of our extramural participants will have taken the course, and some will have further participated in the Jenkins Competition, so, at that point, they’ll be well prepared for national competition.”

One of Kearney’s goals stemmed from his law school days when he participated in Harvard’s Ames Moot Court Competition. He wanted to spark more discussion among the law students about legal issues.

“What we hoped to do was foster a culture in which students, even outside the formal class, were discussing the law,” Kearney said.

Greipp and Price observed that taking place with the legal issue posed in the fall Appellate Writing and Advocacy class. The issue dealt with an attempt to overturn a verdict based on an ineffective assistance of counsel argument when the lawyer had slept through part of the trial.

“It’s a way to get students talking about legal issues the way that lawyers really do,” Price said.

### **Support from the Profession**

Throughout the class and the competition, the Law School received tremendous support from Wisconsin’s legal community. Lawyers and judges stepped up to help critique practice oral arguments, score briefs, and judge the three rounds of oral arguments in the Jenkins Competition.

“There is a real value to the Law School and to the legal community in this kind of interaction,” Kearney observed.

Not only did the legal community turn out to help with the Law School’s intramural program, it also provided strong support last November, when Marquette hosted a regional round of the National Moot Court Competition run by the New York Bar Association. That competition is one of the oldest and most prestigious moot court competitions in the country.

### **Beyond the Inaugural Year**

Kearney is most delighted that, only one year into the

program, it gives evidence of taking root within the school. “The program does not belong to any one person in the school. Professors Greipp and Price taught the Appellate Writing and Advocacy class the first year and will do so again next year; other years it may be other faculty. More than two-thirds of the faculty volunteered to judge the final round arguments in the class. The school as a whole invested in the program.”

“In fact,” he concluded, “the program does not even belong exclusively to the school, given the number of judges and attorneys who have contributed to the program. It is only because of this broad support that we appear to be accomplishing our goals of helping students develop their legal writing and advocacy skills and getting them to debate the law and legal issues.” •

The venerable National Moot Court Competition held a regional round at Marquette University Law School last November. The following members of Wisconsin’s legal community participated by both grading briefs and judging oral arguments. The Law School is grateful for their helpful contribution to the future of the profession.

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|------------------------|------------------------|
| Michael A. Baird       | Katherine M. Longley   |
| Alison M. Barnes       | George W. Love         |
| Tony Bell              | John P. Macy           |
| Remzy D. Bitar         | Erin H. Martin         |
| Rebecca K. Blemberg    | Christopher G. Meadows |
| Daniel D. Blinka       | Michael J. Morse       |
| Michael A. Bowen       | Scott A. Moss          |
| Timothy J. Casey       | Brent D. Nistler       |
| Patricia A. Cervenka   | Matthew W. O’Neill     |
| Brian C. Cholewa       | Roddy W. Rogahn        |
| Andrea Taylor Cornwall | Matthew R. Rosek       |
| Anthony D. Cotton      | Daphne C. Roy          |
| Sigrid E. Dynek        | Rodd Schneider         |
| James B. Gehrke        | Kevin R. Schulz        |
| Denise Greathouse      | William L. Shenkenberg |
| Jeffrey P. Greipp      | Adam J. Sheridan       |
| William C. Griesbach   | Kathlene A. Sheridan   |
| Catherine R. Grogan    | Thomas L. Shriner, Jr. |
| Lisa M. Hatlen         | Trevor A. Sisk         |
| Carah Helwig           | Sven E. Skillrud       |
| Ellen Henak            | Paul Snyder            |
| Robert R. Henak        | Richard J. Steinberg   |
| Daniel R. Humble       | Mary Stevenson         |
| Kathleen E. Hume       | Kathleen B. Stilling   |
| James L. Huston        | Laura F. Straus        |
| Linda Stover Isnard    | Andrew M. Strnad       |
| Alison E. Julien       | Michael P. Sullivan    |
| Lora A. Kaelber        | Russell M. Ware        |
| Rudolph J. Kuss        | Jeff A. Winchester     |
| William G. Ladewig     | Richard L. Zaffiro     |
| Jeremy P. Levinson     |                        |