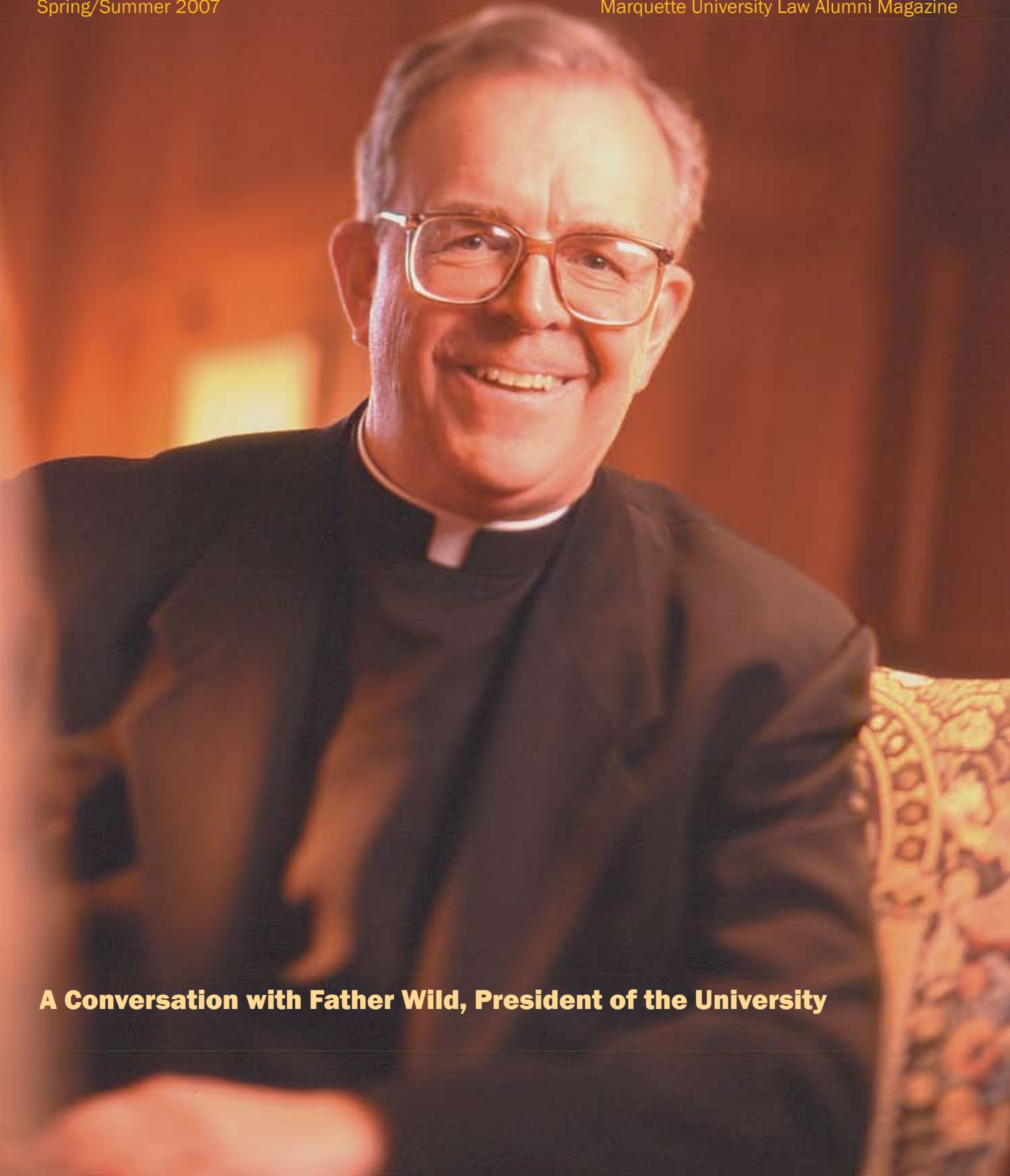


Marquette Lawyer

Spring/Summer 2007

Marquette University Law Alumni Magazine



A Conversation with Father Wild, President of the University

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On the cover: Marquette University President Robert A. Wild, S.J. Conversation with Dean Kearney starts on p. 4.

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The Law School and Marquette University

For the first sixteen years of formal legal education in Milwaukee, our law school stood apart. Begun as the Milwaukee Law Class in 1892, Milwaukee's law school did not become a part of Marquette University until 1908. As we approach the century mark as *Marquette University's law school*, our affiliation with the University is much on my mind.

To some extent, those thoughts concern the past. Although I have been part of the Law School only since joining the faculty in 1997, I have acquired, particularly over the course of the past four years as dean, some sense of the Law School's historical relationship with the University. There is no question that we have greatly benefited in a number of respects. Marquette is truly a university, and it nurtures research and learning in a remarkable variety of fields. Because of its excellence, Marquette has a national (indeed, international) reach, and our mere association with the University reflects well on us. There is also the important fact that the Catholic and Jesuit values that help comprise the University have informed, influenced, indeed, have helped to comprise Marquette Law School, as well.

There have been over time other, less happy aspects of the relationship with the University. It is generally acknowledged that for some decades the University underinvested in the Law School, returning for the Law School's use an unreasonably low proportion of the school's own tuition revenues and even alumni donations. This approach now can be found only in the history books here, for early during his now more than decade-long tenure Rev. Robert A. Wild, S.J., President of the University, agreed with my predecessor, Dean Howard B. Eisenberg, that law school tuition revenues must be expended on matters that benefit law students and that alumni donations intended for the Law School must remain entirely with the Law School. These principles have been confirmed in writing in my time as dean with other important members of the central administration, and they thus promise to last well beyond Father Wild's continuing tenure as president and my own as dean.



In these circumstances, our focus overwhelmingly is on the future—our second century with the University. This future is bright. As I suggested two years ago to the Board of Trustees, there is an *exquisite congruence* between the Law School's undertakings and the mission of the University, which is succinctly summarized as “Excellence, Faith, Leadership, and Service.”

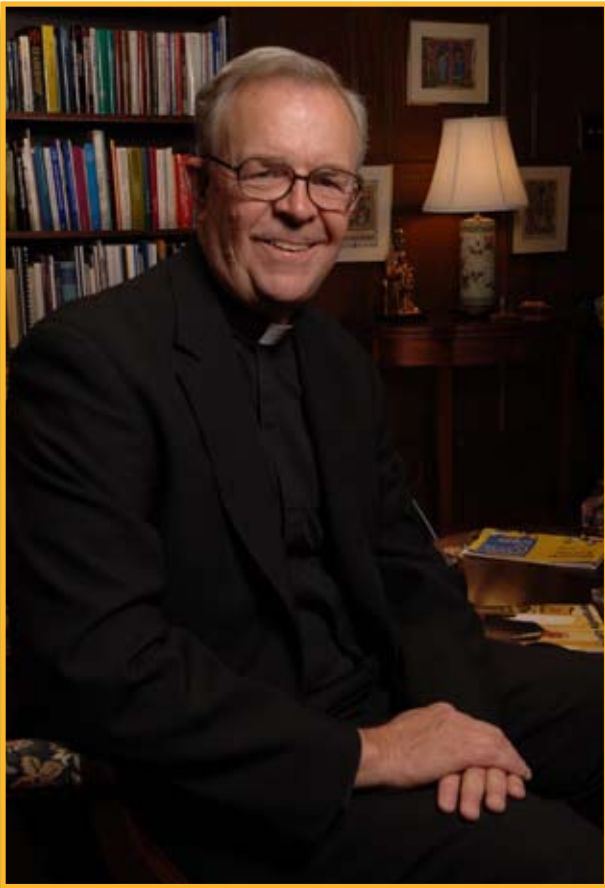
One can get a sense of this from the contents of this and other issues of our magazine. The matter is rather explicit at times in the conversation with Father Wild that is our cover story (pp. 4–11). It is rather more an implicit fact in numerous other pieces—the interview with Professor Scott Idleman, a leading national scholar in religion-and-government matters (pp. 12–15), the undertakings of some of our future Marquette lawyers, as led by our Public Interest Law Society (pp. 16–19), the numerous undertakings of our alumni (pp. 24–41 and 50–53), and the remarks of Professor Michael O’Hear concerning “Faith, Justice, and the Teaching of Criminal Procedure” (pp. 45–49).

Our ability to contribute to the mission of the University is expressed even—or particularly—in our association with those not formally part of the Law School, as perhaps can be seen in the commencement remarks of the Honorable Paul Clement, Solicitor General of the United States, which we reprint here (pp. 42–44), and the remarks on the future of libraries by Dean Emeritus of Libraries Nicholas Burckel at a reception hosted by Marquette’s Helen Way Klingler College of Arts and Sciences (available here at pp. 54–59). Our daily undertakings, quite apart from these printed words, reflect this as well, as evidenced by a description (pp. 20–23 here) of some of our speakers and conferences last fall and the reference (on the back cover) to some of the speakers and guests whom Mike Gousha has brought to the Law School in his few months with us so far.

Truly it can be said that the Law School is positioning itself to serve as an intellectual commons within the University, the region, and beyond. This is most true in the sense that law is the profession in which ideas from other disciplines get adopted, synthesized, or rejected as public policy is fashioned. But it is true as well in numerous other senses, as these pages in our more-or-less semiannual *Marquette Lawyer* magazine reflect.

I wish to thank the many of you who already know this and whose support has advanced our efforts, and to invite others through these pages to come to know us a little better.

J.D.K.



Two Guys Milwaukee (and Chicago)



When Julie Tolan, Vice President for University Advancement, sat down with Rev. Robert A. Wild, S.J., the President of the University, and Law School Dean Joseph D. Kearney to elicit their comments on matters of mutual interest, she had lots with which to work. There are many points of convergence in their respective life stories. Both Father Wild and Dean Kearney grew up in Chicago, on the South Side, and graduated from St. Ignatius High School. Each was drawn to study in the classics. Both had stints in Boston, Father Wild earning his doctorate at Harvard and later serving as President of Weston School of Theology, and Dean Kearney studying for his law degree at Harvard. And of course, most centrally, both have rich Marquette experiences and exciting strategies for taking the University and the Law School to new heights of excellence in teaching, research, and service. The following are some of their comments.

* *Two Guys from Milwaukee*, a Warner Brothers movie released in 1946, cast Jack Carson as a wisecracking cabdriver and Dennis Morgan as a likable Balkan prince. Anxious to learn the “American way,” Morgan joins Carson for a night on the town. Humphrey Bogart and Lauren Bacall appear in a closing-scene cameo. The movie made its premiere in Milwaukee, which was the childhood home of both Morgan and Carson.

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CHICAGO

FATHER WILD: Growing up, I often took the Rock Island line downtown. My father was in real estate and building management, and the firm managed a variety of downtown buildings. He probably drove a number of people nuts, but he would see all these things that needed attention and get them addressed. 310 South Michigan was one of his buildings, the one with the beehive on the top, and I can remember as a kid trekking through the sub-basements with my father, looking at this enormous equipment that they had for compressed air for heating and cooling. I think that it is probably fair to say that some of my interest in buildings derives from those experiences.

FATHER WILD: When I grew up there, I was not that appreciative of Chicago. I was happy, when the opportunity came, to go to other parts of the country. The interesting thing is that when you come back after all that time away, as

I did in 1984, and live in the city again, in my case Rogers Park, you find you have a real appreciation for Chicago. I could see the energy, the pulsing energy. As one of my Jesuit friends said, watching people emerge from the subways downtown, you know these folks are *serious* about making money. And there is a good cultural life. There's just a lot of civic energy. It really is, I think, this tremendous mix of people. You can go down to Devon Avenue, and all kinds of different nationalities have their stores and restaurants, particularly now various South Asian communities, but the Jewish community still is well represented, and Croatians and Greeks. It's Chicago.

DEAN KEARNEY: You used the one word that I definitely would have also used, which is to say *energy*. New York would be another example, I suppose, where the energy is almost palpable. You can almost feel it when you are downtown. And it is true in Chicago even more than it was

when I was growing up. I remember in the mid-1970s Chicago's downtown really seemed to be dying. You would go there, and there would be the rundown movie theaters—the Woods, the State and Lake, and other places such as that. What has happened over the past 30 years in terms of turning around the decline of the downtown has been extraordinary and probably not at all inevitable. And the building boom in that time has expanded on some of the best traditions in Chicago in terms of creating new and interesting architecture. While not every one of the buildings is a success, many of them are. For example, Millennium Park is very interesting and unquestionably a tourist draw, probably not least because it is architecturally interesting. As for its merits, I go back and forth on them.

FATHER WILD: I really like Millennium Park myself. I do think that some aspects of it are an acquired taste. Although I can't say that every single aspect of it succeeds, it is a sign of this large amount of energy and belief in the city and its future. Ed Brennan, our former board chair who works in Chicago, remarked that in his lifetime he really believes Chicago will have gone from being a good city to a great world city. I think there's a lot of truth to that. To be sure, I am a Milwaukeean now, and I know that you feel very much that way yourself—there seems to be no shortage of Chicagoans who apparently prefer life in Milwaukee. And, continuing on the architectural point, I have been encouraged by some of the recent architecture in Milwaukee. The Quadracci Pavilion, or the Calatrava, at the Milwaukee Art Museum particularly stands out, and it is a good reminder of the role buildings can play in shaping our view of a region's possibilities.

TEACHING AND RESEARCH

FATHER WILD: It is critical for Marquette to get excellent talent in the classroom. That is where the rubber meets the road. Faculty really drive the University. I mean that's just the way it is. It comes from the nature of our work.

DEAN KEARNEY: When I think back on high school at St. Ignatius, for me the remarkable fact, probably more than any other, is how many memorable teachers there were. My

parents were college teachers at local schools in Chicago. My mother taught at National College of Education, which is now National-Louis University, at the downtown Chicago campus. My father taught at Chicago State University, which he had attended when it was Chicago Teachers College. They both were products of local schools, and both got their advanced degrees from Loyola. Education was sort of the family business, and their view always was that if you had one or two teachers in your lifetime who made a real impression on you, you probably had done better than the vast run of the populace. Looking back, I had at least three or four teachers at Ignatius alone who were extraordinary. Some of them were Latin and Greek teachers.

FATHER WILD: The move by a faculty member into administration has its costs. In your scholarly work, the risk is that after a while you're not a player any more, as I put it. You don't have the time to research and publish, and so going to the conferences doesn't carry the same excitement. A good faculty member eats, drinks, and sleeps the discipline. You are learning from your students as well as imparting knowledge. You are immersed at some cutting-edge point in your discipline, writing and researching. You are engaged with your colleagues. That's such an important part of the life of a good faculty member, and I think that it gives energy. And teaching—I don't care at what level—ought to give energy. There are constant sources of feedback—colleagues, students, your own work, and the reactions you get from people reading the stuff.

DEAN KEARNEY: I feel fortunate as dean of the Law School that I am able to maintain a connection with the students in the classroom. That is certainly the tradition at Marquette Law School, and it is probably more common at law schools than in other parts of universities. The real challenge, though, is trying to stay current in the scholarly work. I have done a little bit of scholarship as dean, but it gets harder all the time. It really is the case that you have to take a lot of joy in your colleagues' accomplishments as scholars, and you have to regard any time you can spend following a research thread as an unexpected gift. I haven't ceded the field altogether, I hope, but it is a struggle to stay in it.

THE PRIEST AND THE LAWYER

FATHER WILD: A homily is a bit like teaching in that you're trying to move people affectively but also intellectually.

FATHER WILD: We really do spend a lot of time preparing to be a Jesuit, and the level of intensity is fairly high. The point tends not to be recalled, but we were not founded to be educators. Ignatius originally thought it would tie people down too much, and he wanted a more fluid organization that would respond to needs within the church as they were emerging. He didn't intend to establish an elite group, but they were all university-trained at the best university in Europe. A master's degree meant what it said. They were qualified as masters, teachers, and at the university level. Ignatius was not the most brilliant in the group, but he had brilliant organizational capacity and spiritual insight. There were several people more brilliant than he, and they were a real mixed group, the ten of them, the founders. But it all circled around Ignatius.

FATHER WILD: I also did pastoral work when I was at Harvard. I got fired out of one parish. The pastor—remember, this is 1970, just after Vatican II—didn't like part of my homily. But what really bothered him is that I went to the back of the church and greeted people after Mass. He said that's a no-no. He told me that if I agreed not to do that any more, then I could stay. By that time I had already seen the handwriting on the wall, and I had found another parish with which I was happy. So then I went to this parish in Malden—"Sacred Hahts" ("Hearts" to non-Bostonians). The pastor there had been trained at Boston College and probably thought that all Jesuits were nuts. The only time he ever gave me static was when I tried to have altar girls, and he said "no." He said I would lose all the altar boys. They would go on strike if I continued. So I said all right, no altar girls.

DEAN KEARNEY: In my family, four of the five of us siblings are lawyers, but four of the five of us, differently counted, are teachers. I am not quite sure what I would have done had I not been a lawyer or a teacher.

FATHER WILD: Well, I, of course, would laugh and say I was genetically programmed to be a Jesuit. I had an uncle, Ed Colnon, who was a Jesuit, and I have a cousin, a first cousin, who is a Jesuit at Loyola in Chicago. But the fact of the matter is that it was really the Jesuits teaching at Ignatius, especially the young scholastics, who sort of primed the pump. I must admit it was second semester of my senior year before I went through the application process. The penny didn't really drop until somewhere in the senior year.

FATHER WILD: I have thought many times what I would have done if I hadn't become a Jesuit, if I had gone to Holy Cross—as I was signed up to do. I think I'd have been a lawyer, or at least that thought had crossed my brain. But to say that isn't to say that I could imagine how it would have turned out, because lawyers do so many different things. Something I've come to realize is the diversity of possibilities we discover as we move through our lives.

DEAN KEARNEY: I was invited to join the priesthood only once—and then only facetiously by one of the priests waiting in the sacristy with me shortly before my wedding was about to start. Needless to say, I thought that it would be poor form to accept the invitation. I was already a lawyer at that point and indeed about to seek a full-time law teaching job after a number of years of clerking and practicing. I sometimes say that law teaching was something in which I had been interested even before it was rational for me to be—by which I mean, before I had gone to law school. I suppose that it was a combination of my own attraction to law and the family influence with respect to teaching.

BOSTON

FATHER WILD: There is a kind of arrogant side to Harvard that I didn't like, but the other side of it is, the whole world is there, and it's just an extraordinary environment. That's what juiced me up originally that first summer in Cambridge. After that I thought that, if Harvard takes me, that was the place to go, in the United States certainly or even worldwide, for New Testament studies.

DEAN KEARNEY: The academic and intellectual resources there are pretty remarkable. When I was a third-year law student, I wrote a paper on recusal of judges in medieval canon law. I would sit there in the Treasure Room at Harvard Law School, poring over medieval Latin texts. It was my last gasp at pretending to be a classicist, I suppose, although my students might think I'm still trying, with some of my Latin phrases or allusions. I tell them that I use no phrases and make no allusions that an educated person historically would have been unable to appreciate. I co-teach my Advanced Civil Procedure class with a lawyer from downtown Milwaukee. He is perfectly capable of doing the Latin as well, and he told our students recently that the motto of the class should be *Forsan et haec olim meminisse iuvabit*. I don't recall his translating it for them. Why would we?

FATHER WILD: There is a culture at Harvard, a world of educated men and women. And the libraries are astounding. I was in every one of them including the law library. My dissertation dealt with odd material and strange languages that took me all over the institution. I had one article in Serbo-Croatian that stopped me cold. Fortunately, the lady who lived across the way was the curator for Slavic-language materials at Widener Library and was a good friend of ours. She'd come to Mass at our house all the time, and she said, "Well, let's just go through it." It just is extraordinary. There's no place quite like it. I mean, I was looking for lots of weird stuff, and it was there.

FATHER WILD: Harvard was a great experience for me at many levels, even though I was happy eventually to get out of the hot house at Cambridge. I was already a priest, and I was in a program with older students. As a graduate student, you live life in your department. Ours was not a huge department, but the people came from all over. We had a South African, a member of the Zulu tribe who was a good friend of mine, a Methodist and wonderful guy. We had the son of a rabbi in Oklahoma City, who was one of our youngsters. We gave an honorary degree two years ago to Eleanor Stump, who was a year ahead of me in the doctoral program and ultimately decided that philosophy was what she ought to be about, and she is now a

distinguished professor at St. Louis University. It was a very interesting group of people.

DEAN KEARNEY: I was at Harvard for just the three years, and going through law school is much different from going through graduate school, not least because you can pinpoint with exact certainty your terminal date. The second Thursday in June, if I recall the Harvard graduation schedule correctly—three years after you arrive in Cambridge for law school you will be leaving Cambridge. And I had put my seven years in on the East Coast. While I certainly enjoyed my classmates very much, I would not say that the law school was a warm place. And I do think that Marquette—maybe it's because we try harder—I do think that the University and the Law School here do a pretty good job in trying to care for the individual student. We do have some students who think that that should translate into something along the lines of going soft on a course requirement from time to time, but I've been very impressed by the University in not taking that route. At the same time, it is important for us not to get too self-satisfied about the matter.

SPORTS

FATHER WILD: I like going up and seeing the Packers play. I follow the Packers. I admit I betray my Chicago roots, but I'm approaching my 20th year living in Milwaukee. You cannot cross that border and start living in this state without realizing very quickly, especially in these latter years, that the Packers are *the* athletic institution in this state. And so going to Lambeau is both an athletic and cultural experience. And when I discovered that I had a block of six tickets on the 50-yard line, rather good seats that came with the office—oh, there are some perks in this job—I decided they ought to be made use of. Now, these are only for what's called the Milwaukee series.

FATHER WILD: My first love is basketball, and Marquette basketball without question. I got interested in basketball as a spectator sport when I started my first year of teaching high school in Cincinnati. We ended that year as state runner-up. And I went to all those home games and

tournament games, even away games. As a young Jesuit, you go to everything. What a surge of energy that gave to that institution. In making that run, we lost the state championship by a point. We were good all the years that I was there. Great guys. Great human beings coaching in that era. The basketball coach was a fine teacher and a good coach.

FATHER WILD: You know, you get all this static out of certain quarters about athletics, and you do have to insist on a program that has integrity. And you can never say, “These problems can never happen here.” You have to create the right climate, and I inherited a situation with an athletic director who really cares a lot about that. There is certainly a low, low, low tolerance, as there should be, for mischief in our athletic department, which is what we want. We want our program to run with integrity, and I think we do a pretty good job in that regard.

DEAN KEARNEY: We are barely two years into it, but you must be just delighted thus far with our involvement in the Big East conference. I ran into Greg Kliebhan [Senior Vice President of the University] the night after the U Conn game last year. We were at a stoplight, and I saw that he was in the car next to me. I rolled down my window and asked him, “How many people are going around saying that the move to the Big East was their idea?” His response was to laugh and say, “Well, everyone knows that it was your idea, Joe.”

FATHER WILD: It has just been terrific for us. We’ve been able to strengthen our presence in the northeast, where we have lots of alums. We’re beginning to connect more easily, more readily. You just feel more energy in that whole group of alums. That’s a work in progress, I think, connecting with these men and women who are out there. But then, of course, not everybody gets all excited about athletics. But for an awful lot of people, it is a tremendous rallying point. And last year we exceeded all our expectations for how we would perform in the league. Those Big East games turned out just the way we thought. Every one was an incredible event. I don’t care what team you’re playing. It’s just an

amazing league, and it’s no surprise that it got as many teams as it did in the NCAA tournament at the end of the 2006 season, including us.

DEAN KEARNEY: My own great passion in sports has always been the White Sox—another family tradition. I accepted numerous congratulations for their winning the 2005 World Series because everyone knew that it had been a substantial personal accomplishment on my part. For a while after that I worried that sports would become pointless for me (could a sporting contest ever matter again?), but then I recalled that it remained important that the Cubs *not* win a World Series. The Brewers’ move into the National League the first year I was living in Milwaukee enabled me to root for them as well, although sports loyalties formed while one is young are usually a lot deeper.

THE LAW SCHOOL, THE UNIVERSITY, AND THE REGION

FATHER WILD: With regard to the Law School, what energized me, candidly, was the same person who energized you, Howard Eisenberg. In my case it was his drafting of a letter for a law bulletin that was going to come out under my name. He sent the letter over for my review. I was prepared thoroughly to revise it. Then I read it, and I called him and asked, “Did you write this yourself?” He said he had. The letter was amazing. It was a statement about the Law School’s mission and interface with that of the University and it talked about Ignatian values. So Howard and I connected very early on—I arrived as president six months after he came on as dean—and I thought, “This guy is the real deal.”

FATHER WILD: My experience while on the Marquette faculty [from 1975 to 1984] had been that the Law School was just not part of my world. Some of that is natural. It’s a



professional school, and it has a certain independence. You're forming people not simply for an academic discipline but a real profession. Students are socialized into this profession. It's more than simply academics. But on the other hand, to see the values of the broader University as they had been emerging over time and to see Howard's strong sense of sharing those values in a way that made sense in a legal education environment—well, I was excited by that. And I knew Howard wanted to move things forward. Part of the way he did that was to recruit you here.

FATHER WILD: Of course, Howard and I did not always agree in the first instance. We would have these big arguments, but I knew his heart was in the right place, and he was a good advocate. If the person is not a good advocate, you probably do not have the right law school dean. Howard worked constantly to build a first-rate law school, and that impressed me. And I went on a number of trips with him, visiting with various donors or groups of donors for the Law School, and met some tremendous people. So we were able to make a lot of common cause together.

DEAN KEARNEY: One of the key things that attracted me to come here in 1997 was my sense that with Howard the Law School was a place that was aggressively moving forward and was on the advance.

FATHER WILD: A lot of that had and has to do with resources. Howard was the one who really brought the issue of the Law School's finances front and center. At the time, it was clear the Law School was looked on as a financial

cash cow which we were milking dry. And so that had to be turned around or it would simply be hopeless to try to grow a stronger, better law school and to engage the

alums with the school. So making the decision on the Law School financial agreement, as challenging as it was at that point in the University's history, I think was very important not simply for the Law School but for the University as a whole. There's not much question that it has worked out well all the way around.

DEAN KEARNEY: It really is an extraordinary position to be Dean of Marquette Law School. It is like few other deanships in the country. It is a

much more important civic position than being dean of any law school in Chicago, including the University of Chicago or Northwestern, for the simple reason that this is Milwaukee's law school, and in very few other cities could a similar thing be said.

DEAN KEARNEY: We've only begun to scratch the surface of what it means to be the law school for this region. In the past it might have been enough for us to educate a disproportionate number of lawyers and judges in the area. Now, even beyond that fundamental role, we want to be a prime agent in building the civil society here, by acting as something of an intellectual commons, a neutral forum in which those interested in law and public policy can come and engage, explore, debate, and maybe even help forge some possible solutions to problems that the society faces. The region needs political, economic, and cultural drivers, and Marquette Law School is progressing toward being a key driver.



FATHER WILD: There is no question that the Law School has made a lot of progress, and next we have to crack the nut of the building. The faculty is more visible, and not only because it is larger. The progress is important to me. I felt the same way with the Dental School. These schools are professional schools. We want them to be high quality because if they can be really high quality, this is going to lift up not simply that part of the University, but the entire University. That's particularly true in a law school, which is a high-visibility school. Trustees would make that point as

well. There are certain schools that I think give particular visibility to an institution. Those are just the facts of life. But apart from that, I think that educating men and women as lawyers is a very worthy enterprise—truly they are, as we Jesuits say, men and women for others. Legal education goes way, way back to university education in the medieval period. So the ties with the broader University are deep. And to see the rapprochement between the Law School and the University as a whole is, I think, very encouraging. •

DEAN KEARNEY'S REMARKS AT THE PRESIDENT'S PICNIC

At the most recent President's Picnic, an annual affair held in August, the University spent a few minutes marking Father Wild's tenth anniversary as Marquette's President. The most memorable part was a lighthearted but warm imitation of Father Wild by Joseph Simmons, Arts '04—something of a bold move, when one considers that Mr. Simmons recently joined the Jesuit order. Although that imitation cannot be captured in print, the following are remarks that Dean Kearney delivered at the invitation of John Stollenwerk, Sp'62, Grad '66, Vice Chair of the University's Board of Trustees.

Thank you, John. I interviewed in 1996 to join the law school faculty, and the dean at the time, Howard Eisenberg, later told me that what I had done before I was 18 was more important in my getting the job than anything else. He meant being from the same neighborhood on the South Side of Chicago as Father Wild, the President of the University, and having gone to the same Jesuit high school, St. Ignatius, as Father Wild. I sort of doubted Howard, but certainly made sure, several years later, to wear a *maroon*-and-gold tie when I interviewed with Father Wild for the deanship.

Since then, my job, like that of others at the University, has been on a daily basis to seek to implement Father Wild's and the Board's vision for Marquette: that it achieve such excellence that, in any conversation on the top Catholic universities in the country, Marquette will be mentioned as a matter of course. There have been great strides during the ten years of Father Wild's leadership. Consider the example of the Raynor Library, which is transforming the undergraduate experience at Marquette. Or the athletic department's challenge and achievement as a member of the Big East conference. And I know that my colleagues in the Dental School take great pride in the astonishing momentum they gain from their new curriculum and building.

Father Wild's demand for excellence underlies all of this. He requires excellence of himself in representing the University, and in this way he leads by example. He proceeds *confidently*, which, many of you will recall from your Latin classes with the likes of Father George Ganss, comes from the Latin *fides*—faith, loyalty, trust—surely among the essential characteristics for leadership of this great University. I hope, when we join in the toast that John will give in a few moments, that you, like me, will be thinking not so much of the past decade, but to paraphrase what they might say at a political convention: "*Ten more years!*" •

An interview with

SCOTT IDLEMAN

Religion and Government— An Ongoing Experiment



The proper relationship between religion and government has been a longstanding concern in Western societies. The United States has been no exception, of course. Many of Europe's inhabitants left the Old World for religious reasons, and the various arrangements forged on this continent—including eventually the Constitution's First Amendment—were rather novel and experimental. Today, these experiments continue to play out in the forums of law and politics. In this Q & A, Marquette Law School Professor Scott Idleman, who specializes in law and religion, discusses several of these interactions and a book that he is presently coauthoring on the topic.

Why is religion such a recurring presence and force in American law and political life?

There are two principal reasons. First, for a majority of citizens, religion embodies or reflects their moral and conceptual outlook on the world. They view many if not all relationships—familial, economic, political,

and other—in reference to their foundational beliefs about God and the purpose and nature of their and others' existence. Second, political and legal issues tend to implicate many serious ethical issues that can be satisfactorily resolved only by reference to such foundational beliefs. The dignity and moral equality of all human beings, for example, is not a scientific, verifiable



(or non-verifiable) fact. Rather, it is a moral proposition that can only be embraced as a truth when it is consistent with and buttressed by one's foundational beliefs.

Will American law and politics, as a consequence, always be faced with religion-related issues and conflicts?

Yes, of that we can be sure. Perhaps to the proverbial certainty of death and taxes we should add religious issues in law and politics. Some of these issues are recurring, such as the use of public funding to support certain educational and socially beneficial functions of religious organizations. Similarly, we have seen for decades conflicts over the teaching of evolutionary natural selection in public schools and related efforts to teach alternative theories such as creationism. Other issues, by comparison, are fairly new or at least of unknown duration. For example, most legally recognized conflicts over religious symbols in public, outside of the schools—from nativity scenes in public parks to Ten Commandments monuments

on courthouse lawns—are but one or two decades old. And the challenges to the Pledge of Allegiance, the most significant of which eventually failed for lack of jurisdiction, date back only a few years.

Can you explain a bit more about the book you are writing, and what kinds of issues it specifically addresses?

It is intended to be a comprehensive treatise, presently titled *Religion and the State in American Law* and generously funded by the Lilly Endowment. The book is the brainchild of the late Professor Boris Bittker of Yale Law School, who was best known—indeed, famous among many lawyers—for his work on taxation, but who was extremely well-regarded as a scholar in general. Prior to his death in 2005, he invited me to be a co-author and we, in turn, invited Professor Frank Ravitch of Michigan State University College of Law to join us as a third author. What surprised us then, and it continues to be true, is that there does not currently exist an exhaustive and practical work on law and religion, one

that could readily be used by judges, scholars, lawyers, the media, and the public at large. One of our primary purposes, therefore, is simply to fill that void. As for issues addressed, they are numerous and wide-ranging, everything from historical perspectives to the current law on public education, prisoners' rights, criminal law and process, land use and zoning, and beyond.

It seems that when it comes to matters of religion and public life, no one is without bias or opinion. How do you attempt to address or overcome this fact in your book?

First, let me say that all three of us have relatively few axes to grind, so to speak. We are not principally litigators regularly representing clients or sides on law-and-religion conflicts, although we have occasionally signed onto amicus briefs. Instead we see ourselves as teachers and scholars whose chief function is to convey the law and the legal process in an even-handed, comprehensive manner. This is not to say—and I think it would be absurd to contend—that we are devoid of views on specific issues. This brings me to my second point, however, which is that having multiple authors can greatly reduce the likelihood that a biased or one-sided view is being conveyed. If anything, coauthorship provides a check on idiosyncrasy and partiality. Also, where divergences in our viewpoints are observed, this gives us an opportunity to examine and to note the possibility that they represent larger conceptual differences in judicial, legislative, and academic circles.

You mentioned the media as one possible audience for your treatise. What is your assessment of mainstream media coverage of law and religion issues?

In a number of ways, media coverage of religion has much improved over the past decade, due to a variety

of circumstances, and yet in other ways there remain significant deficiencies that I am not sure can ever be satisfactorily remedied. On the positive side, it does seem that religion-related articles are more prevalent in mainstream media. There is often, for example, a religion editor on the staff of major newspapers. Some of this is attributable to the not-so-complicated realization that many people who read newspapers and magazines are religious, and perhaps they would like to read things that concern their lives. Some of it is attributable, however, to increased university offerings on religion and media as well as the contributions of independent think-tanks and foundations such as the Ethics and Public Policy Center and the Pew Forum on Religion & Public Life.

That seems like a rather positive assessment, especially given your initial caveat. What exactly are the “significant deficiencies” that hinder the media’s coverage of religion?

I think at least two problems, one superficial and one more entrenched, can be identified. The first is the tendency of print media to ghettoize religion by segregating it into a “Religion Page,” typically located in the rear portion of the paper’s first section or, worse yet, in an entertainment or community events section that has very little to do with real news. Even more problematic is the exception to the rule, in which a paper will elevate a religion story to its first or second page if the story involves an allegation that a church or pastor or even a congregant has engaged in criminal or otherwise scandalous conduct. This, of course, is the nature of the news industry—if it bleeds, it leads, as they say—but such an approach gives the public an extremely skewed view of religion and public life.

A second and much deeper problem is an unrealistically ideal view of journalism itself. Consider two ideals or myths we hold about the media. One is that their robust pursuit of truth advances democratic decision-making and the public good, and the second is

that the media are neutral conveyers of facts and ideas. Both of these, of course, are patently false much of the time. First of all, the media have a vested interest in the existence, exaggeration, and perpetuation of problems or conflicts. If there were no perceived social divisiveness or apparent threats to our immediate sense of security and well-being, the news media as we know it would essentially be out of business. Secondly, as for supposed neutrality, it is well known that media coverage itself—be it “liberal” or “conservative”—actually affects the subjects or objects covered. Media folks become vested players in the game, not simply neutral observers.



The current Supreme Court, for the first time in history, has a majority of Justices (five of nine) who identify themselves as Roman Catholic. These include Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito. In your view, is there any significance to this development?

Certainly it reflects a cultural shift from an earlier era in which one’s Catholicism could have been a major hindrance. In the presidential arena, for example, this was clearly the case with Al Smith’s unsuccessful bid in 1928, though less so with John F. Kennedy’s successful election in 1960. It is interesting to note, however, that in the well over two centuries of the Court’s history, there have been only 11 Catholic

Justices, including today’s five. So, at the very least, the virulent anti-Catholicism of prior decades has markedly declined, and that fact is itself significant.

I suppose that what you’d really like to know, at bottom, is whether a Catholic majority will make a

difference in Court rulings, or at least Court dynamics. At the risk of sounding coy, I simply cannot predict these matters at this time. So diverse have been the three recent Catholic Justices—Scalia, Kennedy, and Thomas—in terms of not only outcomes but also methodology, that

it would be entirely speculative to predict what effect the addition of Roberts and Alito will have. The sense among court observers is that Chief Justice Roberts is a consensus-builder, which naturally contrasts him with Justice Scalia, who adheres to a textualist approach no matter how many or how few adherents join him. And Justice Alito, who had sardonically been dubbed “Scalito” during the confirmation process due to his similar approach to Justice Scalia’s, may pursue an entirely unique and different course over his tenure on the High Court. In short, these matters are quite difficult to predict, and I am prepared to play neither the prophet nor the fool at this point. •

Summer of Service: Marquette Law Students in Public Service Law

BY ANNEMARIE SCOBEEY-POLACHECK



T

he summer fellowship program administered by the Public Interest Law Society at Marquette Law School has enabled a growing number of the school's students to engage in public interest and public service work.

There is no question that there are trade-offs for the students. The Eritrean government office where Jennifer Hanson, now a third-year student, clerked last summer did not even have running water. "In the bathroom, there was a bathtub filled with water, so you would just dump a bucket down the toilet when you were finished," she said. "It really didn't bother me, though. It's amazing what you can get used to."

Hanson was one of 15 Marquette University Law School students who received fellowships from Marquette's

Public Interest Law Society (PILS) to help them spend last summer working as law clerks in public interest agencies, both governmental and nongovernmental. Other placements were not as far-flung as Eritrea. They included a Catholic Charities office, legal aid clinics, public defender's and district attorney's offices, and the Task Force on Family Violence and Centro Legal in Milwaukee.

As this partial catalog suggests, each fellowship is different. In Hanson's instance, her job working with an Eritrean commission meant that she was responsible for visiting and then writing reports on Eritrean towns, public buildings, and markets that had been destroyed in a 1998 border war with neighboring Ethiopia. The reports will be used as part of an Eritrean effort to obtain compensation from Ethiopia. While her office's lack of running water, the absence of the internet, and limited phone service gave Hanson an experience of law very different from that



Twelve of the Summer 2006 PILS Fellows photographed in Eisenberg Memorial Hall: From left to right (front row) Julie Piper, Anne Jaspers, Jennifer Hanson, Kristina Hanson, Andrew Hitt, (back row) Todd Kleist, Hussain Khan, Ravae Sinclair, James Swiatko, Jr., Molly Smiltneek, Jessica Marquez, Candace Hayward Hoke.

available in the United States, she says she would not trade her time in Eritrea for anything.

“I feel that I was very productive and useful there, but at the risk of sounding clichéd, I took so much more with me than I gave,” Hanson said. “I learned how much I take for granted in my whole life. I learned that I need a lot less to be happy and to get by than I thought I did.”

Building on Eisenberg’s Example

The PILS summer fellowship program has operated at Marquette Law School for over a decade. Fellows are chosen through a competitive application process that requires students to find the agency they plan to work for and persuasively write how their work would benefit the common good. Fellows are not paid for their time, but receive a stipend to cover their living expenses for the summer. The necessary funds are raised through an

annual auction sponsored by the Law School’s Public Interest Law Society.

The PILS summer fellowship program was established during the tenure of the late Howard B. Eisenberg, who served as Dean of the Law School from 1995 to 2002. Eisenberg passionately believed in a lawyer’s duty to assist the community. Both his writings and his actions emphasized the importance of pro bono legal services and other public interest and public service work by members of the legal profession. Students during Eisenberg’s era also led the creation of the PILS summer fellowship program.

Although his own time as a student preceded this period, Dan Idzikowski, L’90, appointed last year as Assistant Dean for Public Service at Marquette Law School, sees today’s students in the PILS fellowship program as carrying on Eisenberg’s legacy. “Howard Eisenberg

personally embodied public service,” Idzikowski said. “He saw the promotion of justice and faith through service as an ideal at the center of Marquette’s mission as a Catholic, Jesuit university. The PILS fellows are actively entering into the struggle for a more just society—just as Dean Eisenberg did. They are giving concrete expression to their beliefs by giving of themselves in service to those in need.”

Joseph D. Kearney, Eisenberg’s friend and successor as dean, has sought to build upon this legacy over the past four years, both by allocating significant additional resources to the PILS summer fellowship program and by leading the school’s creation of the Office of Public Service (and with it the position to which he appointed Idzikowski).

But it is the students who have been the driving force throughout. The Public Interest Law Society’s annual Howard B. Eisenberg Do-Gooders’ Auction provides the funding for the PILS summer fellowship program. Although the Law School provides administrative support and some alumni also help, the auction is organized by current law students.

“It is an incredible amount of work,” said Heather Placek, PILS president, “but without it, we wouldn’t have the fellowship program.”

The auction has been held in recent years in February at the Pfister Hotel and in February 2007 was attended by more than 400 students, faculty, area attorneys, and other supporters of the Law School, bidding on everything from high-end vacation rentals to homemade Christmas cookies. It raised \$40,000 for fellowships for this coming

summer, and Dean Kearney has matched this amount out of discretionary monies (funds donated by alumni and earmarked to the dean’s discretion).

A Formative Experience

Hussain Khan, 3L, who served as a clerk in the Cook County Public Defender’s Office, found his experience invaluable. Khan grew up in the Middle East and moved to the United States at 18 to attend college at Loyola University in Chicago. “I came to the United States, having seen extreme poverty in both the Middle East and India,” he said. “But at the time, I didn’t know there also was poverty in America. I knew only of one side of America—the side with excellent educational opportunities.”

At Loyola, however, Khan often played basketball with neighborhood teens on the streets just outside of the university. Walking back to the Loyola campus after these basketball games, Khan was struck by the difference between the lives of the university students and the lives of the city kids growing up nearby.

“I would see guys going through the court system who really didn’t know there was another way,” Khan said. “Working in the Public Defender’s Office was an opportunity to give some of these guys a chance at a better life.”

Khan’s experience in Cook County was so positive that he plans to apply for a full-time position in that office or in its analogue in Milwaukee.

“I couldn’t have worked there without the PILS fellowship,” he said. “I am so grateful for the experience.”

While students in the PILS fellowship program left their



The annual PILS auction, held at the Pfister Hotel this past February, drew more than 400 guests and raised \$40,000 to help fund the PILS summer fellowship program.

summer clerkships feeling that they had a powerful experience of service, many left also feeling some frustration. Too often, some students said, other attorneys assume that public interest attorneys are in their line of work because they could not get a job with a private firm. They said that some students who feel drawn to serve the public have trouble reconciling their desire to serve with the realities of public interest law—low pay and lack of prestige.

Molly Smiltneek, a third-year PILS fellow who clerked for the Legal Services to Immigrants Program of the Archdiocese of Milwaukee's Catholic Charities, said that it is up to every generation of law students to redefine what success as a lawyer means.

“Deciding whether or not to do public service law is a struggle for many students,” Smiltneek said. “Part of it is economic—students have loans and public interest law does not pay well. But part of it is also the competitive nature of law students. People look at you differently depending on where you work. The great thing about the PILS program is that it exposes more students to a career in public interest law—students who would not have had that opportunity without the fellowship.”

Smiltneek sees Marquette's newly established Office of Public Service as a “huge step forward” for the Law School. “Marquette has a unique responsibility that comes from being a Jesuit school located in the middle of a city,” she said. “There are so many needs to be met in the area surrounding the University. The Law School is in a position to take action and make a name for itself in public interest law.”

Kristina Hanson, 3L, who worked as a restorative justice intern with Alternatives, Inc., in Chicago, agrees with Smiltneek's assessment. Hanson sees restorative justice, which emphasizes that a perpetrator must be made aware of the harm he or she has caused to the victim and community, as a program that would speak to any student with a Jesuit education. Hanson believes that once students experience the satisfaction that comes from public service, there is no going back. “I think that a part of being at Marquette means that you keep your mindset that you are in law to help people.” she said. •

2006 PILS Fellows: Where They Worked

Eric Berg

Department of State, Washington, D.C.

Laurie Best

Milwaukee County District Attorney's Office

Lee Greenwood

Rhode Island Legal Services

Jennifer Hanson

Eritrea-Ethiopia Boundary and Claims
Commission, Asmara, Eritrea, East Africa

Kristina Hanson

Alternatives, Inc., Chicago

Andrew Hitt

Office of the District Attorney,
Jefferson County, Wisconsin

Candace Hayward Hoke

Task Force on Family Violence, Milwaukee

Anne Jaspers

Cabrini Green Legal Aid Clinic, Chicago

Hussain Khan

Cook County Public Defender's Office

Todd Kleist

Cook County State's Attorney's Office

Jessica Marquez

Task Force on Family Violence, Milwaukee

Julie Piper

Cook County Office of the Public Guardian

Ravae Sinclair

Centro Legal, Milwaukee

Molly Smiltneek

Catholic Charities Legal Services, Milwaukee

James Swiatko, Jr.

Centro Legal, Milwaukee

Fall 2006 Boden Lecture — “Law, Politics, and Slippery Slopes”



Slippery-slope arguments—we’ve all made some, and we’ve all pooh-poohed others, in contexts as varied as free speech, privacy, euthanasia, gun control, regulation of smoking, and various hot-button social issues. So explained **Eugene Volokh**, Gary T. Schwartz Professor at UCLA Law School, in Marquette Law School’s annual Boden Lecture this past fall. Professor Volokh discussed how we can make such arguments more effectively and how we can evaluate them. The lecture was delivered at the Pfister Hotel in Milwaukee on October 16, 2006, to 150 students, faculty, alumni, and members of the Milwaukee legal community. Professor Volokh, a former law clerk to Justice Sandra Day O’Connor and Judge Alex Kozinski, is a prominent commentator on the law and public policy, reaching both popular and academic audiences, particularly through his “Volokh Conspiracy” blog (www.volokh.com). The annual lecture remembers the late Robert F. Boden, L’52, who served as Dean of Marquette University Law School from 1965 to 1984.

Remembering a Marquette lawyer

The Law School this past fall mourned the loss of Professor Emeritus **Charles W. Mentkowski**, L’48, who passed away on September 22, 2006. Mentkowski had returned to the Law School in 1968, joining the faculty following two decades of practice in Milwaukee. He served as Associate Dean for 20 years, working with both late Dean Robert F. Boden and former Dean Frank C. DeGuire, and remained a full-time member of the faculty until 1996. Throughout this time Mentkowski remained active in the community, perhaps most notably as Chair of the Milwaukee Police and Fire Commission in the 1970s. Mentkowski was actively involved in the Law School up until his death.



In delivering the eulogy at a funeral Mass celebrated at Gesu Church by Rev. Gregory J. O’Meara, S.J., a member of the Law School’s faculty, Dean Joseph D. Kearney recalled Mentkowski’s remarkable number of undertakings, then saying this: “I should like to be able to connect all of these various activities—those of a student, husband, parent, coach, scoutmaster, teacher, administrator, public servant, and mentor—and weave them together to demonstrate a sort of seamless web. If I spoke long, it would be a highly imperfect exposition. But nonetheless I can make the connection in only a few words: Chuck Mentkowski was a Marquette lawyer.”

The Fall 2006 issue of the *Marquette Sports Law Review* contains a number of memorials to Dean Mentkowski, who served on the Board of Advisors of the Law School’s National Sports Law Institute, including as Chair from 1989 to 2000.

Expanding the faculty



The Law School welcomed this year to the full-time faculty Professor **Chad M. Oldfather**. Oldfather is a graduate of Harvard College and the University of Virginia School of Law. He has experience both in practice (in his native Minnesota) and in teaching. Oldfather's primary area of scholarly interest is judging and the judicial process. In 2004, the American Academy of Appellate Lawyers awarded him its Howard B. Eisenberg Prize, which the Academy bestows for the best article on the appellate process in the previous year. Oldfather's article, "Appellate Courts, Historical Facts, and the Civil-Criminal Distinction," appeared in the *Vanderbilt Law Review*. Oldfather's teaching at the Law School includes sections of the courses in civil procedure and evidence.

New positions in recruitment and public service

As part of implementing its strategic plan, as developed by both the faculty and administration of the school, the Law School created two new administrative positions, beginning this past academic year. **Daniel A. Idzikowski**, L'90, joined the Law School as Assistant Dean for Public Service. Idzikowski has extensive experience since law school, including as a member of the Jesuit Volunteer Corps, a lawyer in the legal services area, and most recently (indeed, for the eight years prior to joining Marquette) as the Executive Director of Catholic Charities in the Diocese of La Crosse. As Assistant Dean for Public Service, Idzikowski helps lead the Law School in such varied areas as community outreach, volunteer service, and public service law. He can be contacted at (414) 288-8060 or daniel.idzikowski@marquette.edu.

The other position doubles the size of the professional staff of the Law School's Admissions Office. **Stephanie L. Nikolay** has joined the Law School as Director of Recruitment. She will work with Assistant Dean for Admissions Sean Reilly. Nikolay spent the previous 16 years with the Office of Undergraduate Admissions at Marquette University, most recently as Senior Assistant Dean. She can be reached at (414) 288-8062 or stephanie.nikolay@marquette.edu.

"These new positions are the culmination of one aspect of our strategic planning, but they are far more about the future of the Law School," said Dean Joseph D. Kearney. "The Law School needs to attract talented students and then to help those students transform themselves into Marquette lawyers, which means more than simply technical prowess with the law. To have an Assistant Dean for Public Service and a Director of Recruitment will be of immense help, especially given the two individuals whom we attracted to those positions."



A look back at fall 2006 conferences

The Law School this past fall hosted four significant conferences, variously reflecting regional, national, and international interests of the school's faculty. The first was an early October conference entitled **"Is the Wisconsin Constitution Obsolete?"** The conference focused on core constitutional issues—most notably, the allocation of political power, economic development, the structure of local government, education, and taxation—and inquired whether Wisconsin's basic document facilitates or restrains advances by the state. The Wisconsin Alliance of Cities and the University of Wisconsin–Madison La Follette School of Public Affairs were cosponsors. Leading national scholars joined with distinguished Wisconsin scholars to present papers that are being published in a symposium issue of the *Marquette Law Review*. In addition, former Wisconsin Governors Patrick J. Lucey, Lee Sherman Dreyfus (by video), and Anthony S. Earl and former Wisconsin Lieutenant Governor Margaret A. Farrow participated in a sold-out dinner program as part of the conference. Professor Michael K. McChrystal led the Law School's effort.



The Law School's National Sports Law Institute hosted a conference on **"Individual Performer Sports: Current Legal and Business Issues"** on October 5, 2006. Conference panels focused on a number of issues, including such varied topics as public law constraints on internal governance, transsexualism and athletic competition, doping, contracts, and sports marketing, as these arise in the sports of golf, tennis, track and field, triathlon, and poker. Speakers included Libba Galloway, the LPGA's Executive Vice President and Chief Legal Officer, and Gary Johansen, the USOC's Associate General Counsel. Foley & Lardner, LLP, Greenberg & Hoeschen, LLC, and the Sports & Entertainment Law Section of the State Bar of Wisconsin cosponsored the conference.

Later in October, Marquette hosted the first **"Colloquium on Current Scholarship in Labor and Employment Law,"** which organizers hope to make an annual event. The colloquium was a first-ever national effort to bring together labor and employment law scholars from around the country to present their scholarship, get feedback from their colleagues, and meet others teaching and researching in the field. Fifty attendees presented in a day and a half of concurrent sessions, and the other attendees included local attorneys, Marquette law students, government officials, and additional professors from around the country. Marquette Law School professors presenting were Phoebe Williams and Scott Moss; the organizers of the conference were Professor Moss and two professors at other law schools, Paul Secunda of the University of Mississippi and Joseph Slater of the University of Toledo.

The Law School's fourth conference last fall attracted more than 300 people, some of them from across the world. On November 13, 2006, Marquette Law School's Restorative Justice Initiative, led by Professor Janine P. Geske, L'75, convened a gathering entitled **"International Restorative Justice Conference: Healing After Political Violence."**

Many Marquette Law School events are available at <http://law.marquette.edu/jw/webcasts>.



At the conference, an Israeli woman whose son was killed by a Palestinian sniper and a Palestinian man whose brother was killed talked about how they work together toward peace in an organization of grieving families on both sides of the conflict. Linda Biehl, whose daughter, Amy Biehl, was killed in South Africa while working against apartheid, appeared with one of Amy's killers who now works for the Amy Biehl Foundation in Cape Town. Through videoconferencing from Ireland, Patrick Magee, an IRA activist who was responsible for leading a 1984 attack against members of the British government, resulting in the death of five people, sat next to Jo Berry, the daughter of one of the men killed, as they discussed how they have met and talked and forged a healing relationship. Cosponsors for the conference included a number of Marquette University organizations; the AMC Foundation; the Jewish Community Foundation; the Islamic Society of Milwaukee; the Milwaukee Irish Cultural Society; Gass, Weber, Mullins, LLC; Gimbel, Reilly, Guerin & Brown; and Leib & Katt LLC, as well as many generous individual donors.

Student Bar Association update

So what does the Student Bar Association do? A great deal, reports **Mandy Gardner**, president of the Marquette Law School Student Bar Association.

New programming initiatives this past year included informal monthly student–faculty coffee and bagel breakfast get-togethers as well as a regularly scheduled series of speakers addressing current law-related issues. Along with the Federalist Society, the SBA hosted a discussion on U.S. immigration policy, which featured Professor Ed Fallone of the Law School and Professor Margaret Stock of the United States Military Academy at West Point.

The SBA continues to organize the annual fall Malpractice Ball—a formal dance bringing together the students of Marquette's Law School and School of Dentistry and the Medical College of Wisconsin—as well as Casino Night in February and Spring Follies.

Great programming—both social and academic—that's what the Student Bar Association does. •



1957

50-Year Class Reunion
May 19–20, 2007

Chairs: Robert Peregrine and Ted Wedemeyer, Jr.
Committee: Neil Hamilton, Arthur Labros, Alan Marcuvitz, John McFarland, Rudolph Mudroch, Jr., and James Ziperski.

1960



Kenneth E. Voss, attorney and general counsel for the Greater Milwaukee chapter of the American Subcontractors Association, was recognized at the association’s annual meeting in 2006 with a Meritorious Service Award. Voss resides in Brown Deer and practices at the Brookfield office of the law firm of DeWitt Ross & Stevens in construction law, real estate and land use, and estate planning and probate.

1963

Raymond S.E. Pushkar, along with his law firm, McKenna, Long & Aldridge in Washington, D.C., was formally presented with a Volunteer Recognition Award in May 2006 at the Archdiocesan Legal Network Reception in Washington, D.C., for longstanding dedication to serving the legal needs of the less fortunate in the D.C. community. The Archdiocesan Legal Network was established in 1989, with Pushkar playing an instrumental role in getting it started; he currently serves on its Advisory Board.

1966



Michael W. Wilcox, of the Madison office of DeWitt Ross & Stevens (trusts and estates), has been listed in the 2007 edition of *The Best Lawyers in*

R. Thomas Cane, Chief Judge of the Wisconsin Court of Appeals, has had a distinguished career which began with a decision nearly half a century ago encouraged by his father. “When I was preparing to graduate from the University of Michigan in 1961, I initially intended to attend pilot training with the United States Air Force, as I was one of the eight student pilots in Michigan’s Air Force ROTC program,” he explained. When the Air Force told Cane that he would not be assigned to pilot training until the following spring, it gave him a deferment so he could go to law school—also one of his dreams.

Cane’s father told him he could pick any law school—so long as it was a Jesuit school. “Because both my older brother (Arnold Cane) and sister (Dorothy Cane) graduated from Marquette, it seemed only natural that Marquette was where I would go,” said Cane.

While at law school, Cane met Jane Fleming, who would become his wife the same month they both graduated (she with a bachelor’s degree from Marquette University). Upon his graduation from Marquette Law School in 1964, the Air Force gave Cane a choice of entering either pilot training or accepting a position with the Judge Advocate General’s Office. “Naïvely, I thought I could be both a pilot and lawyer with the Air

America. He has been listed in this publication for more than 20 years.

and J.P. Stadtmueller.
Committee: Thomas Bailey, Wayne Brogelman, Michael Bruch, Thomas Guskowski, Michael McClone, Bruce O’Neill, Robert Penegor, Peter Salza, John Savage, Dennis Wicht, and David Werth.

1967

40-Year Class Reunion
June 8–9, 2007

Chairs: Terence Evans, C. Michael Hausman,

R. THOMAS CANE

Force. Wrong. I had to choose between the two, and going with the Judge Advocate General meant I would be a Captain within six months,” he said. He chose the Judge Advocate General’s Office and was assigned to Okinawa for three years, where he prosecuted and defended well over 100 courts martial (Air Force and Navy), participated in many administrative hearings on plane crashes, and was also assigned periodically during those three years to Thailand and Vietnam. “Fortunately, Jane was able to join me on Okinawa, where our first two children were born,” Cane said.

After the Air Force, Cane joined the law firm of McCarty, Swetz & Curry in Kaukauna. He departed for the Outagamie County District Attorney’s office in 1969, when Jim Long, L’63, was elected District Attorney and asked Cane to come on board.

In 1972, Governor Patrick Lucey appointed Cane to the trial court in Outagamie County, where he presided over civil and criminal jury trials as well as the juvenile court. In 1981, Governor Lee Dreyfus appointed him to the Court of Appeals. The following year, his family moved from Appleton to Wausau, as the seat of the District was in Wausau. After he had served as Presiding Judge for District III for 14 years, the Supreme Court appointed Cane as the Chief Judge for the entire Court of Appeals in 1998, the capacity in which he serves today.

Cane believes that his career as a judge has allowed him an opportunity to contribute positively to the judicial system. “I also have been fortunate enough to serve not only as a judge, but also as a teacher for my colleagues at the Wisconsin Judicial College, judicial seminars, State Bar Seminars, and as a member of the Executive Board of the National Council of Chief Judges. I strongly believe that, to have a true democracy and healthy economy, there must be a strong independent judicial system that is impartial, fair, and timely. As I have traveled over the years and met with judges from other states, I can honestly say our judicial system—even with some of its shortcomings—is one of the important reasons our country has been so great. I am proud and grateful to have been allowed to participate

as a judge at both the trial and appellate levels in this wonderful system,” he said.

Cane remembers with special fondness what could be considered a memorable moment in any judge’s day, especially considering the circumstances as the

enforcer of the law: “One of the most rewarding times of my career was when I presided over the juvenile court as part of my responsibilities. It was very difficult to order a young person to Lincoln Hills School as part of the juvenile disposition. Consequently, one of the Appleton police officers and I would often go to Lincoln Hills School for the weekend and visit with the kids I had ordered to serve some time there. We would play ping-pong, pool, and just talk with them. I gained a better insight on what they were feeling and maybe how I could do things better as a judge. After a few years of these trips, I would chuckle when they would brag to their friends, saying, ‘He’s my judge.’”

Cane regards his career path as having gone as he had hoped. “The intellectual challenge and discussions with my colleagues are always stimulating. However, my first love has always been the trial court, where you have face-to-face contact with the lawyers and their clients,” he said.

Cane will retire from the Wisconsin Court of Appeals this summer. Retirement will start a new chapter in his life, giving him the opportunity to return to the trial court through some reserve work. It will also allow him and his wife, Jane, to travel, golf, and go camping while, as Cane put it, “we are still healthy enough to enjoy it.” They also plan on doing some volunteer community work.

The Canes live in Wausau and have four married adult children and four grandchildren. •



LYNNE HALBROOKS



The steps from a small town in Minnesota to the nation's capital were more like giant leaps for Lynne (Solien) Halbrooks, L'88.

Halbrooks was born and grew up in Aitkin, Minn., and started law school in 1985 after earning her undergraduate degree in political science and philosophy from the University of Minnesota at Duluth. She applied to Marquette Law School sight unseen, on the advice of her prelaw advisor at UMD. "He thought it would be a good fit—and he was right!" Halbrooks said.

Upon graduation from law school, Halbrooks clerked for the Minnesota Supreme Court and then returned to Milwaukee to work for Hinshaw & Culbertson, where she had clerked during law school. In 1991, she accepted a position as an Assistant United States Attorney for the Eastern District of Wisconsin. As an employee of the Department of Justice (DOJ), Halbrooks prosecuted criminal cases and also represented the government in civil litigation.

During that time, Halbrooks had the opportunity to do a short detail in Washington, D.C., at the Executive

Office for United States Attorneys. When a permanent position became available there, she applied and was selected. "I came to D.C. expecting, as do so many people, that I would spend a couple of years here and move on. Of course, that was 13 years ago now," she related.

Her career at DOJ was fascinating, according to Halbrooks. "I worked with the U.S. Attorney's Offices nationwide and on a variety of operational and criminal policy issues. I was deputy director of that office on 9/11 and was able to assist in the Department's response to the terrorist attacks," she said.

In May 2003, Halbrooks was appointed General Counsel for the Sergeant at Arms for the United States Senate and was selected as Deputy Sergeant at Arms in February 2005. She reported directly to the Sergeant at Arms, a retired Secret Service agent, and in his absence to the Majority Leader of the Senate.

The job of Deputy Sergeant at Arms involved no such thing as a "typical" day for Halbrooks. "The position was incredibly diverse and interesting," she explained. As Deputy Sergeant at Arms, she oversaw all aspects of the office and interacted daily with senators and leadership staff. "I also spent a significant amount of time on issues relating to security, policing, and emergency preparedness. I was directly involved in continuity of operations and continuity of government planning for the Senate," she said.

An especially unusual part of her job as Deputy Sergeant at Arms involved protocol duties. The Office of the Sergeant at Arms controls access to the Senate chamber, enforcing rules relating to media coverage and visitors' access to the Capitol. "Some of my specific protocol responsibilities included leading the Senate to the State of the Union and other Joint Sessions of Congress, greeting the vice president and first lady during their visits to the Senate, and escorting the Senate at other special events." Halbrooks participated in the state funerals of Presidents Reagan and Ford and attended, with members of the

Senate, the memorial service for Coretta Scott King.

Although a law degree was not required for this position, Halbrooks believes that having a Marquette law degree made her better at her job. "I was able to spot legal issues that needed to be addressed before policy decisions should be made," said Halbrooks.

The changeover in political control of the Senate that occurred this past January (as a result of the November 2006 elections) meant the appointment of a new Sergeant at Arms and thereupon the appointment of a new Deputy Sergeant at Arms. But in leaving the deputy's position, Halbrooks was appointed to a new, different, and equally interesting position.

Halbrooks now serves, by appointment of the minority leader of the Senate, Senator Mitch McConnell, as the Republican Representative to the Sergeant at Arms. "While I'm no longer managing people, the trade-off is that I am part of Leader McConnell's leadership office and closer to the political world on Capitol Hill. I will be representing Leader McConnell's interests on different projects as well as acting as the liaison for the Republican senators with the Office of the Sergeant at Arms. So while the change in the Senate meant I lost an amazing job, I think this will be challenging and immensely interesting."

Halbrooks and her husband, Kevin, together with his son, Charlie, live in Annandale, Va. She does manage to find time for a hobby even in the midst of the political world: Her husband is assistant superintendent of a local golf course, and Halbrooks related that she recently committed to becoming a better golfer and practices every chance she gets.

Halbrooks reflects one of the many different ways Marquette lawyers pursue public service. And she is grateful for the possibilities that she has found. "I feel very fortunate to serve in government at this level," Halbrooks said. •

1970

L. Mandy Stellman has been featured in *Feminists Who Changed America—1963 to 1975*. Once described as "probably the most active and outspoken legal advocate in Wisconsin for equal rights for women," she has a long history in Wisconsin (from the 1970s through the 1990s) of efforts to prevent discrimination against women.

1972

35-Year Class Reunion

June 8–9, 2007

Chair: Leah Lampone.

Committee: James Beer,

Tom Healy, Vincent

Howard, Michael Judge,

William Kulkoski, Harold

Lessner, John Maloney,

Nancy Phelps, Carl

Ricciardi, Thomas St. John,

and Wilbur Warren, III.

1977

30-Year Class Reunion

June 8–9, 2007

Chair: Linda Vanden

Heuvel. *Committee:*

Patricia Kling Ballman,

Barbara Becker, James

Curtis, Raymond Dall'Osto,

Dean Dietrich, Kathryn

Westphal Foster, Patricia

Gorence, Victor Harding,

Raymond Jablonski,

Kevin Kukor, David

Lowe, James Pauly, Don Prachthausser, John Shiely, Steven Sorenson, and Tom Wolfram.

1978



Roy E. Wagner has joined von Briesen & Roper s.c., in Milwaukee. He focuses his practice on representing businesses and individuals in business formation and construction law matters.

1981



Susan A. Hansen, of Milwaukee, a founding member of the Collaborative Family Law Council of Wisconsin, Inc., was recently named the President of the International

Academy of Collaborative Professionals. IACP is a worldwide interdisciplinary organization whose members include attorneys, mental health professionals, financial specialists, and mediators.



William E. McCardell, who practices construction law and labor and employment law in the Madison office of DeWitt Ross & Stevens, has been named in the 2007 edition of *The Best Lawyers in America*.

1982

25-Year Class Reunion June 8–9, 2007

Chairs: Robert Buikema, Michael Gonring, and Kathleen Gray. *Committee:* Kathy Anderson, Michael

Ariens, II, Timothy Bascom, Dwight Darrow, Eric Eberhardt, Joseph Heino, James Jameson, Jerome Janzer, David Karp, Bruce Lanser, Donald Layden, Mary Lutzen, Gregory Ricci, Dean Richards, and Donna Schumell.

Kathleen A. Gray, a partner at Quarles & Brady, serves as Chair of the Board of the State Bar of Wisconsin's Real Property, Probate and Trust Law Section, which consists of nearly 1,600 members. Gray concentrates her practice in the areas of estate planning for executives, professionals, and business owners and probate and trust administration.

Jerome M. Janzer has been appointed the President and CEO of Reinhart Boerner Van Deuren s.c. Janzer has a 25-year history at the firm, specializing in business, real estate, and finance law, and has served on its board of directors for seven years.



Rebecca Leair has been named a shareholder in the Real Estate Department of Reinhart Boerner Van Deuren s.c. in Waukesha.



Dean B. Richards is a shareholder in the Real Estate Department of Reinhart Boerner Van Deuren s.c. in Waukesha. He represents developers and landowners throughout Wisconsin, principally in connection with development, zoning, and land-division activities.

1985



David C. Sarnacki, a Grand Rapids, Mich., attorney and mediator with The Sarnacki Law Firm PLC, has become Chair of the State Bar of Michigan's Family Law Section. The section serves lawyers, judges, and the community on matters of the family, including marriage, adoption, divorce, custody, and paternity.

1987

20-Year Class Reunion June 8–9, 2007

Chairs: Barbara O'Brien and Paul Christensen. *Committee:* Robert Blazewick, Jeffery Davis, Deborah Fink Frederick, John Gelhard, Heidi Johnson, Laurie McLeRoy,

STAY CONNECTED . . . VISIT:
[HTTP://LAW.MARQUETTE.EDU](http://law.marquette.edu)

Deborah McKeithan-Gebhardt, Philip Miller, Peter Silver, Kevin Smith, Roberta Steiner, Kenneth Sweeney, Mark Thomsen, and Ted Warpinski.

Captain Robert B. Blazewick has been appointed Director of the U.S. Navy & Marine Corps Appellate Defense Division, Washington, D.C. He previously was the Deputy Director of the General Litigation Division of the U.S. Navy Office of the Judge Advocate General.

1989

Margaret (Peggy) Anne Herlitzka, partner (since 1995) in the law firm of Hale, Skemp, Hanson, Skemp & Sleik, has been appointed as La Crosse County Assistant Family Court Commissioner. Her duties include conducting hearings and enforcing orders related to child custody and placement, child support, spousal maintenance, and restraining and harassment injunctions.

1991

Stephen D. Zubiago has been appointed by Nixon

Peabody LLP to be the managing partner of the firm's office in Providence, Rhode Island. Zubiago was recently recognized on the "40 Under Forty" list published by *Providence Business News*; he is a frequent speaker on various health care law topics.

1992

15-Year Class Reunion June 8–9, 2007

Committee: Robert Brill, Susan Engler, Mark Johnson, Joseph Leone, Kevin Long, Cynthia Mack, Steven Mayer, Christine Liu McLaughlin, and Thomas Miller.



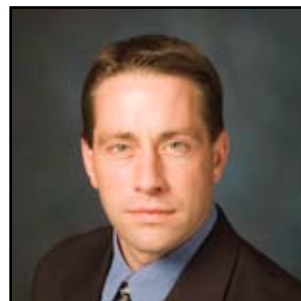
Joseph T. Leone was named in the 2007 edition of *The Best Lawyers in America*. He practices intellectual property law with DeWitt Ross & Stevens in Madison.

1993



Victor A. Lazzaretti has joined von Briesen & Roper, s.c., in Milwaukee. He focuses on real estate acquisitions, development, and finance, including private placements of securities and tenant-in-common (TIC) investments.

1994



Richard C. Rytman, Jr., has joined Veritas Global LLC, a business intelligence and global investigative firm, as general counsel and managing director of technical services. Rytman served as a special agent in the FBI's Detroit field office, where he specialized in

counterterrorism and cybercriminal investigations.

1995

Scott B. Franklin married Amber J. Jacobs in June 2006. Franklin is a tax manager with Kohler and Franklin, Certified Public Accountants, in Glendale, Wis.

1996

John R. Lagowski has joined the electrical and computer group of Brinks Hofer Gilson & Lione of Chicago. Lagowski has over nine years of experience writing and prosecuting patent applications, particularly in the electrical and computer arts, including the telecommunications, signal processing, memory, semiconductor, and software industries.

1997

10-Year Class Reunion June 8–9, 2007

Chairs: Sean Bosack and Kelly Twigger. *Committee:* Jonelle Burnham, Lisa Cards, Michael Katarincic, Christopher McLaughlin, Patrick Nolan, Matthew Stippich, and Garth White.

Meredith Wilson Ditchen is a real estate attorney with Ditchen and Associates Law Firm. She and husband, Rob, live in Marietta, Ga., with their children, Harris, Reilly, and Elise.

1998

Rebekah R. Syck was appointed municipal judge for the City of Harlingen, Texas, in May 2006. She and her husband, Steve, live in Brownsville, Texas, with their son, Erik, and daughter, Jillian.

1999



Emily C. Canedo is an associate in the Intellectual Property Department of Reinhart Boerner Van Deuren s.c.

Michael D. Cicchini, criminal defense attorney in Kenosha, recently published a law review article on the Confrontation Clause: *Confrontation After Crawford v. Washington: Defining "Testimonial,"*

10 Lewis & Clark Law Review 531 (2006) (with Vincent Rust).

2001

Elana Sabovic Matt has joined Perkins Coie's Seattle office in its national Commercial Litigation practice as an associate focusing on patent litigation. She joins the firm from the U.S. Army Judge Advocate General's Corps in Colorado Springs, where she was a Senior Trial Attorney.

2002

5-Year Class Reunion June 8–9, 2007

Chairs: Shannon Elliott and Benjamin Menzel.

Committee: Aaron Bernstein, Gregory Bollis, Rebecca Coffee, Tanner Kilander, Eugene LaFlamme, Maureen Lokrantz, Joel Mogren, Erika Mielke, Tyler Qualio, Karin Anderson Riccio, Chad Richter, Gilbert Urfer, and Joseph Voiland.

2004

Daniel M. Foutz lives in Atlanta and practices in the area of sports law with Turner Sports. Son, Brady Dane, was born on December 29, 2005.

According to Barbara Graham, L'93, her circuitous route to law school—through Madrid and Paris (as a gourmet cook, no less)—takes a little bit of explaining, but is quite a natural sequence of events.

With a hint of teasing in her voice, Graham explained that there should really be a tuition monument erected at Marquette in her honor. "I not only earned my bachelor's and master's and law degrees from Marquette, but I think I hold the record for attempting the largest number of different undergraduate majors," she quipped. As an undergrad, she ended up majoring in Spanish and was able to study abroad at Madrid University, immersing herself in the language and culture for seven months. While a senior in college, she volunteered at the Spanish Center one night a week. After earning her undergraduate degree in 1981, she decided to pursue a master's degree in journalism. Upon completion of her second Marquette degree, Graham spent a year in Paris earning a gourmet cook diploma and certificate from Le Cordon Bleu in 1986. When she returned to the United States, Graham owned and operated a catering business and then taught demonstration and participation cooking courses and co-wrote instruction manuals for diploma courses.

All this while, thoughts of law school were simmering and the timer was winding down on Graham's ability to use the LSAT score she had received several years previously.

In 1990, Graham decided it was time to begin her law school education. She recalled very much enjoying it.



Robert W. Habich is an associate in the Real Estate

department of Reinhart Boerner Van Deuren s.c.

John J. Schulze, Jr., Pewaukee, Wis., is in-house counsel for American Transmission Company. He authored the lead academic article in the Spring 2006 issue of the

BARBARA GRAHAM



“Law school was like a big logic puzzle for me, and I met some very interesting people,” she said.

Graham views the progression from the culinary arts to law school as a very natural one. “I’m not even the only person in my class who came from a cooking background, and there is more crossover between law and cooking than one might think,” she said. “Law can be very creative, as can cooking. It is not dry and dreary.”

During law school, Graham volunteered for a law school clinic and was involved in a task force for battered women. She also worked as a law clerk for the Milwaukee County Circuit Court for Judge Frank T. Crivello.

When she graduated in 1993, Graham wanted to use her Spanish skills and was fortunate enough to be in the right place at the right time. “My roommate from Marquette’s Study Center in Madrid had a friend who was looking for an attorney to provide Spanish-speaking people free workers compensation representation and called me to see if I was interested,” she explained. Graham accepted the position and became Director of Legal Services for Esperanza Unida, Inc., a social services agency on Milwaukee’s south side. During her five years there, a successful immigration program was instituted by a colleague. The Archdiocese of Milwaukee eventually assumed the work of this agency, and Graham was able to carry on the mission.

In 1999, Graham, again able to utilize her multilingual

skills, joined Catholic Charities of the Archdiocese of Milwaukee as a staff attorney. Her job and the agency have grown over the years, and she is now a director and an immigration attorney. Graham oversees a five-person staff which provides legal services for low-income families, with a special emphasis on family-based immigration. “We also do a lot of asylum and representation of immigrant victims of domestic violence—two areas in which Marquette law students have been invaluable to us,” said Graham.

“We currently have people from 44 different countries in our program, and while we provide our services at a minimal fee, we never turn people away because of an inability to pay,” she said. The agency continues to grow and now has two staff attorneys, three paralegals, one person from the Jesuit Volunteer Corps, and a Marquette law student who helps out in various capacities. The newest hire is Erin Murphy, L’06. Plans are underway to welcome a PILS fellow over the summer (see PILS article beginning on p. 16) as well as one volunteer student.

“The Law School has been very supportive of us, providing student interns to our program,” explained Graham. “They help make it possible to do what we do.” Currently, two third-year students are at Catholic Charities as part of the Law School’s curricular internship program, and three are simply volunteering. They all have a great mentor in Graham, who provides an example of how to make a career in public interest law, even if there is no one recipe. •

American Journal of Trial Advocacy, the nation’s oldest law review dedicated to the art of trial advocacy; the article, titled “Caveat E-Emptor: Solutions to the Jurisdictional Problem of Internet Injury,” discusses international jurisdictional issues

created by the internet and attempts to fashion solutions for these issues.

2006

Jill M. Carland was married to **Michael A. McCause** on October 7, 2006 in Paradise Valley, Arizona. The couple lives

in Scottsdale. Both are working at Bowman and Brooke LLP, a corporate defense litigation firm in Phoenix.

Scott T. Kelly joined von Briesen & Roper, s.c., as an associate in the Business Practice Group.

He focuses on transactions, mergers and acquisitions, governance, and tax issues.

Jamie J. LaVora became an associate with Kirchner & Buchko Law Office, S.C., in Sheboygan in August 2006. LaVora lives in Grafton, Wis. •

Cliff Steele, Marquette lawyer Resilient. Resolute. Remarkable.

BY ANDY HAAS SCHNEIDER



H

enry David Thoreau famously remarked, “If a man does not keep pace with his companions, perhaps it is because he hears a different drummer.” The drumbeat followed by Clifford Steele has a cadence set by many life experiences, among

them his years at Marquette Law School.

Despite a recent serious cardiac illness and nearly lifelong orthopedic challenges in his spine, Steele, a 1977 Marquette Law School graduate, has persisted diligently throughout his life—working hard, playing hard, and loving much. This is reflected in the countless professional and personal accomplishments he has enjoyed. His life reflects much goodness and exemplifies what a Marquette lawyer can be.

Steele was born in New York City in 1951, the child of professional parents. “My dad was a nuclear chemist and active Democratic politician, and my mom was a newspaper editor and school librarian,” Steele recalled. He was raised in New York and in Paramus, N.J., where he attended high school and played varsity baseball—a hobby that stayed with him as he entered his law school years. “I

was a not-so-successful wrestler in high school and college as well, earning letters in each sport,” Steele said, “and had the lead part in my high school play. I am convinced that the latter helped lead to my career as a trial lawyer.”

He attended Ohio Northern University prior to transferring to Rutgers in New Jersey, where he was admitted into Phi Beta Kappa and, in 1972, earned a bachelor’s degree in political science with a minor in English literature.

The symphony of Steele’s life is composed of many, many notes, mostly sweet, some discordant, a few unscripted.

His professional path made an abrupt turn just as it was about to begin—a turn that set the course for a lifetime of service and commitment to justice. Steele was already accepted, enrolled, and ready to begin law school at Temple University in Philadelphia, when his uncle, Dr. Frank Campenni, suggested he try Marquette and learn what a wonderful place Wisconsin would be to live, study, and eventually practice law. Steele heeded his uncle’s advice. “I fell in love with Milwaukee—the predominant aspect being the kindness and decency of its

people (certainly not its climate),” he recounted. “I thank the many deans, professors, and Milwaukee lawyers for helping me make the decision and ensuring that I went to Marquette.”

Steele stayed in Milwaukee for a number of years after graduating from law school in 1977. His continuing gratitude to Marquette Law School is evident in his staunch support of the school and its endeavors. He gives of his time as well as his treasure and is among the Woolsack Society donors.

Steele noted that, since his graduation from law school nearly 30 years ago, he has seen the torch lit by the late Dean Howard B. Eisenberg passed along through interim Dean Janine P. Geske to Dean Joseph D. Kearney. “The impressive quality of the new faculty and the incredible impacts made by those three individuals are remarkable,” he said.

So what has transpired for Steele in these 30 years since graduation? His first job as an attorney was as an assistant public defender in Racine County in 1977. He was then recruited by the Public Defender’s Office in Milwaukee in 1980, eventually leaving to join the law firm of Coffey & Coffey, where he worked exclusively on criminal trials and appeals. Steele then opened his own firm with Marquette classmate David Geraghty and fellow attorneys Chip Burke (now a senior trial attorney for the Eastern District of Wisconsin Federal Defender’s Office) and Neil McGinn (now a senior trial attorney with the Wisconsin State Public Defender’s Office in Milwaukee).

In 1983, Steele married Mary Schafer, who worked at the Shellow & Shellow law firm (formerly partners with the Coffey brothers), and they moved to Florida and took a year sabbatical in the Islamorada area of the Florida Keys. “I studied for the Florida bar exam in between fishing, diving, boating, and teaching Mary to respect—but not fear—barracudas, sharks, and the other marine life that became a special part of our lives for that year.” He passed the exam and was admitted to the Florida Bar in 1984. While living in Florida for that year, Steele was asked to return to Milwaukee to head a litigation section of a small firm on Michigan Street which ultimately grew and was named Cunningham, Lyons, Steele & Cramer, S.C.

A few years later Steele was recruited by a Brickell

Avenue litigation firm in Miami (which had always been his dream place to practice), where he decided to “reinvent” himself into a civil/commercial and ad valorem tax trial lawyer. This, in turn, led to his representing Victor Posner, who in the 1960s and 1970s was one of the wealthiest men in America and had ownership interests in literally hundreds of public and private companies. “It changed my life,” said Steele. “I made the fortune I wished for—well, at least part of the fortune I wished for—all the while remaining steadfast in honoring the principles I learned while at Marquette.”

“I was in Mr. Posner’s inner circle for 14 incredibly exciting years,” Steele recalled. “I think that I worked harder even than Professor Ray J. Aiken preached to us in first-year Civil Procedure—lectures on the benefits of hard work that I fondly remember.”

Success came at price, though. “It almost killed me,” explained Steele, “and I seldom had time with my family or a vacation that wasn’t interrupted by a frantic call directing me to fly somewhere to prepare and prosecute an injunction or lawsuit. Marquette Law School taught me that we, as trial lawyers, can and must learn to quickly master



a subject and study the law and also know the facts of every case better than anyone else in the courtroom—that was the lesson I retained from the late Chief Judge John Decker, an extraordinary Evidence professor at Marquette Law School. My single-most favorite thing, aside from boating and diving, is (or was) trying jury trials.”

In 1992, Steele and his family barely survived the unforgiving wrath of Hurricane Andrew. They lost everything from their home to their family’s history of photographs and belongings. As the rooms were being shredded and the roof torn away by 160-mph winds, Steele was tied at the waist to the remaining doors, while Mary huddled under a mattress with toddlers in the remaining interior bathroom. The house was obliterated, but they survived. “We all prayed a lot through that ordeal,” he said. “We started over once again.”

Steele has had many pursuits, beyond those already mentioned. He founded and co-owned Rudy’s Mexican Restaurant in Milwaukee from 1985 until he and his family moved to Miami in 1989. Rudy’s won *Milwaukee Magazine*’s “Best Mexican Restaurant” award twice. He is a licensed Florida mortgage broker, licensed Florida title insurance broker, and licensed to practice law in Wisconsin, Florida, and Hawaii. When he could no longer practice law because of health complications and numerous spinal surgeries, Steele worked in title insurance and banking and also as a Miami-Dade County administrative law judge deciding ad valorem tax appeals.

Steele is especially dedicated to protecting and representing the most innocent among us—children—in matters of sexual abuse. This was the focus of his community involvement of which he is proudest: being a founding director of Kristi House, a special facility that provides child victims of sexual abuse a healing environment through community collaboration and system coordination. Kristi House is a nonprofit agency in Miami formed because sexually abused children were falling through the cracks of the social service and criminal justice systems, which often were a confusing and complicated patchwork of government

programs. Kristi House offers multiple services under one safe, welcoming, healing roof for the victims and their families.

Kristi House and the work that it took to establish it are tangible examples of how a Marquette lawyer has made a positive impact on a large community far from the Milwaukee area. The expanse of the efforts and dedication of people such as Steele stretches from coast to coast and touches countless people, often those most in need.

Steele recently needed to resign as a director of Kristi House because of his physical disabilities but is proud to have been part of establishing it. He credits his wife, Mary, for the other community and church involvement. “I can help with the money, but she gives the sweat, the compassion, and provides for the needs of many. She may not have graduated from Marquette, but she has every trait a Marquette person should, and often does, demonstrate, quietly seeking no applause or thanks.” Mary is a graduate of the University of Wisconsin—Milwaukee.

Steele has to his credit a \$6.7 million verdict in a Miami child sexual abuse case featured on Court TV. This was a personal and professional victory that meant a great deal to him. Steele stood up, as someone who has personal knowledge of what it is like to be such a victim.

Looking back on all of his undertakings, Steele is pleased that his life has unfolded in the manner it has: “I tried some of the highest-profile cases, was on Court TV trying a jury trial for three weeks, met business tycoons that I had only read about in the *Wall Street Journal*, tried cases against the largest firms in the country, and became involved in community projects and politics I would have thought I would only be able to dream about,” he said.

He and Mary have been married for 23 years, have three children, ages 15 to 20, and live in Pinecrest, Fla. Despite his health challenges that have rendered him fully disabled (he now awaits a heart transplant at the University of Miami’s cardiac transplant program), Steele remains customarily optimistic, passionate, and hopeful. •

Remembering the Past and Securing the Future

E

ven though Marybeth Anzich Mahoney has traveled extensively, lived in different parts of the world, and relocated more than 14 times, she has never lost sight of where “home” is, or to whom she is first and ultimately thankful for her

wonderful life.

Marybeth grew up in Sheboygan, Wisconsin, as the only child of Mary and Methodius J. Anzich, L’45. She attended a Catholic grade school and the local public high school, but her parents encouraged her to explore life outside of Wisconsin for college. “My dad especially wanted me to have other experiences,” explained Marybeth. “He valued education and instilled in me a sense of what a good education at a good school could do, and so I chose to attend Marymount College in Tarrytown, New York.”

After earning a bachelor’s degree in economics in 1970, Marybeth stayed on the east coast and became a bank examiner for five years with the Comptroller of the Currency. She then was hired by Citibank in New York for assignment to Toronto, Canada. She spent nearly 30 years with Citigroup,

which eventually merged with Travelers and became the largest U.S. bank. Marybeth worked all but five of those years on the international side. The position that she held upon retirement was CFO for the consumer business in Latin America.

In 1983, her parents moved from Sheboygan to North Carolina and then to Naples, Florida in 2000. When Marybeth’s dad passed away in 2001, she relocated to Florida to be close to her mother. They return “home” to the Plymouth area of Wisconsin in the summer where Marybeth enjoys golf, reading, and travel.

Marybeth attributes much of her professional success to the opportunities presented by her parents, which

she believes were made possible by her father’s education at Marquette University Law School. “My father taught me that the most important gift you give your children is a good education,” she said.

Grateful, Marybeth and her mother, Mary, set up a scholarship at Marquette Law School to honor the memory of her father and to keep the tradition of excellent education alive for other generations. The Methodius J., Mary, and Marybeth Anzich Scholarship Fund provides renewable funds to students



in need. The fund will continue to grow through a charitable remainder trust as provided in her will.

“My dad was a wonderful man and was always there for me,” said Marybeth. She tells a brief story of his life: He grew up in Sheboygan and went to the University of Wisconsin—Madison on a basketball scholarship. He finished college as World War II broke out. Though recently married, Methodius decided to enlist, but while receiving his physical discovered he had tuberculosis. He spent one year at Rocky Knoll Sanatorium in Sheboygan. It was during his recovery that he decided to attend law school.

“With little to no money to pay for school, Marquette crafted a special payment arrangement that allowed him to repay after he completed his studies and was legitimately employed,” recounted his daughter.

“Marquette had a special place in his heart. Dad always said to me, ‘Don’t ever forget Marquette.’”

As soon as Methodius graduated from the Law School in 1945, he returned to Sheboygan and was hired by Werner & Clements, where he made partner (the firm then becoming Werner, Clements & Anzich). “He was with the firm for nearly 12 years when he decided to hang out his own shingle,” explained Marybeth. He practiced solo for several decades,



“My dad always encouraged me to do what I like, to reach for what I wanted, and assured me that it will and can happen,” said Marybeth.

“He never suggested I do anything other than that which made me happy, but with the caveat to do it well.”

until deciding to retire in the early 1980s. The Anzichs then moved to North Carolina, because it had plenty of golf courses, four seasons, and reciprocal law licensure.

“Curly (Methodius’s nick name) enjoyed his retirement,” recalled Marybeth, “and never practiced law again.” As the Anzichs approached the next phase of their lives, they decided to move to a retirement village in Naples, Florida, where several of their Sheboygan friends also lived.

Marybeth has very fond memories of her dad and is grateful that she still can spend time with her mom, now 89. She considers her parents her best friends. “My dad always encouraged me to do what I like, to reach for what I wanted, and assured me that it will and can happen,” said Marybeth. “He never suggested I do anything other than that which made me happy, but with the caveat to do it well,” she said. He instilled in her the fundamental belief that with an education she would always be able to fend for herself.

“My inheritance was my education,” Marybeth said. “He told me to treat others well, do my best, and most of all be happy. It is not just about money.”

Through the generosity of his daughter, Methodius Anzich’s beliefs and his passion for higher education will continue to live on. •

Dear Fellow Alumni—

It is an honor to serve as the 2006–2007 President of the Marquette University Law Alumni Association Board of Directors. We have been busy connecting with as many alumni as possible. Please do not hesitate to contact me with questions or recommendations you have regarding the Law School or the Alumni Board.

My “platform” provides me with the opportunity to encourage fellow alumni to become active ambassadors for the Law School. Of course, monetary contributions are always welcome and valued, but your involvement in Law Alumni events is equally important. We hope you will participate in them, particularly our annual Law Alumni Association Awards Ceremony (this year on April 26).

In addition to increasing alumni attendance at events, we have taken on several other important goals. They include:

- Supporting the Law School by creating alumni networking programs;
- Increasing alumni participation in “Simplicity” (the Law School Career Planning Center’s program) to advise and mentor students;
- Supporting the Law School Admissions Office’s recruitment efforts, especially to help matriculate a diverse class;

- Increasing the nomination pool for our annual Law Alumni Awards; and
- Increasing overall alumni participation in the Law School’s Annual Fund.

Your volunteering to help the Board achieve these goals will contribute greatly to fulfilling our new strategic plan. Further, your participation and engagement create an alumni network of which both current law students and alumni can be proud.

There are many ways for you to be a part of our efforts each year. For more information on Law School activities and Alumni events, please visit <http://law.marquette.edu>.

Thank you for your ongoing support and your service as a Marquette Law School ambassador! I look forward to seeing you at events into the future.

GENYNE EDWARDS, L’00
PRESIDENT,
MARQUETTE UNIVERSITY
LAW ALUMNI ASSOCIATION



SEEKING TALENTED LAW STUDENTS OR GRADUATES?

If your organization has hiring needs for law school students or graduates for full-time or part-time positions at any level, target the rich pool of talent of Marquette University Law School alumni and current students.

The Career Planning Center will post your job opening for students and/or alumni free of charge. Simply complete and submit the online job posting available at law.marquette.edu/jw/jobposting, or email your complete job description to mulawcareers@marquette.edu. If you have any questions about recruiting at the Law School, please contact us at (414) 288-3313.

Marquette University Law School provides its students and graduates with the opportunity to obtain employment without discrimination or segregation on the ground of race, ethnic background, national origin, gender, sexual orientation, marital or parental status, religion, age, disability or perceived disability, or veteran’s status. The Law School restricts its recruiting programs and services to employers that agree to abide by this policy.

As we look forward to this year's Law Alumni Association Awards Ceremony (see information on page 40), we look back at last year's ceremony, which saw five alumni honored for aspects of their careers or service to the Law School. The then-president of the Law Alumni Association Board, Larry B. Brueggeman, L'69, Dean Joseph D. Kearney, and the President of the University, Rev. Robert A. Wild, S.J., presented the various awards.

Sports Law Alumnus of the Year



Shawn M. Eichorst, L'95, received the Sports Law Alumnus of the Year Award. Eichorst is currently the Senior Associate Athletic Director at the University of Wisconsin–Madison, having previously served at the University of Wisconsin–Whitewater and the University of South Carolina. After graduation, Eichorst helped to create the course at the Law School in Amateur Sports Law. He has helped the sports law program in other ways as well, including the creation of an internship and participating in career panels, conferences, and seminars. Eichorst has particularly made himself available to talk with students interested in working in college athletics.

Howard B. Eisenberg Service Award



The Howard B. Eisenberg Service Award ordinarily is presented to a fairly recent graduate who has demonstrated an unusual commitment to the school, the profession, or the underserved. As Dean Kearney noted in his remarks at the ceremony, “The only difference this year is that there are two winners of the award.”

Eric Montgomery, L'90, whose day job is as Assistant General Counsel at Bank of America in Charlotte, North Carolina, was recognized for his civic involvement. Montgomery has served as President of the Board of Cooperative Ministry, as a board member for Children Unlimited, as the Treasurer of Legal Services of Southern Piedmont, as Chair of the City of Columbia's Planning Commission, and in several other organizations serving the community, the profession, and the public at large.



Tanner Kilander, L'02, helped to establish the Marquette Volunteer Legal Clinic even while a student at the Law School. The MVLC recently celebrated its fifth year of service to the Milwaukee-area community. It operates each Tuesday, from 3 to 7 p.m., at the House of Peace at 17th and Walnut Streets, just blocks from campus. Kearney cited the MVLC as “essential in our efforts to redefine and broaden the concept of what it means to be a Marquette lawyer.” Kilander’s own service to the profession and society goes far beyond the clinic, such as through her extensive work as a court-appointed guardian ad litem for children.

Lifetime Achievement Award

Michael Wherry, L'62, received the Lifetime Achievement Award. Wherry’s career has been distinguished by accomplishments in litigation, beginning with his work at the United States Department of Justice from 1963 to 1966 and for the next almost 40 years as a civil litigator in Wisconsin’s state and federal courts. In presenting the award on behalf of the Law Alumni Association, Kearney noted “a broader characteristic, specifically, his leadership, which has been a particular hallmark of Mike Wherry’s career.”

In addition to leading law firms, Wherry served as the President of the Milwaukee Bar Association, was a member of the Wisconsin Supreme Court’s disciplinary agency for lawyers, and played an active and leading role in matters ranging from his local parish to more-extensive politics. He has demonstrated as well his support for future Marquette lawyers through a scholarship that he established several years ago. His nominators specifically noted that he has devoted a significant amount of time to mentoring younger attorneys. The career is summed up, perhaps, in the words of one of Wherry’s nominators, who described him as “a highly skilled and ethical trial lawyer, a committed public servant, a leader among his peers, and a kind and generous individual.”



“Looking back at my entire legal career, from start to finish, I can say in honesty that it all started at Marquette. I started at Marquette High School, Marquette University, and Marquette Law School. So I will tell you that I would not have had the ability to advance in the legal profession if it had not been for Marquette. And I am so glad that I did. My father told me (he was a well-known lawyer in Milwaukee and a Marquetter), ‘Start and stay ‘til the end, Mike, because you’ll never, never regret being a Marquette person, because you’re going to learn a lot over there.’ And I did, and I did.”

—From the remarks of Michael Wherry, L'62, in accepting the Lifetime Achievement Award

**You are invited to attend the 2007
Law Alumni Awards Ceremony
Thursday, April 26, 2007**

5:30 p.m., reception
6 p.m., program
Alumni Memorial Union,
Monaghan Ballroom, 3rd floor
No charge



**MARQUETTE
UNIVERSITY**

LAW SCHOOL

Law School Alumna of the Year

Patricia J. Gorence, L'77

Law School Lifetime Achievement Award

Thomas J. Curran, L'48

Law School Howard B. Eisenberg Award

Katherine Maloney Perhach, L'00

*Charles W. Mentkowski Sports Law
Alumnus of the Year Award*

Martin J. Greenberg, L'71

Please contact Christine Wilczynski-Vogel,
Assistant Dean for External Relations, to receive
information on how to nominate a deserving
classmate or colleague for awards
in future years.

Law Alumnus of the Year Award



Gene Duffy, L'78, received the Law Alumnus of the Year Award. Duffy passed away in November 2006, several months after receiving the award. In his practice, Duffy handled almost all manner of state and federal taxation issues as well as corporate law

and other matters. His practice extended beyond Wisconsin and was marked, in the words of one of his nominators, "by excellence not only in expertise and success but also in ethics and civility."

Duffy's lifetime of service extended far beyond his clients. He served his country in the military, both in combat in Vietnam and in the courtroom as a member of the Judge Advocate General's Corps of the United States Navy. He served the community, with extensive board work for educational institutions throughout the Milwaukee area, not least (but also not only) for a decade as a member of the Law Alumni Association Board, including a term as President.

In presenting the award to Gene Duffy, Dean Kearney recounted some of the foregoing and noted in part as follows: "But Gene is a leader quite apart from any formal institutional role. When my predecessor, the late Howard Eisenberg, became Dean of the Law School in 1995, one thing that he made clear is that, in order to advance, the Law School needed to develop more of a culture of philanthropy among those closest to and most knowledgeable about the school—in particular, its alumni. At the time, this was a hard sell; it still can be, but it especially was then. Gene was one of the very first to answer Howard's call, helping to establish a scholarship so that the Law School would be better able to attract and to educate the next generation of Marquette lawyers." Excerpts from Duffy's remarks appear on the page opposite this. •

Excerpts from the Remarks of the Late Gene Duffy, L'78, in Accepting the Law Alumnus of the Year Award

The Dean forewarned me that he was going to make the effort to get students here tonight, and he has succeeded at that. He wanted me to address some of my remarks to them. He knew also that a few of my classmates and friends would be here. And he wanted me to address some of my remarks to them as well. But the precise remarks are mine, and I tried to harmonize them with the help of my expert writer, my daughter.

So I'm going to take about five minutes, and hopefully not bore you, but hopefully motivate you to think about what we need to take as the next step to maintain the momentum in the improvement of our Law School. What are we going to do in terms of facilities, what are we going to do in terms of faculty, what are we going to do in terms of student recruitment? What are we going to be able to do ourselves?

So here is my description of the ideal Alumnus of the Year. First, the relationship between an alumnus and the institution must be a strong one. You can't come in and out of your relationship like anything else. You have to be committed to a law school to help it. You have to provide it the kind of involvement that is a sustained contribution of time and talent, that advances the standing and stature of the institution.

The second thing about the relationship of a strong alumnus and a school is that it must be a dynamic one; it can't be passive. If alumni no longer have a stake in their institution, there will be no future for the relationship. So, too, if the Law School merely stands in place, it has no future, and it's not a place that I would, frankly, want to waste my time in. I want something dynamic, and someone that's asking me to help it to build and to grow. And I am confident that this is what this administration wants, too.

I will be forever grateful to Marquette and to Marquette's community for the opportunity that it has offered me across the board. This is the place where I met and proposed to my wife; it is the place where I raised my children; it has allowed me to participate in some incredible, creative social and educational planning, like Campus Circle.

I take great pride in being a member of the Class of 1978, and I want to apologize to my classmates, because with this award I was unfairly acknowledged. All of my class participated in responding to Howard Eisenberg's call, and I was so proud to be in a class that stepped up to the plate and sacrificed at a young age, with a lot of debt, to fund a scholarship, because the Law School needed the example. And maybe it's time we did it again. But my classmates did it, and it was just a wonderful, wonderful self-sacrifice, and a classic example of what it means to be good alumni.

Finally, I want to take this moment to say that I'm very grateful that my wife and children, and my beautiful new daughter-in-law, and my sisters and their families are here to share tonight. For me it was a little iffy—I got out of the hospital today—and I've been given another little battle to deal with. And it's helped me learn another very, very important lesson in life, which maybe is important to every Marquetter in the room. And that is a song, or a thought from a song, that my son was taught. It goes like this: "Someday I hope you get the chance/To live like you were dying." It changes your perspective, and it helps you really to understand what the important work is. Thank you for this honor. I will treasure it.

Commencement Remarks of the So

The Honorable Paul D. Clement, the Solicitor General of the United States, spoke at the Law School's May 2006 graduation ceremony at the Milwaukee Theatre. We reprint his remarks here.

Introduction by Dean Joseph D. Kearney

It is a privilege for me to welcome and formally introduce the Honorable Paul Clement, tonight's commencement speaker.

Mr. Clement holds the position of Solicitor General of the United States. President Bush nominated him to this position, and the United States Senate confirmed him. In his capacity as Solicitor General, Mr. Clement is the United States' chief lawyer in its highest court. It is a position of enormous importance and influence. The Solicitor General has the responsibility of formulating and articulating the position of the United States, on the most important legal issues of the day, in the United States Supreme Court.

This is an awesome undertaking, not only because of the learning it requires, but also because it demands another quintessential quality: judgment. The Solicitor General, through the office that he heads, must at times tell others in the Executive Branch—whether the Attorney General, a federal agency, or even the President—that the law does not support a position that the government would like to see maintained, and that he cannot in good faith advocate it to the Court. This combination of learning and judgment is why the Supreme Court frequently turns to the Solicitor General, even when the government is not a party to a case, and requests his views. In short, it is not for nothing that some refer to the Solicitor General as “the tenth Justice.”

Paul Clement discharges his duties as Solicitor General with excellence, making important arguments on matters of immense public significance over the past several years before the Supreme Court. He comes to the position well prepared: he holds a bachelor's degree from Georgetown University, a master's degree from Cambridge University, and a law degree, *magna cum laude*, from Harvard University. He comes to the position as well after clerking for Justice Antonin Scalia of the United States Supreme Court and practicing in Washington for a number of years before joining the Justice Department, first as Deputy Solicitor General and now as Solicitor General.

And he comes to all of these positions from the Milwaukee area. He is a native of Cedarburg, Wisconsin, and a product of its public schools. He honors us this evening by marking the commencement of a new band of Marquette lawyers, soon to be officers of the court. We admire your excellence, General Clement, and we are grateful for your presence.

Please join me in welcoming the Honorable Paul Clement, Solicitor General of the United States.

Licitor General of the United States

Commencement Remarks of the Honorable Paul D. Clement

Thank you, Dean. Congratulations to both the graduates and their families and friends.

I want to extend particularly hearty congratulations to all the graduates who plan to practice law in Wisconsin. You have something going for you that distinguishes you from virtually every other law graduate in the nation: the diploma privilege and a summer without a bar exam. While others face a long, hot summer of review courses to be followed by the ordeal of the bar examination itself, you need only decide what to wear to the swearing-in ceremony.

Personally, I think this speaks volumes about your good judgment and bodes well for your professional careers. If, through the same kind of careful thought and advance planning that allowed you to excuse yourself from the need to take a bar exam, you can help your clients avoid similar ordeals, you will be well on your way to a successful career with many happy clients.

Even more importantly, though, I want to congratulate every one of the graduates, even those who face a bar exam so that they can practice elsewhere. The degree you will receive represents a ticket that will allow you, if you so choose, individually to make a difference in your professional life. This is no small matter. There are many pursuits in which your success is critically dependent on others. Anyone who watched Brett Favre play without Marco Rivera and Mike Wahle last year can understand the point.

I do not mean in any way to underestimate the importance of collaboration or having talented colleagues, but the reality is that a single individual with a law degree has a tremendous potential to make a difference. The law degree represents an opportunity to challenge unjust laws, to bring the guilty to justice, to compensate victims, or to

make abstract ideas a reality.

The legal careers of legends such as Thurgood Marshall and Ruth Bader Ginsburg demonstrate the potential for lawyers to bring about transformative change through hard work and carefully chosen litigation strategies. And while such examples can be intimidating because of the scale of their accomplishments, they clearly show the kind of potential to make a difference that a law degree holds. In my own relatively brief professional career, I have come across scores of lawyers who clearly have made a difference in their professional lives.

Early in my career, I had an opportunity to work on the school choice litigation here in Wisconsin and ran across Clint Bolick, a lawyer who has dedicated much of his professional career to the legal battles surrounding school choice. When Wisconsin expanded its pilot school choice program to include religious schools, Clint was part of the legal effort to defend the statute against an Establishment Clause challenge. That effort, which involved two trips to the Wisconsin Supreme Court, was successful, and school choice has become a reality in Milwaukee. Clint worked here in Wisconsin along with in-state lawyers such as Ed Marion and Jim Friedman. He also was involved in defending school choice initiatives in countless other states, including the Ohio program that ultimately led to a United States Supreme Court decision upholding the constitutionality of school choice.

While Clint has dedicated most of his career to causes



like school choice, most of us will spend the bulk of our careers on things like commercial litigation, corporate transactions, and real estate. Work on such matters may not make headlines, but it very often makes a difference. The specialized skills that a lawyer has can make it possible to bring a new product to the market, to enable someone to purchase a business or a home, or to get back property wrongfully taken.

Moreover, every lawyer—no matter what the nature of his or her everyday practice—has the opportunity to make a difference in pro bono work. And one of the great things about being a lawyer is that it only takes one pro bono case to make a world of difference.

Last Term, I had the opportunity to share time in a Supreme Court argument with Bert Deixler. Bert has an entertainment law practice out in Los Angeles and represents groups such as the White Stripes and Puddle of Mudd. Bert also was appointed by the United States District Court to assist a pro se inmate's effort to try to stop California's decades-old practice of racially segregating inmates in its prison system. Bert took over the case and, after losses in the district court and the Ninth Circuit, ultimately persuaded the Supreme Court to review the case. Then, with the support of the United States as amicus, he convinced the Supreme Court to overturn the Ninth Circuit's ruling and to issue a decision that signaled the end of California's practice of segregation.

That kind of successful effort to strike down an unconstitutional government practice is perhaps the most dramatic example of how a lawyer can make a difference. But my work in the Justice Department has introduced me to countless government lawyers who make a difference by defending government policies that are constitutional or by prosecuting criminals. In many cases, this work comes at a great personal sacrifice. The recently completed Moussaoui prosecution, for example, involved the dedicated efforts of prosecutors like Dave Novak, who spent the better part of two years separated from his family down in Richmond so he could work on the prosecution in Alexandria. On the other side of the case, you had the federal public defender, Frank Dunham, working tirelessly for a defendant who did not even want to be represented.

And even beyond those who stand up and argue in court, there are government lawyers who make a difference by mastering the complexities of legal regimes that profoundly impact people. In the course of preparing for a Supreme Court argument involving the reach of the Clean Water Act this year, I had the pleasure to meet Lance Wood, a dedicated public servant who works for the Army Corps of Engineers and can tell you more about what is or is not covered by the Clean Water Act than any other person alive.

But lest you get the wrong impression, the lawyer's ability to make a difference is not a one-way ratchet. The capacity to act as a fiduciary and to gain your client's trust or the public trust carries with it the potential to betray that trust. I wish I could tell you that the lawyers who prosecute and defend criminals in court never end up as the criminal defendants themselves. Unfortunately, the Justice Department's corporate fraud, and even terrorism, prosecutions tell a different story. And it was just two years ago that the District Court for the Eastern District of Wisconsin up in Green Bay accepted the guilty plea of the former Winnebago County prosecutor, who admitted to, among other things, accepting bribes in order to dismiss charges and reduce sentences. The court departed upward from the agreed-upon sentencing range and sentenced him to 58 months in prison for using his legal license and position of public trust "to make a difference."

Finally, I should emphasize that while a law degree may enable you to make a difference in your professional life, it should not end up being an obstacle that prevents you from making a difference in your personal life. Some of the doors that a law degree opens up are to offices where lawyers work very long hours and are sometimes expected to place work priorities before family matters. Each of you will need to make your own choices in the difficult enterprise of achieving balance between your professional and personal lives. In trying to strike that balance, I urge you to consider the commonsense advice of Wisconsin's own Chief Justice Rehnquist: if you say you want to spend time with your young children, you need to do it while they are still young.

In closing, let me simply congratulate you on attaining this honor and wish you good luck and Godspeed with your own opportunity to make a difference. •

Faith, Justice, and the Teaching of Criminal Procedure

Marquette Law School Professor Michael M. O'Hear delivered the following remarks at last year's sixth annual Conference of Religiously Affiliated Law Schools, held at Baylor Law School. The Marquette Law Review printed the remarks as an essay, which we reproduce here because we believe that it will be of interest to a number of members of the legal profession.

Essay by Professor Michael M. O'Hear

Many of us who teach at religiously affiliated law schools find ourselves pondering from time to time the significance of the religious affiliation. Legal education, after all, is a form of professional training, and the legal profession is a decidedly secular one. Our students, by and large, come to us seeking the knowledge and skills they will need to be successful in this secular undertaking. Most, I suspect, would regard proselytizing in the classroom, or any extended, overt treatment of matters of faith, as, at best, a distraction from the true mission of the law school.¹ Indeed, many religiously affiliated law schools boast such religious diversity among students and faculty that it is hard to imagine any teacher promoting an aggressively sectarian agenda in the classroom without causing a bitter and divisive backlash from students and colleagues.

One can, of course, debate whether religiously affiliated law schools ought to strive for greater homogeneity of religious belief. Should, for instance, Catholic law schools hire only Catholic teachers and admit only Catholic students? My own instincts are that a school that purports to prepare students for professional careers in an increasingly diverse American society ought to deliver its education in an institutional environment that promotes comfort with, and appreciation of, important forms of social diversity, including religious. But this difficult question is not really my subject in this essay. Instead, for present purposes, I will simply assume that it would be unwelcome and inappropriate for me, in my law school classroom, either to seek converts to my religious faith or to persuade my students, on strictly religious premises, to adopt particular positions on controversial social issues that are closely associated with one church or another (e.g., the anti-abortion or anti-death-penalty positions of the Catholic Church).²

Does this mean that I must check my faith at the classroom door? My answer is a qualified *no*: faith values need not be wholly suppressed. Even with a due regard for the diversity of religious beliefs within the classroom and the predominantly secular expectations that most students have of their professional education, I do think that I can appropriately introduce into the classroom normative perspectives on the law that are informed by my faith values. I



should hasten to underscore what, for me, is an important distinction, that is, between perspectives *informed by*, as opposed to *derived from*, faith values. I have in mind principles of human dignity and the value of life that, for me and many others, resonate profoundly with our religious traditions, but that do not necessarily depend, in an intellectual sense, on any particular theological framework.

Is this approach really any different from what I might employ in the classroom at a nonreligiously affiliated law school? I have never taught at such a law school, so I cannot say with certainty whether I would feel equally comfortable with this approach in other contexts. I can say that, despite the essentially secular nature of our undertakings, I do perceive a real openness at *my* religiously affiliated law school to normative perspectives that are morally richer than formalism, law and economics, or legal process. And it is not entirely implausible that this openness is enhanced, at least on the margins, by our religious affiliation, by our chaplain, and by the small acknowledgments of a higher being we routinely make as an institution, such as the saying of invocations and benedictions at formal law school events.

* * *

In the remainder of this essay, I will move from the general to the specific, providing an illustration of

how my teaching of one course, Criminal Procedure, is informed by my faith values. In particular, I will focus on one important challenge with which I wrestle when teaching Criminal Procedure: how to encourage students to think about procedural justice in ways that go beyond the conventional reliability paradigm, that is, the view that procedural safeguards exist solely in order to minimize the risk of wrongful convictions.

By way of background, I will begin with a critique of the American criminal justice system that is grounded, at least in my mind, on some core elements of my Christian faith. I do not mean to suggest that this critique is Christian or Catholic *per se*, but rather that, to my way of thinking at least, the critique gains particular force from its connection to certain values espoused by the Christian Gospels. These values may be summed up as follows. All human beings are children of God and members of the Body of Christ. As such, each person possesses an essential and irreducible dignity that must be respected by all other people. Jesus provides our great model here. Time and again, in the Gospels, He reaches out to, and shows compassion for, the socially marginalized: the poor,³ lepers,⁴ the disabled,⁵ tax collectors,⁶ the woman caught in adultery,⁷ members of disfavored ethnic groups,⁸ and even one of the criminals crucified next to Him.⁹ Jesus teaches that all of us—including, perhaps most notably for my purposes, those who violate our criminal laws—have intrinsic value in the eyes of God, regardless of social prejudices to the contrary.

This belief, however, is in tension with many of the basic premises of our American criminal justice system. For one thing, so much of the system is directed to stigmatizing, shaming, and degrading criminal defendants. Professor Whitman has done some particularly compelling work in identifying and critiquing these tendencies in the American system, for instance, contrasting the indignities of life in American prisons with the more self-consciously respectful treatment accorded Western European inmates.¹⁰

Perhaps even more insidious, though, than the intentional efforts to degrade is the criminal justice culture of speedy case processing.¹¹ Put yourselves in the shoes of a typical criminal defendant. Like most

criminal defendants, you cannot afford a lawyer to represent you. Fortunately, the state will provide a lawyer for you. Unfortunately, that lawyer—poorly paid and under-resourced—will be juggling your case along with dozens, perhaps hundreds, of others. Your contact with your lawyer will be sporadic and fleeting. Your case—like approximately 90 percent of American criminal cases—will almost certainly be resolved through a plea bargain. The deal will be negotiated by the prosecutor and your lawyers with little or no direct involvement by you, and probably based chiefly on a police officer's version of the events. Then your lawyer will present the deal to you on a take-it-or-leave-it basis. In order to pressure you to plead quickly, your lawyer is apt to repeat, and even amplify, the threats made by the prosecutor about the terrible price you will pay at sentencing if you exercise your constitutional right to a jury trial.

So when do you get your day in court?

Technically, you must speak at the change-of-plea hearing, but this involves little more than giving carefully scripted answers to a series of “yes-no” questions posed by the judge. At sentencing, you will have a greater opportunity to speak your mind, but your lawyer will discourage you from doing much more than offering a terse and unconditional apology for the crime. Your lawyer will likely say more on your behalf, but, remember, this is an overtaxed public defender: he probably will not go much beyond a brief recitation of a few factual circumstances that he believes are likely to evoke the judge's sympathy. In the end, the sentencing hearing is apt to be a remarkably short and casual affair, given that years of a human being's life may be at stake.

Defendants, in short, are often well justified in

feeling that no one in the system—not even their own lawyer—*really* cares about who they are, where they have come from, and what their perspective is on the crime. In my view, a system that makes profoundly important decisions about an individual's life without first giving that individual a meaningful opportunity to tell his or her side of the story is a system that treats human beings in a degrading fashion. Even assuming—for argument's sake—that the system “works” (in the sense that no innocent people are convicted, and no unjustifiably harsh sentences are imposed), I would still contend that the system is not a just one, at least as I understand the term *justice* in light of my beliefs about human dignity.

The reliability paradigm of procedure—which exalts conviction accuracy far above other values—is, I think, at least partly to blame for this culture of speedy case processing. Why? If the people in the system are thinking about procedure solely in terms of reliability,

they are not apt to have qualms about the culture I have just described. By and large, the system does work, or at least gives the appearance of working, if working is understood in that limited sense of not punishing the innocent. Most people in the system, even defense lawyers, seem reasonably confident that most defendants really are guilty.

This is an understandable assumption.

In general, defendants become defendants because some nominally objective, professional law enforcement officials decided there was probable cause that they committed a crime. Most defendants, moreover, come from socially disadvantaged backgrounds and have multiple characteristics (race, income, sex, ethnicity, education, age, criminal history, gang affiliation) that are associated with elevated levels of criminality.

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In the end, if guilt can plausibly be assumed from the outset in most cases, then, from a reliability standpoint, we may justifiably feel comfortable with the sort of highly expedited process that I criticized earlier.

For that reason, I think it important, when I teach Criminal Procedure, to help my students—many of whom will be practicing criminal law in the not-too-distant future—to see alternatives to the reliability paradigm, even though that paradigm does seem dominant in the relevant case law.

The constitutional right-to-counsel cases are a particularly effective vehicle. I start with *Powell v. Alabama*,¹² the famous Scottsboro case. A group of poor, black defendants faced capital rape charges in the Jim Crow-era South.¹³ A lawyer was not appointed until the eve of trial.¹⁴ He was obviously ill-prepared, and despite the flimsy nature of the state's evidence, the defendants were convicted and sentenced to death.¹⁵ Why should this be regarded as a due process violation (as the Supreme Court held)?¹⁶ The answer is reasonably clear: because there was no real adversarial testing of the evidence in the case, the verdict was unreliable—a good lawyer would have drawn out the gaps and inconsistencies in the stories of the complaining witnesses, and thereby prevented a wrongful conviction. It is no real stretch for students to see that a system with a high risk of wrongful convictions is not a just system.

With *Strickland v. Washington*,¹⁷ however, the story becomes considerably more complicated. David Washington, charged with capital murder, confessed and pleaded guilty against the advice of his lawyer.¹⁸ Feeling a sense of hopelessness about the case, the lawyer then did essentially nothing to prepare for the sentencing hearing.¹⁹ For purposes of comparison, I tell students about the hundreds of hours two other lawyers and I have spent on a pro bono capital case investigating the family background, education, work history, medical history, and mental health of our client. Although the efforts of Washington's lawyer plainly did not comport with the norms of experienced capital defense lawyers, the

Supreme Court rejected Washington's claim of ineffective assistance of counsel. The Court did so, in large part, by reference to what I term the reliability paradigm: there was absolutely no reason to doubt the accuracy of Washington's conviction, and the supposedly sympathetic information about Washington's personal background and mental state that was unearthed by post-conviction counsel was far less than compelling. The Court, using the language of the test it imposed for "ineffective assistance of counsel" claims, found no "reasonable probability" of a different outcome if Washington's first lawyer had done the sort of investigation and presentation of evidence that was performed by post-conviction counsel.²⁰

Justice Marshall's dissent, which I think is outstanding, embodies the contrasting dignity paradigm. Marshall wrote, "The majority contends that the Sixth Amendment is not violated when a manifestly guilty defendant is convicted after a trial in which he was represented by a manifestly ineffective attorney. I cannot agree."²¹ Even if he received no better *outcome* than he deserved, Marshall argued, David Washington was entitled to a better *process*.²² His lawyer—feeling "hopeless" by his own admission—gave up on him. Lost to David Washington was any meaningful opportunity to place his crimes in context; to present himself in the public setting of the courtroom as a real human being, rather than a sociopath; and to show that he was capable of doing good in the world, not just evil. In my view, Washington did indeed suffer real prejudice, measured by the rejection of his basic human dignity, even if his lawyer was wholly incapable of altering the judgment of death that was ultimately rendered.

Strickland thus functions as a terrific vehicle for encouraging students to think about procedural justice in broader terms than reliability, as well as the special role that defense lawyers may play in helping defendants to tell their side of the story.

Matters become even more complicated with *Faretta v. California*,²³ in which the Court recognized a defendant's right of self-representation. One striking feature of the case is that both the majority and the dissent

took for granted that the pro se defendant will, in general, do a poorer job of subjecting the state's case to robust adversarial testing than will the defendant represented by counsel.²⁴ Indeed, the majority acknowledged that its decision was in tension with *Powell*.²⁵ If not reliability, then what values are advanced by *Faretta*? Our discussion of *Strickland* suggests an answer: the right to mount a pro se defense ensures that the defendant really can tell his or her side of the story without a recalcitrant or incompetent lawyer getting in the way. Indeed, *Faretta* is an unusual decision in the way that the Court self-consciously subordinated reliability values to dignitary interests.

Chief Justice Burger's dissent, which emphasizes the reliability costs of self-representation,²⁶ problematizes my view that defendants should be given a fair opportunity to tell their side of the story. A defendant's view about what is important about his or her background and conduct may undermine or distract from favorable evidence that is more directly relevant to the legal issues in a case. I tell students here about a dilemma that not infrequently confronts capital defense lawyers. The law recognizes mental illness and mental retardation

in various ways as defenses to capital punishment.²⁷ Reliability values thus indicate that the capital defense lawyer should always present evidence of mental illness and retardation. On the other hand, these are stigmatizing conditions in our society. Some capital defendants have spent years attempting to overcome or hide such conditions and may view the prospect of baring such conditions in court as profoundly degrading. What should the lawyer do when the client refuses to be presented in the most legally advantageous manner, when the defendant's chosen "story" about himself omits information that might save his life?²⁸

Throughout the discussion of *Strickland* and *Faretta*, I strive for a balanced presentation, giving reliability its due and not insisting that students agree with my alternative understanding of procedural justice. Indeed, through our discussion of the *Faretta* dissent, I self-consciously attempt to problematize my view. I do hope, however, that the discussion will cause students at least to question the reliability paradigm and perhaps contribute to a greater sensitivity to issues of basic human dignity in the criminal justice system. •

Notes

1. I would, of course, except from this generalization elective courses on law and religion, church law, and the like.

2. This is not to say that *students* should be discouraged from arguing in favor of such positions in the classroom; good teachers, I think, are capable of *welcoming* a student's religious perspectives in class discussion without *endorsing* those perspectives or leaving other students feeling unduly put-upon. One might draw an analogy to the Supreme Court's discussion of a "corridor between the Religion Clauses," that is, a "space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 719–20 (2005).

3. *See, e.g., Mark* 10:46–52 (healing of blind beggar).

4. *See, e.g., Luke* 5:12–13 (healing of leper).

5. *See, e.g., John* 5:1–9 (healing of disabled man by the pool).

6. *See, e.g., Matthew* 9:9–13 (eating with tax collectors and sinners).

7. *John* 8:1–11.

8. *See, e.g., John* 4:7–26 (conversation with woman from Samaria).

9. *Luke* 23:39–43.

10. *See, e.g., James Q. Whitman, Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe* (2003).

11. Professor Natapoff offers a similar account of this culture in Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449 (2005).

12. 287 U.S. 45 (1932).

13. *Id.* at 49.

14. *Id.* at 56.

15. The weaknesses in the state's case were exposed in a later retrial involving a better-prepared defense lawyer. *See* Stephan Landsman, *History's Stories*, 93 MICH. L. REV. 1739, 1739–41 (1995).

16. *See Powell*, 287 U.S. at 71.

17. 466 U.S. 668 (1984).

18. *Id.* at 672.

19. *Id.* at 672–73.

20. *Id.* at 699–700.

21. *Id.* at 711 (Marshall, J., dissenting).

22. *Id.*

23. 422 U.S. 806 (1975).

24. *Id.* at 832–33, 838.

25. *Id.* at 832–33.

26. *Id.* at 839–40 (Burger, C.J., dissenting).

27. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (barring execution of mentally retarded criminals).

28. For a penetrating analysis of the pressure on capital defense lawyers to fit their clients into extreme "caricatures" of mental illness, see James M. Doyle, *The Lawyers' Art: "Representation" in Capital Cases*, 8 YALE J. L. & HUMAN. 417, 442–46 (1996).

Remarks of Steven M. Radke

The Law School holds an orientation for new law students before classes begin each August and concludes the orientation with the Dean's Reception. The school frequently asks a relatively recent graduate to address the future Marquette lawyers at a short program preceding the reception. This year's speaker was Steven M. Radke, L'02. In introducing him, Professor Peter K. Rofes, Associate Dean for Academic Affairs and Director of Part-Time Legal Education, recalled Mr. Radke's experience as one of the first students when the Law School's part-time program opened in 1997 and some of Mr. Radke's undertakings since then, most notably as a lobbyist at Northwestern Mutual.

Orientation Remarks by Steven M. Radke

Thank you, Professor Rofes. I am very honored to be speaking to all of you this evening.

Not so long ago I was sitting where you are—anxiously waiting to begin my legal education. If you had told me then that nine years later, out of all of the outstanding Marquette lawyers in our community, the dean would ask me to come and speak to all of you, I probably would not have believed you.

In fact, when Professor Rofes called to discuss this talk with me, I wondered if I was really the right person for this task. As was noted in my introduction, I am not a practicing lawyer. In fact, as Professor Rofes stated, I practice the often-besmirched, yet I believe still noble, trade known as lobbying.

While I deal with the law everyday, I do it while the law is in its infancy—as it is being crafted by legislators and regulators. You technically don't need to be an attorney to do what I do. But as you will hear later, I believe I am much more effective as a lobbyist because of my legal education.

In addition to being a lobbyist, I cautioned Professor Rofes, my practice is in a relatively narrow field—particularly issues dealing with life insurance. I told him that if he wanted a stem-winder of a speech on Chapter 611 of the Wisconsin Statutes (the section that deals with the governance of mutual life insurance companies), I'm your man. If he wanted to have the new students on the edge of their seats with a discussion of insurable-interest laws—give me a call.

Well, Professor Rofes was persistent. He indicated that he and the dean thought my nontraditional path to law school and the unusual way I use my legal education might provide you all with some different perspectives. I will note that only after I agreed to give this talk was I advised that I would be the only thing between you and free drinks, so I will try to be brief.

I would like to do two things tonight. First, I will offer five pieces of commonsense advice, which—if you keep them



in mind—may make your law school experience, and in particular your first year, a bit more bearable.

Second, I will fast forward to graduation day, and try to briefly explore how you will be different after this experience than you are today.

The practical advice

First, the practical advice, and my first point pertains to your professors. And I apologize in advance to any faculty members present, but please hear me out.

1. Don't expect too much from your professors.

You will come to class next week, expecting the faculty to be the most important part of your educational process. They are not. Law school is actually a multiyear process of guided self-education.

Let me explain. Most of your educational experiences to date were probably an attempt to transfer a discrete set of knowledge and facts from your teacher to you. You would listen to lectures, take notes, read a text, and ultimately pass the lessons learned back to your teachers on quizzes, midterms, and finals.

Law school is much more than that. Your professors are there to teach you the vocabulary and create a useful structure so you can develop the skills of legal reasoning you will need once you leave Sensenbrenner Hall. In many ways the actual laws you will be learning about are secondary.

It took me a while to appreciate this—actually until I was finished with law school. But when you think about it, this is the only way one can be prepared for a career in the law. The practice of law is so broad and diverse, it is virtually impossible for even the best professor to possibly anticipate the substantive knowledge you will need during your career. I would doubt that any class in this law school even mentions Chapter 611, which is so important to me and several colleague attorneys at Northwestern Mutual. In fact, much of the law you may need to master in your career does not even exist yet.

Although the introduction that you get to substantive law in your classes is essential in the short run, what is really important are the skills of analysis and self-instruction you will be using for the rest of your career.

My next point pertains to how you should conduct yourself in the classroom.

2. Allow yourself the luxury of an unexpressed thought. I would imagine that since the earliest days of the Law School back in 1892, there has consistently been a person in virtually every class who always has one more comment to make, one more point to argue, and one more question to ask. There will be someone like this in your class. Respect that person, try to learn from that person—but try not to be that person. Certainly, if you need to have a point clarified, or simply don't grasp a concept, ask. If you are curious about a footnote, ask. Take this unique opportunity to critically analyze others' arguments, and feel free to challenge a point if you disagree. But be respectful of your classmates, and don't monopolize the conversation day in and day out. If, several months from now, you somehow remember these remarks and think to yourself, "Boy, there is no one like that in my class," perhaps it is you!

3. Take advantage of every opportunity to become a better communicator. Others will tell you this over and over, and they will do this because it is so true. Your legal writing class may very well be the most important class you take in law school. You can be a legal genius, but if you cannot communicate your thoughts, no one will ever know. In addition to your writing, hone your speaking skills as well. Even if you never step in a courtroom (like me) or are terrified by speaking in front of an audience (like me), the importance of being able to communicate articulately and confidently cannot be overstated, regardless of what field you are in.

4. For those of you with spouses or significant others. Over the next few years, you will develop a highly tuned ability to make distinctions that do not make a difference to most people, a capacity to see ambiguity where others see things as crystal clear, and an ability to see issues from all sides. You will be able to artfully manipulate facts and sharply and persuasively argue any point. You will even learn a little Latin.

I have learned from firsthand experience that your spouse is not the appropriate person on whom you should practice any of these skills. My advice for dealing with spouses is simple: tell them often you love them, and

remind them how nice it will be once law school is over.

5. Relax. From every fellow law school graduate I spoke with in preparing my remarks, this was the most common piece of advice offered. It is the simplest to understand yet the most difficult to actually implement.

Relax. Take a deep breath.

Grades are important, but they are not all-important. Take time to simply absorb and enjoy the experience you are about to begin. You will forge friendships with other people in this room that will last a lifetime. Cherish these friendships. Take time to read a novel or go see a movie. Leave your books at school over Thanksgiving break—or at least keep them away from the Thanksgiving table!

The big picture

Well, I have finished my first goal. I have imparted the best practical advice I could muster. Now I would like to take my few remaining minutes to offer my thoughts on how you are going to be changed by the education you are about to begin.

I am always a bit troubled when I hear the phrase that law school does not teach you to be a lawyer, it teaches you to “think like a lawyer.” It seems to imply there is a single way lawyers think. When I brought this up with a table full of lawyers, it actually sparked a debate. We discussed what it means to “think like a lawyer,” if lawyers

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really think differently from nonlawyers, if lawyers who practice in one area of the law think differently from practitioners in another area, and if law school changed our way of

thinking or rather we attended law school because we are predisposed to think like lawyers. While we reached no consensus, I concluded that only a table full of lawyers would enjoy such a debate!

Nonetheless, if, God forbid, I someday find myself being wheeled into an emergency room, I hope the person preparing to operate on me doesn't just think like a doctor. I want him or her to *be* a doctor. Ninety credits from now, most of you will be lawyers. And knowing the values and skills Dean Kearney, Professor Rofes, and the rest of the faculty will instill in you, you will be prepared to be very good lawyers.

But how will you be different when you graduate than you are today?

The education you are about to receive will do much, much more than make you a lawyer. It will make you a better citizen, and a better person. You will emerge able to work harder, think more clearly, communicate more effectively, analyze diverse viewpoints, negotiate productively, and apply these disciplines to any field you choose. You will be given the sword to be an effective advocate, and the shield to be a protector of the vulnerable.

A law school education is truly an amazing thing.

There is no other educational experience that could train you for the variety of opportunities that lie ahead of you. A few years from now, one of you will be up here speaking to incoming students. You may be a district attorney, or a member of the plaintiff's bar. You may practice family law, or you may be an expert in the federal tax code.

Some of you may never practice in the traditional



sense. You may be lobbyists or an elected official. I know a lawyer who is the CEO of a Fortune 500 company and a lawyer who owns a pizza restaurant. I know a lawyer who is building a real estate

empire and a lawyer who is raising her children.

What is it about a legal education that trains you equally well to be a CEO or a personal injury attorney or to run a restaurant?

I think in many ways the answer is so simple we often overlook it. Whatever path you follow, you will be using all of the skills you acquire—the ability to ask the right questions, apply solid reasoning, make a persuasive argument—in order to help people solve their problems.

Do not forget this.

Most people reach out to a lawyer when they are in dire straits. When they have nowhere else to turn. When their lives have taken an unfortunate twist. Businesses turn to their attorneys when they need wise counsel and an experienced hand. But they all come with a problem to be solved.

And it is the skill in problem-solving that only a legal education provides that will allow you to help these people. And if you choose not to practice law, it is this problem-solving capability that will allow you to excel in whatever endeavor you choose.

You will begin one of the most exciting journeys of your life next week.

You are at an institution that is prepared to educate you, mind, body, and spirit, to become agents for positive change in society. You will acquire great skills and powerful knowledge.

Enjoy this experience, and remember to use this knowledge wisely.

Thank you again for asking me to join you tonight, and good luck. •

Libraries: Stability and Change

Nicholas C. Burckel retired at the beginning of last year as the University's Dean of Libraries and Associate Professor of History. Dean Burckel served during the conception and construction of the new Raynor Library at the University. Although Dean Burckel was not responsible for the Law Library, his remarks at a reception hosted by the Helen Way Klingler College of Arts and Sciences on the occasion of his retirement are of interest, especially for a law school such as Marquette exploring the possibility of a building project that would affect, among other things, its own library.

Remarks by Nicholas C. Burckel

Libraries and their historical antecedents have preserved the record of literate societies over the centuries. Changes in libraries have also both reflected and affected the democratization of information and the increase in general literacy—not always with the support of philosophers and kings. In the words of Father William Leahy, President of Boston College, Aristotle apparently “feared that the spread of literacy in his time would harm learning” because “it would free men of intellectual ambition from the responsibility to memorize great written works.” During the Middle Ages in Europe, Christian monks transcribed classical texts in scriptoria, thus preserving the accumulated wisdom of Greek and Roman culture and sacred texts on vellum and parchment—a medium more malleable than clay tablets and more durable than papyrus. While this laborious process effectively preserved and more widely disseminated information, access to that information remained severely limited—available for examination only in the monasteries and mainly by clerics and kings.

By the fifteenth century, Western Europe's Age of Discovery led to a wider interest in, and exploration of, a world beyond the Mediterranean. The Renaissance emphasis on a humanistic perspective and a rediscovery of classical antiquity meant that man again became the measure of all things, in the translated terminology of Protagoras, a contemporary of Socrates in the fifth century B.C. Scientific discoveries and inventions buoyed the spirit, providing further proof of man's ability to understand his world and control his destiny. For the world of learning and libraries, the introduction of the movable-type printing press marked a significant advance in the preservation of information and, even more so, its dissemination. Text was freed of clerical control and the Latin language. Though still expensive and not uniformly available, the printed word made possible a level of access undreamed of in the Middle Ages. Even so (again to borrow from Father Leahy), “religious authorities in Europe feared that printers of vernacular Bibles would undermine faith by allowing individuals to interpret scripture without first undergoing theological training.”

As recently as the nineteenth century, John Henry Cardinal Newman, among others, “feared that the mass production

of books through machine technology would harm higher education, because it would lead individuals to adopt informal self-teaching in place of university study. And his eloquent effort to define the purpose of universities was in part driven by this concern.” By then, however, libraries were already serving a wide range of needs. The free public library movement in the United States gave tangible expression to the democratic ideas of the Declaration of Independence and the Constitution.

By the nineteenth century, most academic libraries resembled a gentlemen’s club library rather than a research collection. Most colleges were private male-only institutions; their libraries were closed stacks and the contents available only to the educated elite. The apocryphal story of a conversation at Harvard illustrates the prevailing attitude about the role of the library in the life of the college. On the morning of graduation, Harvard President Charles Eliot encountered Librarian Justin Winsor as he crossed the quadrangle. Eliot asked about the library, and Winsor replied that all was well: All the books were safely back on the shelves except for three, and he was just on his way to retrieve them. In short, library books belonged in the library.

By the latter half of the twentieth century, academic libraries had become more accessible to users and more inclusive in their collecting scope. Most academic libraries had open stacks, longer hours of operation, and more-generous borrowing privileges. Their collections extended well beyond classical texts in traditional disciplines. Even so, the growing collection of research journals did not circulate, food and drink were prohibited on the premises, talking was discouraged, study was considered a solitary enterprise, and libraries maintained a virtual monopoly on systematic access to published information.

This was less a function of libraries seeking that control than it was simply a matter of economics. Access to most reliable information, especially scholarship, was through publications—a monograph published by a respected press or an article in a peer-reviewed journal.



In either case, the production technique was print on paper and distribution was through the mail system. The copyright doctrine of “first sale” meant that libraries could buy a single copy and make it available to anyone. Faculty and students could not afford to buy everything they needed; they had no place to store the information; and they did not have a systematic method for retrieval. Under these circumstances, libraries were the ideal solution for serving faculty and students.

Not only did libraries have a virtual monopoly on research material, but they also provided a filtering service. Libraries have never been able to acquire all published information, and so they have used a variety of tools to select the most important and useful information for current and future researchers. While not perfect, the acquisition of material by libraries provided an informal imprimatur that the information had been published by presses and professional associations that assured quality control.

One major impact of the digital revolution and the exponential growth of the internet has been the loss of the library’s traditional monopoly on published research

information. In a distributed digital environment, especially after commercial entry into the internet, the library's information monopoly changed. Libraries still maintained a gate-keeping function, but that role was useful only if researchers continued to rely heavily on the libraries for their information. Not only is an incredible amount of information freely available on the internet, but increasingly easy and sophisticated search engines are delivering satisfactory results to millions of users. In such an environment, many students and some faculty find ease of use and speed of response more important than quality of information. "Good enough" is becoming a substitute for "best."

The growth in volume of publications is enormous, and libraries are staggering under the weight. In his book, *Information Anxiety*, Richard Wurman estimates the annual number of volumes published at 850,000. Over 6,500 scientific, technical, and medical articles are produced in the United States every day, 24,000 (1,000 an hour) worldwide. Wurman further estimates that information doubles every five years. Libraries have never been truly comprehensive, and they are now collecting a smaller proportion of available publications. While digital technology has contributed to this proliferation of information, it also offers the promise of some relief. The most obvious advantage is the possibility of immediate simultaneous access to a vast amount of information formerly accessible only in certain buildings, usually libraries, at certain times, and for a limited period.

Not only has the growth of available information put a strain on acquisitions budgets, but so too has the spiraling cost of scholarly journals. While most library acquisitions budgets are funded at or slightly above the general rate of inflation, the journal literature inflates at a cost two to three times that rate. The Association of Research Libraries reported that between 1986 and 2000 the unit cost of journals rose 215 percent. Monographs, by comparison, rose only 68 percent. During that same period, purchase of journals actually declined by 5 percent and monographs by 9 percent. At major research libraries, the journals' budget accounts for over 75 percent of the entire acquisitions budget.

Libraries, with the assistance of foundation grants or

in partnership with publishers, are trying to deal with the myriad issues surrounding digital publications, including long-term access to back files when subscriptions are cancelled or archival access when publishers no longer find it profitable to maintain them—or even go out of business. The former Dean of the University of Michigan School of Information Science, an engineer by training, predicted that 98 percent of all new information would soon be created and stored in digital formats. Several years ago, Clifford Lynch, Executive Director of the Coalition for Networked Information, observed that the half-life of a website was 45 days and dropping. This creates a very unstable research environment and suggests the complexity of maintaining fixed information points in a rapidly changing digital world. While not settled, the direction is clear—frequently revised reference material, scholarly journals, a host of special data sets, and audio-visual material will be purchased or leased only in digital form. That translates into fewer volumes to process and bind and less space needed to house. Collections will continue to be important, but the format for most of it will be digital.

Let's take a brief look at academic library trends in this new environment.

Convergence. Libraries increasingly reflect the emerging convergence of three complementary elements—content, conduit, and communication. Content is information, both local (physical) and remote (virtual), in a bewildering variety of formats—manuscript, microfilm, print, electronic, video, audio, digital, and analog. Libraries have always accommodated to new information formats, recognizing that they often do not displace other formats, but provide another dimension. Conduit, the second element, provides access to much of this information—equipment that makes the material intelligible to the user: microfilm readers, record and compact-disc players, televisions and video playback units, slide and film projectors, tape recorders, and, increasingly, computer hardware and software. The combination of content and conduit facilitates the third element—communication. Learning and discovery are important for students and faculty, but unless that learning is shared, it is lost to others. Knowledge is cumulative,

and that cumulation depends on communication—the ability to share the product of research and creative effort with a wider audience. Libraries are in a strategic position to coordinate that convergence. Certainly, in the coming years, specific technology will change, but students will continue to need help both in navigating the information sources and in utilizing the technology. Libraries will remain relevant to the extent they provide the essential elements—the information, the technology, and the expertise—to facilitate intellectual inquiry (student learning and faculty research).

Collaboration. The exponential growth of information, increased user expectations, and the greater technical demands on library staff make it clear that libraries cannot meet these challenges alone on their respective campuses. Collaboration with other campus units and among libraries nationally and internationally offers the only hope for libraries to maintain or reclaim the central role on campuses they enjoyed in the last century as the intellectual heart of the campus. On campus, that means working closely with campus units responsible for information technology—academic computing as well as educational or instructional media. What may be less obvious is the need to partner with campus teaching centers, writing centers, disabled student services, and academic units responsible for formulating and promulgating policies on academic honesty. Collaboration recognizes the blurring of boundaries and seeks alliances to achieve results that alone no single group could achieve.

User Focus. The recent emphasis on undergraduate education, the competition for students who demand more amenities, the increased generation of information in digital form, and the wide availability of information on the internet have combined to create new expectations

about libraries. Collections, virtual or physical, still remain important to academic libraries, but the perspective has shifted from a collection to a user focus. That has profound implications for academic libraries. For that reason, it is useful to look at the research and teaching patterns of our faculties and the learning styles of our students. Some needs are shared; others are specific to a group; and still others conflict with each other. The challenge for libraries is how to serve this diverse clientele.

It may be true that students and faculty have always wished for the information they want, when they want it, where they want it, and in a format they want. Technology and consumerism, however, have combined to change a velleity to an expectation. Meeting this array of user needs even in a stable environment is difficult; doing so in a time of economic constraints, rapid technological obsolescence, and exponential growth in information can overwhelm. How are academic libraries responding?

Access and Ownership. Usually this topic is phrased dichotomously—access versus ownership. From the perspective of the user, this is seldom an issue. She wants accurate information quickly and reliably, when and where she wants it! The issue for libraries is the continued availability of that information. The attractiveness of purchasing a physically discrete, eye-legible body of information (e.g., a book or journal) is that it assures access nearly in perpetuity. Digitally available information offers the promise of nearly instantaneous multiple simultaneous access from any location, along with the ability to download, analyze, manipulate, and store the information. From the user perspective, this is ideal. For libraries, the challenge is meeting their archival responsibility—assuring the continued availability of

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digital information when no longer commercially viable. This raises a host of legal, technological, and financial issues that time constraints and your stomachs don't permit us to explore.

Physical and Virtual Collections. Much has been made of the emergence of digital collections and the predicted decline in physical collections. That trend has shaped not only plans for new libraries but also renovation and expansion of existing libraries as well. Especially in the last 50 years of the twentieth century, collections took up an increasing amount of library space at the expense of user seating. In an environment of limited access to information, this was a logical trade-off. In the rapid migration to digitally generated information and the consequent increase in its availability outside the library, planners have begun to de-emphasize on-site browsable access to vast collections. The focus has moved to the user, whose demands for comfortable and useable space have forced libraries to reconsider how space is allocated. Before the widespread dependence on digital collections, it was assumed that academic libraries could safely house approximately 15 percent of their collections at remote sites. By 2003 that figure had doubled, if not tripled. Even if material is not moved off campus, much has moved to compact mobile shelving or to dense storage where material is bar-coded, arranged by size, and stored in book bins that electronically retrieve desired items through an online paging system. Physical collections have not been eliminated, but they no longer have first claim on space in libraries that typically occupy the center of campus. Some faculty decry the loss of the physically browseable collection. Online catalogs, however, do allow for browsing by call number and include related material in different formats that is often housed separately and missed by physically browsing the collections. Libraries are adding table-of-content information and reviews of monographs to the bibliographic record, thus dramatically enhancing users' ability to locate and evaluate useful information.

Academic libraries have always served the needs of faculty and students, but they have traditionally done so by focusing on acquiring printed material that is catalogued and shelved in a physical structure. Users came to the

library to use the collections or, at minimum, to retrieve material for use outside the building. Libraries were among the first buildings on campuses and have remained at the physical center of the campus, emphasizing the centrality of their role in serving the intellectual needs of the university. Until recently the 25–30-year expansion cycle for building additions to libraries was driven not by enrollment increases, but rather by dramatic increases in the size of collections. The drive to improve the heating, ventilation, and air conditioning of libraries came from a concern for preservation of the collections, not the comfort of users. Libraries were constructed with little natural light to protect collections from harmful ultraviolet light.

While we librarians think of the physical collections as research materials that need to be readily available, trustees, many campus administrators, and donors may look at the library as a warehouse, books as inventory, and the cost per square foot to house little-used material on prime campus real estate as a poor investment. In announcing the construction of a seven-million-volume remote joint storage facility for Princeton, Columbia, and the New York Public Library, the provost at Princeton observed, "In the main libraries, books have crowded out people. . . . That's not the optimal situation." As the architect who worked with our librarians to meet this challenge, Geoffrey Freeman, observed, "Collections will continue to evolve but not at the expense of providing services and an environment for learning. While the library remains a preserve of information, it is assuming the greater role of generator, exchanger, and server of information."

Instruction. Public libraries have traditionally met their users' needs by providing them with the answers to their questions; academic libraries have met their users' needs by helping them locate sources that will answer their questions. Academic librarians, in short, contribute to the educational process by helping students learn how to locate information for themselves. The Association of College and Research Libraries defines information literacy as the ability "to recognize when information is needed and . . . to locate, evaluate, and use effectively the needed information." The goal of such training is to help

students assume greater control over their own learning.

Information Commons.

One tangible manifestation of the conceptual model I have described is the evolving design of library services around an information

commons. Just as, during the colonial period in America, the town commons was a place for people to meet socially, the information commons provides an analogous intellectual space for students and faculty to meet. Until recently, libraries have been logically organized around discrete functional responsibilities. This often resulted in a proliferation of service points, each serving a separate function. Some were organized around broad subject areas or disciplinary clusters, such as humanities, social sciences, or sciences. Others were organized around a specific service—interlibrary loan, reference, reserve, media, and circulation. When libraries faced staff reductions, these service points were staffed less intensively, for fewer hours, or with lower-paid support staff or students. In many cases, the service point had to be abandoned, and the function shifted elsewhere.

The convergence of content and computing has made the functional distinctions of the past less relevant. Instead of the user's going to several points in the library to retrieve information, she can bring those resources to her computer—in effect, letting her fingers do the walking. The information commons model embraces this approach. It recognizes that in a user-centered library, users want convenient access. When they need assistance, they do not readily distinguish between help in identifying a specific piece of information and help in using software to access, manipulate, and download information. Users prefer one-stop service to the extent possible, and this has obvious implications for how we staff the information commons.

Software Instability and Obsolescence. In a presentation highlighting the differences between librarians and computer center personnel, consultant Joan Frye Williams listed a number of characteristics. Library staff strive for completeness; information technology staff for timeliness. Librarians want a



flawless product; technologists want a functional one. The clash of professional values creates problems. Librarians do not want a software product until it is stable; technologists respond that they would prefer to produce a timely

product, rather than wait until it is perfect. The product can continually be improved incrementally through new releases and “patches.” Obviously such a portrait is overdrawn, but it illustrates different perspectives about how to provide service. As much as we may seek stability, the trend is in the opposite direction. The challenge to librarians, therefore, is how to adapt new and upgraded software to user needs. This requires librarians to improve their instructional skills and their skills as mediators between users and the digital information they need.

Even if sellers provide libraries with digital files of retrospective material on CDs or DVDs, how will the information be maintained? The medium itself is subject to rapid obsolescence. It will be increasingly difficult to find hardware and software to mount and manipulate the information. To avoid the eventual loss of data, librarians are wrestling with how to migrate it to new software or develop new software that emulates the obsolete software. These techniques are costly and time-consuming and not nearly so risk-free as print on paper or microfilm.

In summary, all of these issues—convergence, collaboration, user needs, access/ownership, physical and virtual collections, the evolving information commons, technological obsolescence, and the role of librarians as instructors—raise questions about the future of academic libraries. The dynamism and rapidity of change have made planning for academic libraries increasingly difficult. In such an unstable environment, we are rethinking our ideas about what libraries should be, how they will function, how they can enhance teaching, research, and learning. Raynor Memorial Libraries—the building, collections, services, and staffing—reflect our attempt not only to serve the present but to anticipate the future. Time will tell how well we have done it. •

Welcome to Mike Gousha and Mike McCann

The Law School welcomed this past January two individuals well familiar to anyone who has lived in its region in the past quarter-century. **E. Michael McCann** (seated at right) joined the Law School as Adjunct Professor of Law and Boden Teaching Fellow, after an extraordinary run of 38 years as District Attorney of Milwaukee County. McCann, who received an honorary doctorate of laws from Marquette University in 1997, looks forward to engagement in the mission of the Law School.

“I am so pleased to be associated with a Jesuit institution—given that I attended one for high school, college, and law school—and with Marquette University in particular,” McCann said. “I have long had a great deal of respect for Marquette lawyers, as could probably be seen in my almost four decades of hiring practices as district attorney.”

Mike Gousha (standing) comes to the Law School as Distinguished Fellow in Law and Public Policy. For the past 25 years, Gousha has been a prominent broadcast journalist in Milwaukee—in fact, he was termed by the *Milwaukee Journal Sentinel* last year as “maybe the best there ever was in Milwaukee television.” Gousha intends to contribute to the Law School’s mission by helping to make Marquette Law School *the* place in the region for discussion of legal and policy issues. By the end of this semester alone, the Law School will have hosted under his leadership discussions with Governor Jim Doyle, former Governor Tommy Thompson, Mayor Tom Barrett, Sheriff David Clarke, both candidates for the Wisconsin Supreme Court, all nine candidates in the general election for the Milwaukee School Board, and a number of others, partnering with organizations such as the *Milwaukee Journal Sentinel* for some of these undertakings.

“This is just the beginning,” said Gousha. “I came to Marquette University Law School because Father Wild and Dean Kearney persuaded me that their standards and ambitions for the Law School are extremely high. It is an exciting place these days.” •



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