others." We're not perfect, but we know what we're doing and why we are doing it. And so, President Obama, when you ask for the service and active citizenship of our youth, you need look no further than the students we graduate from these—our 28 Jesuit colleges and universities.

And when you hear the term, *Jesuitical*, my friends, think not about the debate between Hillary Clinton and Tim Russert on whether or not her vote on the Iraq war was really just a vote to put inspectors back in Iraq, or whether she was accusing Tim Russert of employing casuistry to make a morally specious argument. Think instead about the words of my friend and colleague, Dr. Heidi Malm, professor of philosophy at Loyola, who heard that I was delivering remarks on the topic of learning, justice, and faith in Jesuit higher education and wrote:

> I found myself talking about that topic in my Honors College course on moral responsibility today, explaining why I so enjoy teaching (especially value/moral issues) at a Jesuit university even though I'm not Catholic. The focus . . . on clear, careful, intellectually critical reasoning on important moral issues and their underlying values, as well as on one's position (duties and rights) within a society, is wonderful. . . . After all, how could a college-age person not be interested in such things? ■

Civil Trial Counsel of Wisconsin

Law Schools as Common Ground for Discussion

Marquette University Law School Dean Joseph D. Kearney addressed the annual meeting of the Civil Trial Counsel of Wisconsin in December 2009. This is an excerpt from his remarks.

I regard the Law School as a common ground where folks ought to be able to come together—not because they agree but precisely because they do not.

More than ever, we need such common ground in the legal profession. It scarcely exists these days, it seems to me. This is no indictment, or even criticism, of groups such as this one or its counterpart on the plaintiffs' side, the Wisconsin Association for Justice. Such groups provide a valuable forum for the pursuit of common interests, though not as much so for debate, in my experience. By contrast, this may be a something of a criticism of the State Bar of Wisconsin. I am not one of the dis-integrators and, in fact, see the State Bar as, in important respects, playing a positive role, especially among some of the lawyers perhaps most at risk of losing an adequate connection to the larger profession.

At the same time, it is difficult for me to see the State Bar (that's a capital "S" and a capital "B") as providing a robust intellectual commons where folks from the profession can come together to discuss and debate large ideas in the administration of justice. To some extent, my difficulty in seeing this derives from some of the pursuits over the past decade or two, in which, for example, the State Bar of Wisconsin has decided that it is among its interests to lobby the legislature of the State of Wisconsin as to proper content of the substantive law of torts (and, more

specifically, whether the Third Restatement of Torts should be adopted for products liability). Purporting to speak for an integrated bar on practice and procedure is one thing, it seems to me; doing so on substantive law matters is quite another. But the difficulty of successful leadership in certain matters may also inhere in the nature of bar associations: their primary calling card, I think, historically has been their success as trade groups.

The profession therefore needs common ground to discuss, across the lines of practice areas—across the plaintiff's and defense bar bar, if you will—important matters affecting the profession. There are certainly matters requiring attention.

One of my own strong views has to do with what a colleague and I have come to term the "culture of default" in Wisconsin courts.

As a general matter, we have a legal system that prides itself on ensuring that, wherever possible, adjudication is determined on the merits and not technicalities. Indeed, the Wisconsin Supreme Court has told us, repeatedly, that this is "the entire tenor of modern law." There is much truth in this. We see it, perhaps most notably, in the legal system's great focus on the truth, as made accessible, we hope, through not only the traditional adversarial process (which undoubtedly at some level is required by the Due Process Clause) but also the much more modern device of discovery, with its extraordinarily intrusive devices. But we see it as well in the prevailing practices of excusing noncompliance with rules in order to avoid adjudication on the basis of technicalities and small slipups. For example, defects in summonses and complaints, if technical and nonprejudicial, are excused; so, too, we see in the case law, are various failures to comply with statutory timing requirements for mediation in malpractice cases.

The *rule* is similar with respect to default judgments—a trial court has authority, "upon such terms as are just," to vacate a judgment where there has been, for example, "mistake, inadvertence, surprise, or excusable neglect"—but the *practice* is rather different. Indeed, it is clear to me that the prevailing culture in the trial courts in this state increasingly favors the entry of default judgments and the subsequent refusal to vacate them. Two of my colleagues on the adjunct faculty and I have been sufficiently troubled by what we have seen that two years ago we were moved to file our own amicus curiae brief in the Wisconsin Supreme Court, laying out our thoughts on the matter and asking the Court to issue an opinion recalling for the bench and bar "that the law's preference for disposition on the merits extends to nonprejudicial and nonjurisdictional mistakes made by either side" in litigation—to defendants and default judgments no less than to plaintiffs and dismissals for defective summonses. We did this, not as Marquette University faculty nor even for our law firms, but in our capacity simply as members of the bar with an interest in a principled, well-functioning, and even-handed judicial system. The court essentially declined the invitation, although it at least did not favor the particular default judgment at issue in the case in which we filed our amicus brief.

"One of my own strong views has to do with what a colleague and I have come to term the 'culture of default' in Wisconsin courts."

I wish not to get bogged down in my default-judgment point—obviously I feel strongly enough about it that, on my own time and dime and behalf, I filed an amicus curiae brief. Rather, I use it as an example of my point that there are matters that the legal profession needs to discuss in common. Where will this happen? This group is not sufficient, for example: the proportion of people in this room who will agree with me concerning the culture of default in the Wisconsin courts is higher than it would be in the larger profession. You are, after all, a defense association.

And a good perspective on the matter would include not only the plaintiff's bar—even if we might confidently predict many of its members' basic views—but also the trial judges. My own sense is that the culture of default owes much in its origins to the evolving view that judges have of themselves—over, say, the past thirty years—as case managers. A case with a default judgment is a case managed, a case processed, a case closed. It goes on the "resolved" side of the judge's periodic report.

So if trade groups and bar associations cannot be adequate fora to discuss many important issues in law and public policy, where can the profession go? Back to school, is my short answer—to law schools, that is, which in many respects are well positioned to convene intelligent discussion and debate among groups and individuals with opposing views. Or at least this is our hope for Marquette . . . . ■