

# Law School Programs Receive Coast-to-Coast Attention

Timely efforts focus on the U.S. Supreme Court and on Milwaukee history

## Poll provides insight after Justice Ginsburg's death

Obviously, it was one of those things that just happen. On September 15, the Marquette Law School Poll completed a week of surveying people nationwide on opinions related to the U.S. Supreme Court. Three days later, Justice Ruth Bader Ginsburg died, immediately moving Supreme Court issues to the top of the national agenda.

After deliberation, the next day, the Law School released the findings on Ginsburg's standing as the best-known justice and on opinion about naming a successor during 2020. The *New York Times*, *Washington Post*, and CNN were among those reporting on the poll.

Full results of the Law School's second annual Supreme Court poll were released in subsequent days, as scheduled, and ahead of President Donald Trump's nomination of now-Justice Amy Coney Barrett to succeed Ginsburg.

It was another example of the value of the Marquette Law School Poll. Since 2012, the poll has become widely recognized, across the country, as a reliable source of information on public opinion on political issues in Wisconsin, a state with an unusually high

political profile. But the poll also provides insight on many other matters, including the economy, social policy, criminal justice, and education.

One important focus in 2020 was on opinion related to COVID-19. Almost monthly, the poll showed trends in how people were responding and how they rated government responses. One example: In late March, 70 percent of Wisconsin voters said they were very worried or somewhat worried about being affected by the coronavirus. The total ranged variously between 55 percent and 65 percent in five subsequent polls from May through the end of October. The poll also showed strong support overall for requiring people to wear facemasks in public places (in early October, 72 percent were in favor of such a requirement, with 26 percent opposed). In late October, 64 percent of respondents said that they themselves wore facemasks all the time in going out to public places, while 20 percent said that they did so most of the time; 12 percent reported doing so "only now and then" and 3 percent said "never."

The poll was the only source of such information in Wisconsin. This was true as well with respect to evolving public views on racial justice and the Black Lives Matter movement (see the cover story of this issue for some aspects of this polling).

Full results of the poll may be found at [law.marquette.edu/poll](http://law.marquette.edu/poll). ■

## Spotlighting a piece of Milwaukee's history

How about making a documentary on Milwaukee's socialist history? At the start, the idea was connected with the expectation that Milwaukee would be in the national spotlight in 2020 because of the Democratic National Convention. Plus, the word *socialism* has been used a lot in politics recently, and Milwaukee has the most interesting socialist history in the nation.

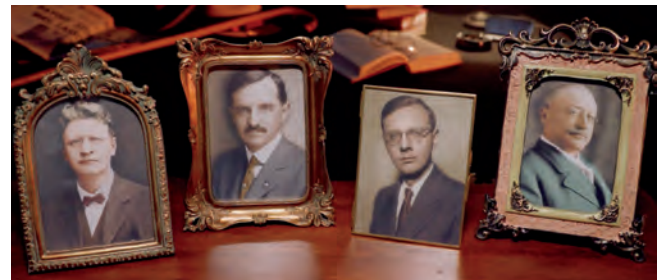
So Mike Gousha, the Law School's distinguished fellow in law and public policy; his wife, Lynn Sprangers, also a journalist; and two filmmakers, Steve Boettcher and Mike Trinklein, undertook the extensive effort of making a one-hour documentary.

The political convention fizzled, thanks to the COVID-19 pandemic, but the history remains relevant.

The film, *America's Socialist Experiment*, premiered in June on PBS stations in Wisconsin and was then shown on PBS affiliates across the country, from New York to Los Angeles, Chicago to San Francisco, Alabama to Idaho. It is now available on Amazon Prime.

For all but a few years between 1910 and 1960, Milwaukee had socialist mayors. But, as the documentary details, they were frugal pragmatists, not big-spending ideologues. They focused on improving public services and daily life-quality issues while providing clean government. They became known as "sewer socialists." It was initially a term of derision, hurled by East Coast socialists who thought the Milwaukeeans weren't sufficiently revolutionary.

Gousha, who narrated the program, concluded, "No one really thinks much about sewers, toilets, and clean water until they're not available. But Milwaukee's socialists did." The socialist era came to an end in 1960. ■



A screenshot from *America's Socialist Experiment*: an image created using photos of Mayors Emil Seidel (in office, 1910–1912), Daniel W. Hoan (1916–1940), and Frank P. Zeidler (1948–1960), and Congressman Victor L. Berger (1911–1913, 1923–1929). Photos courtesy of Library of Congress (Seidel and Berger), Milwaukee County Historical Society (Hoan), and Zeidler family collection.



# Mitten Urges U.S. Senate to Act on Publicity Rights for College Athletes

Whether or how to keep playing at all has been the hottest issue in college sports in recent months, thanks to the coronavirus pandemic. At the same time, a most important long-term debate appears to be moving toward major action. The question has been whether college athletes, especially the most prominent ones, should be allowed to make money based on their celebrity while still in school.



Matthew J. Mitten

Playing a role in that national debate is Matthew J. Mitten, a Marquette Law School professor and executive director of the school's National Sports Law Institute. Mitten testified remotely in July before the U.S. Senate Judiciary Committee that federal legislation is necessary to establish the parameters of college athletes' licensing of their name, image, and likeness (NIL) rights; this would be a significant reform, permitting athletes to receive

related income. He subsequently submitted proposed legislation, drafted with Professors Stephen Ross and Doug Allen of the Pennsylvania State University and Professor Barbara Osborne of the University of North Carolina.

In his Senate testimony, Mitten said it is important for Congress to protect the fundamental amateur nature of college sports by ensuring that athletes' receipt of NIL income does not constitute "pay for play." Only relatively few of the approximately 460,000 National Collegiate Athletic Association (NCAA) athletes—primarily big-name athletes playing football and men's basketball—would be in a position to earn substantial income from NIL licensing deals. So it is equally important to avoid unintended adverse consequences, such as less money being available to fund participation opportunities and scholarships in

nonrevenue sports and to achieve Title IX gender equity in college sports.

Mitten told senators that congressional legislation was a much better route for dealing with the issues than either action by individual states or changes imposed by courts applying antitrust law. Only Congress is in a position to deal with the full picture of what is needed, he said, while avoiding the problems of different states having different rules.

"[A] nationally uniform law regulating intercollegiate student-athletes' licensing of their NIL rights," Mitten said in his testimony, "is required to provide consistency; to prevent the development of conflicting state laws; and to avoid the dangers of professionalizing college sports and creating competitive balance inequities if different states enact different NIL laws for their respective colleges and universities."

In a subsequent interview, Mitten said that colleges and universities should not be able to pay athletes directly. "I'm staunchly opposed to that idea," he said. "We don't want college sports to be minor league professional sports." But athletes who are sought out for such things as appearances at events or commercial endorsements should generally be permitted to benefit. In the current situation, athletes are limited to receiving scholarships and other benefits equal to the cost of college, and licensing their NIL rights would permit them to receive a share of the revenues generated by the multibillion dollar college sports industry.

One important matter, Mitten told senators, is to give the NCAA and colleges and universities a limited antitrust exemption so they can't be sued for enforcing NIL rules.

Several states have passed NIL laws, with a Florida law scheduled to be the first to become effective, in mid-2021. "National NIL legislation needs to be enacted by Congress before this Florida law goes into effect," Mitten said. "We're not quite at that point where the clock is going to strike midnight, but it's definitely ticking." ■