MARQUETTE LAWYER

SUMMER 2022

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Janine Geske, Suzanne Andrew, and Louis Andrew

Let Us Tell You a Story—or Many Interconnecting Ones

One cannot know how things will unfold. When I arrived at Marquette University Law School as an assistant professor, a quarter-century ago, I hardly expected now to be about to enter upon my 20th year as dean. Nor would anyone have expected that for about half of that time (since 2010) the Law School would be found not at our historic location in Milwaukee, 11th and Wisconsin, but a block away at 12th and Michigan, in the new and magnificent Eckstein Hall. Those of us involved in the building project have never forgotten that it was the Marquette University of the 1940s that helped inspire Ray (L'49) and Kay (Sp'49) Eckstein to make their historic $51 million donation in 2007 (or Joe Zilber, L'41, that same year to give $30 million, primarily for scholarships).

Our new Andrew Center for Restorative Justice has its own rich backstory. Janine Geske, upon arriving here in 1973 as a second-year law student, scarcely could have anticipated what her new affiliation with Marquette would bring—beyond the J.D., at any rate—such as her "stints" at the Legal Aid Society of Milwaukee, as Milwaukee County Circuit Court judge, and as Wisconsin Supreme Court justice (to allude to the first 25 years). Still less would the future Justice Geske have foreseen her arrival back to the Law School as distinguished professor of law (1998–2014), her retirement (of a sort) and service on the university's Board of Trustees beginning in 2015, and her return to the Law School now, in 2022. Professor Geske is helping us launch the Andrew Center, whose purpose quite explicitly is to perpetuate her work in restorative justice, as sketched out on pages 4–8 of this magazine.

Professor Geske's story intersects quite compellingly with the story of Louie (L'66) and Sue (Sp'66) Andrew.

Louie Andrew, Janine Geske, and Joseph Kearney, in the Law School's Howard B. Eisenberg Suite

Indeed, this magazine (pages 8–9) hints at some of the latter—from Louie and Sue's education at Marquette to their many years together in Fond du Lac, Wis., to their connecting with Howard B. Eisenberg during his remarkable deanship of the Law School, from 1995 to 2002. There all of us came together.

We all have an affinity for stories. Even in my *law* courses each semester, such as Advanced Civil Procedure or Federal Courts, even as we parse various statutes of limitations in chapter 893 of the Wisconsin Statutes or scrutinize the text of Article III of the Constitution, we keep an eye out for the individual stories. It is hard to understand what the law is—or, at any rate, *why* it is what it is authoritatively said to be—without an appreciation of the stories, such as in *Hansen v. A.H. Robins Co.* (Wis. 1983) what the late discovery of the side effects of the Dalkon Shield would have meant, for not just the plaintiff but many others, under *traditional* interpretations of the statute of limitations, and in *Marbury v. Madison* (no court or date being necessary to note) how the newish chief justice of the United States had an interest in establishing a broader principle of judicial review even while he led the Court in denying the petitioner any relief.

And it is certainly hard without stories to understand an *institution*—as is part of the purpose of this magazine, both this issue and the larger run. I consider myself very fortunate to be part of some of the stories of Marquette University Law School. I hope that, whether near or far in place or time, you may feel a similar connection. Our mission is timeless—helping people form themselves into Marquette lawyers—and aspects of our work scarcely change. Concerning 1892, the year commonly cited for the school's origin (before it became part of Marquette in 1908), a standard account of our history says, "Mr. Churchill was the regular lecturer on Torts and related subjects; Mr. Spies taught Contracts." Torts and Contracts have been a timeless part of the story; by contrast, programs such as restorative justice and sports law have been part of us for only a generation, give or take.

How will it all look a quarter-century from now—or 56, or 73, or 130 years hence, to allude to a few of the dates in this musing? Chapter 893 of the Wisconsin Statutes will look different; Article III of the U.S. Constitution quite possibly will appear the same as ever (on its face, anyway). And Marquette Law School? Some of both, surely, with many more stories—so many of them bound to have been transformative—along the way.

Joseph D. Kearney
Dean and Professor of Law

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Marquette University Law School
Eckstein Hall
P.O. Box 1881
Milwaukee, WI 53201-1881
Phone: (414) 288-7090
law.marquette.edu

EDITOR:
Alan J. Borsuk

DESIGN:
Kristin Pelisek

COPY EDITOR:
Amy Bauman

COVER:
Photo by Gary Porter, illustration by John Jay Cabuay

PHOTOGRAPHY:
Gary Porter

MARQUETTE UNIVERSITY
LAW SCHOOL

STARFISH ENTERPRISE

Launch of the Andrew Center for Restorative Justice will build on decades of Janine Geske's work to reduce harm and increase hope

By Alan J. Borsuk

There's a theme to the art objects in Janine Geske's office in Eckstein Hall: starfish.

They're lovely, but that's a secondary reason for their presence. The primary reason lies in the starfish story, which goes like this: *The tide is going out, and thousands of starfish are being stranded on the beach, where they will die. A boy is picking up starfish one by one and throwing them into the water. A man comes along and asks the boy why he's bothering to do this—there are so many starfish, and there's no way the boy can save them all. The boy responds by picking one up and throwing it in the water. "I saved that one," he says.*

Photos by Gary Porter

Illustrations by John Jay Cabuay

To Geske, L'75, the starfish story says you can look at a problem and say it's overwhelming, or you can say, "Each one that I touch and change is a success." She said she sometimes gives students gifts of glass starfish "so that you can remember that you can make a difference to this one."

She said when lawyers start working, especially on criminal cases, they encounter frustrations, particularly with juveniles. "The hope is that we're transforming everybody. I tell them, 'Life doesn't work like that,'" Geske said. Sometimes you think you have reached someone, only to have the person go out and do something horrible. "Don't get overwhelmed by failure," Geske tells the students. She said she sometimes has to tell herself the same thing.

Over the past two decades, Geske has developed and led efforts to advocate for "saving this one" through restorative justice. Restorative justice work often involves bringing together as many parties as possible who were involved in a harmful situation, having them sit together in a circle, and, through their sharing of stories and deep reflections, helping them make progress toward healing. It is often work done on a small scale—starfish by starfish—but with big goals of making communities healthier.

Thanks to a $5 million gift from Louis Andrew, L'66, and his wife, Suzanne Bouquet Andrew, Sp'66, Marquette Law School will be the home of the Andrew Center for Restorative Justice, and the work of Geske as an internationally prominent advocate of restorative justice will become a permanent effort. (See page 8 for a story profiling the Andrews and giving more of the backstory to the creation of the Andrew Center.)

To launch the Andrew Center, Geske

has come back to work at Marquette Law School. She had retired at the end of 2014, after almost 17 years as distinguished professor of law (which itself followed 17 years as a judge and state supreme court justice), and joined the Marquette University Board of Trustees. She has stepped aside from her trustee duties while she resumes her service on the faculty and helps launch the Andrew Center.

Envisioning the Efforts of the Andrew Center

"I'm really excited about the center," Geske said. "I think we're going to do some really cool things."

Geske's vision for the Andrew Center begins with a law school course on restorative justice, to be offered beginning in the Fall 2022 semester. She also is aiming to launch a restorative justice clinic soon, to be offered both semesters of the year, in which law students will take part in bringing together and leading the circles frequently at the heart of restorative justice. These efforts will be resumptions and broadenings of the work she previously led at the Law School, and their continuation is now ensured.

Geske also is planning to relaunch the restorative justice conferences that have been hosted by the Law School since 2004. Each conference had a theme involving major issues that divide and harm people, with a focus on what steps could address the harm. The conferences continued under Geske's leadership even after her retirement but have been in a hiatus more recently, in part because of the COVID pandemic.

Geske and others are aiming, under the primary auspices of the Andrew Center, to hold a conference in the 2022–2023 school year that will focus on Native American healing work. Native American practices underlie some of the dynamics of restorative justice efforts, including the use of a "talking piece" that is passed around among members of a circle, with only the person holding the piece permitted to speak. Geske would like the conference to concern the multigenerational harm that is a legacy of forced boarding school programs decades ago, leading to deaths and abuses of large numbers of Native American children.

Furthermore, Geske has ambitious ideas for ways in which restorative justice efforts could help meet needs in Milwaukee and beyond. High on the

Janine P. Geske

list: Getting involved with the Milwaukee Police Department, including using restorative justice in dealing with community problems, as well as relying on restorative justice to help officers deal with the impact of what they encounter in their work. Geske said she has met with Milwaukee Police Chief Jeffrey Norman, L'02, and he is very interested in the possibilities. Indeed, in a recent appearance at the Milwaukee Rotary Club, Norman included restorative justice work as one of the initiatives he is supporting.

Geske said that the best thing would be if a restorative justice program were connected to a specific police district station. That could lead to sessions involving law enforcement, members of the surrounding communities, and others, focused on how to reduce violence.

"Let's do some small things to get started" in involvement with policing and responding to violence, Geske said.

And there are other good ideas for restorative justice efforts. A colleague from the Minneapolis area is involved in using problem-solving approaches such as restorative justice to address the needs of military veterans, particularly those who have become involved in court proceedings. Geske said that as a part of such efforts in Milwaukee, a local attorney, Stephen DeGuire, L'19, a veteran himself, has begun to collaborate with her with respect to a problem-solving court in Milwaukee County focused on veterans. "I think it's really important that there be attention paid to vets," Geske said.

And beyond these areas? "I'm really excited about the different avenues that we can go down and be a presence, especially areas that are not being addressed now," she said. And there are always issues that come up unexpectedly and lend themselves to restorative justice.

The Past as a Guide to What Is Ahead

For a sense of the range of issues that might be addressed, look at the themes of past restorative justice conferences. In the 18 years since the first Marquette Law School restorative justice conference, some of the thorniest and most sensitive issues dividing people around the world have been the focus of the school's conferences. Consider several examples (not in chronological order):

- *Harm, Hope, and Healing: International Dialogue on the Clergy Abuse Scandal*. In 2011, that was the theme of a two-day conference that brought together a wide variety of people, including Catholic leaders and abuse victims, from around the world. The Archbishop of Dublin, Ireland, the Most Reverend Diarmuid Martin, received international attention for his description at the conference of how church leaders in Ireland had allowed abuse to fester. "The children on the street knew, but those in charge seemed not to notice," he said. "The Archdiocese of Dublin got it spectacularly wrong."

  Marie Donahue, a retired deputy superintendent of the Boston Police Department and herself a survivor of abuse, urged everyone who can to "do something." Stop being sorry for the priests who are perpetrators, she said, and "stop being so gentle with them."
- *The Death Penalty Versus Life Without Parole: Comparing the Healing Impact on Victims' Families and the Community*. That was the subject of a conference in 2013 that brought together people from around the United States to focus on the lives of family members in the aftermath of a loved one's murder.

  Paula Kurland, whose daughter was murdered in Texas, said, "I was a walking dead person for 12 years" after the murder. But two weeks before the murderer was executed, she took part in a five-hour session with him. That "was life-saving for me," she said. "It gave me back my life. I was able to put Jonathan [the murderer] where he needed to be [in my mind]," she said. "I walked out of there a different person, a free person."
- *The Power of Restorative Justice in Healing Trauma in Our Community*. The 2018 conference included a one-hour documentary film of a restorative justice circle involving law enforcement members, crime victims, and members of victims' families. In that film and in panel discussions that followed, the impact of trauma, stress, and violence on law enforcement officers was described in candid terms, with an emphasis on the need for all who are part of dealing with violence and crime to find ways to cope and heal.
- *Bullying in Schools: Teaching Respect and Compassion Through Restorative Practices*. The 2009 conference included candid descriptions from three Milwaukee high school students who described incidents of bullying they had been involved in. They gave their thoughts on

what motivated bullies. One said he had been on both sides: "When I get bullied, I usually go bully someone else, take my anger out on someone else."

In a keynote address, Brenda Morrison of the Centre for Restorative Justice at Simon Fraser University in British Columbia, Canada, praised efforts such as the Violence Free Zone program in Milwaukee Public Schools, which aims to help teens deal with personal issues constructively. She offered the three *R*'s of restorative justice work: respect for people, responsibility for behavior, and repair for harm done.

- *Restoring Faith in Government*. Reflecting the tenor of the emerging times, perhaps even in an early way, the 2012 restorative justice conference focused on efforts to increase civility and cooperation in government. News commentator John Avlon, in a keynote address, called for moderates "to play offense from the center," emphasizing what unites Americans and not what divides them.
- *Restorative Justice and Human Trafficking—From Wisconsin to the World*. The 2015 conference dealt with the global crisis of human trafficking and ways restorative justice practices could help repair the harm done to victims. "I want to believe that this can end," Sharmere McKenzie, a former victim who became an advocate for victims, told a capacity audience in Eckstein Hall's largest room. "Let's do this together," she said. "Are you with me?" The audience clearly was.
- *Making It Personal*. Amid the pandemic in 2020, an in-person conference was not possible. Instead, four moving and thoughtful sessions were hosted, and then posted on the Law School's website, in which leaders of restorative justice efforts and participants in prior conferences described their work and what it meant to them.

In one of the sessions, Geske said that she had found that there could be great healing from restorative justice circles, even among people who had committed major crimes. She said circles are almost "a sacred process," and added, "To me, the lack of listening in our culture is the foundation of many of our troubles. It is only by listening to people's experiences—not their opinions, but their experiences—that you learn to walk in their shoes."

In addition to her work at Marquette, Geske has become a prominent figure internationally in advocating for restorative justice. She has given keynote addresses and played leading roles in conferences and similar events in countries around the world, including Ireland, Germany, and Turkey. She engages each year with the University of Amsterdam in the Netherlands. After a keynote address in 2018 in Germany, she wrote, "Regardless of one's language, restorative justice translates as hope."

All of the conferences and other aspects of the Restorative Justice Initiative (as it was called before the establishment of the Andrew Center) involved major issues straining, if not tearing, the fabric of lives and communities. In all of the work, the emphasis was on what can be done to make things better. The Andrew Center will deal with issues such as these and many more—and the theme of making things better will be a constant.

Geske's Path to Restorative Justice

The roots of restorative justice work at Marquette Law School go back particularly to the early 1990s, when Geske was a judge of the Milwaukee County Circuit Court. In 1993, Tommy Thompson, the governor of Wisconsin, appointed her to the Wisconsin Supreme Court, and the next year she was elected to a 10-year term.

But a different path was unfolding for her, if not altogether evident at the time. Around 1990, a woman who was teaching classes to prisoners at the Wisconsin state prison in Green Bay persistently asked Geske to visit her class. Geske agreed, saying she would make only one visit. The woman and an attorney/minister were using restorative justice approaches to help prisoners. It turned into what Geske calls "a transformational experience." She returned to the prison frequently to conduct circles, and she brought others with her.

In late 1996, after several years on the state supreme court, Geske went on a trip with Catholic lawyers (and Marquette Law School's Dean Howard B. Eisenberg) to the Dominican Republic. It became a time that accelerated a process of reflecting on what she should do. After a year of continuing discernment, she concluded that she should take a path focused on restorative justice, peace building, and mediation. "I felt I could give more in that field than in judicial decision-making," she said.

"IT IS ONLY BY LISTENING TO PEOPLE'S EXPERIENCES—NOT THEIR OPINIONS, BUT THEIR EXPERIENCES—THAT YOU LEARN TO WALK IN THEIR SHOES."

Janine Geske

She left the court in 1998 and soon joined the faculty of the Law School. After Eisenberg's death in 2002, Geske became interim dean, as a service to her alma mater, until a national search could be conducted, leading to the appointment of Joseph D. Kearney, a faculty member, as dean the next year.

At that point, Geske asked Kearney if she could launch what would be called the Restorative Justice Initiative. He agreed, opening the door to both the conferences described above and the essential ways in which students engaged with the program. In addition to a course introducing students to the history, philosophy, and techniques of the restorative justice movement, the curriculum included opportunities for a number of students to be involved in victim-offender conferencing and juvenile justice circles. Other courses have touched upon restorative justice more or less directly, according to their primary subject matter.

The Andrew Center is intended to enable the Law School not merely to relaunch its restorative justice work, both public-facing and curricular, but also to make it last—indeed, as Geske said with relish, in perpetuity.

Kearney says that helping identify an eventual successor for Geske is now among his most important duties. "We launched the initiative all those years ago in substantial part because of our confidence in Professor Geske," he recalled. "This is someone whose credibility with respect to the sanctions of the justice system is hard-earned as a trial judge. In the wrong hands, restorative justice efforts might revictimize people. In the right ones, they can help remake lives and communities."

Geske said she loves the metaphor in the starfish story. When she gives glass starfish to people, "I really do hope that they put it on their desk or their bookshelf. It's a nice reminder that you have to celebrate the successes."

One has to take on faith, or at any rate one must hope, that the boy in the story continued on to help other starfish, as many as he could. It's good to say, "I saved that one." But, as is the goal of the Andrew Center for Restorative Justice, it's even better to go forward, saying, "And that one. And that one. And that one. . . ."

A QUIET APPROACH, RESOUNDING ACCOMPLISHMENTS

Experts in rising to the occasion—that's Louis J. Andrew, Jr., and Suzanne Bouquet Andrew.

Louie and Sue (as everyone calls them) have stepped up to do good things so many times. Stepped up to build good lives, a good family, a successful law practice and other businesses. They stepped up to leading roles in charitable work that has benefited many others.

Opportunity knocked many times; not only did they answer, but they did so warmly, intelligently, constructively, and generously. Their style has been low-key; their accomplishments major. Or as Joseph D. Kearney, dean of Marquette Law School, put it, "Louie and Sue are a wonderful mix of ambition and humility."

We will not seek to capture a lifetime here, but permit us to give some important examples involving Marquette University Law School.

Louie graduated from Marquette Law School in 1966 and returned to his hometown, Fond du Lac, Wis., about 65 miles north of Milwaukee. He began a law career focusing on estate planning, probate, and general business law. As an alumnus, he had a good relationship with the Law School in the following 30 years or so, but, by his own description, he wasn't very involved.

In the mid-1990s, Louie and Sue, a Minneapolis–St. Paul native who herself had graduated from Marquette in 1966 with a degree in speech, attended a Marquette Law School event where an unlikely new dean, Howard B. Eisenberg, spoke, describing his vision for pursuing the school's Ignatian mission. Louie and Sue were impressed. Sue said, "Howard was the best person I ever heard speak about Catholic education." (Eisenberg, we might note, was Jewish, although he had a whole, well, litany of reasons that he enjoyed reciting to show the unlikelihood of his deanship.)

Eisenberg did one other important thing at that event: He asked people to help him develop the vision for the Law School. The Andrews stepped up, literally, approaching Eisenberg after the event to tell him that they wanted to help.

In the following years, Louie became the first chair of the newly created Law School Advisory Board and then of the board's executive committee. He later would become deeply involved in developing plans for a new Law School building. He was one of eight people who served on the committee steering the design and development of Eckstein Hall, which became the Law School's home in 2010.

The Andrews were interested not just in Marquette Law School's structural or physical development but its substantive growth—initially so, as often, for a personal reason: Through Eisenberg, the Andrews had met and developed a friendship with Janine Geske, a former member of the Wisconsin Supreme Court who had joined the faculty of Marquette Law School,

her alma mater, in 1998. The relationship grew in the time after Eisenberg's death in 2002.

Geske would develop plans for education and service through the Law School in what is called restorative justice. Her work interested the Andrews, who have, as Kearney said, "the most extraordinary and admirable tendency to collect people, to gather them, and to want to *learn* things from them." Sue, and later Louie, joined in restorative justice sessions that Geske was leading inside Wisconsin's Green Bay correctional facility. Sue said, "That was a life-changing experience." She called Geske "this magical person. . . . I was so spellbound by her abilities."

The Andrews also developed a warm and strong relationship with Kearney, to whom Eisenberg had introduced them shortly after Kearney's arrival at Marquette Law School, in 1997, to teach. In 2003, a year after Eisenberg's death, he would be named dean in a national search led by a committee consisting primarily of law faculty and alumni—the latter including Louie.

Geske, who served as interim dean during the intervening year, then devoted herself to working with supporters to launch the Law School's Restorative Justice Initiative (RJI). In addition to courses at the Law School, the RJI included major conferences, generally once a year, focused on significant issues that involved divisions and harm. The first conference was in 2004. The Andrews supported the conferences and the RJI as Geske became an internationally known advocate of restorative justice.

In recent years, the Law School's restorative justice effort reached a crossroad. For one thing, Geske retired from her full-time role at the Law School at the end of 2014, although she continued her efforts as a restorative justice advocate and also joined the Marquette University Board of Trustees. During the pandemic period, starting in 2020, restorative justice efforts slowed even more.

Throughout this time, with help from Associate Dean Christine Wilczynski-Vogel, Geske was working indefatigably to bring together some of the RJI supporters, including the Andrews, to discuss whether it was possible to build a long-term vibrant future for the effort. Sue Andrew said that the group talked about the resources the Law School would need to create a permanent restorative justice center at the Law School. She said it became clear that they were not going to succeed by going to people who weren't involved in restorative justice.

Louie and Sue Andrew, in Eckstein Hall's Wylie and Bette Aitken Reading Room, in March 2022.

"In a meeting early last fall, we were all set to admit defeat," Sue recalled. But, coincidentally, the Andrews met later that same day with close associates to address some long-term aspects of businesses in which they were involved. Louie and Sue discovered that they had more capacity to make a big gift than they had realized.

An idea arose: *They* could be the people they and Geske were looking for.

Sue said, "If it hadn't been for the coincidence of those meetings on the same day, I don't think it would have happened." The Andrews talked about it for a few days and then went to Geske. They offered to make the gift, but they wanted her to come back to work to lead the launch of the center. Geske agreed.

The result: In December 2021, Marquette University President Michael R. Lovell announced that Louie and Sue were making a gift of $5 million and that the university would create the Andrew Center for Restorative Justice at the Law School.

The big ways that the Andrews rose to occasions when they could help Marquette Law School are indicative of the many ways they have risen to occasions to help others.

Stepping into the spotlight is not their style, so let us conclude simply by saying that, throughout Louie and Sue Andrew's pursuits and accomplishments over the years, the consistent themes can be summarized, as perhaps the foregoing Marquette Law School examples show, as centered around "relationships" and "community benefit." In short, along with Geske's work, Marquette Law School's new restorative justice center includes Louie and Sue Andrew as powerful models. ■


We People
Per portion (30g):
Fat
3g
2%
Saturates
0.2g
4%
Salt
0.01g
<1%
TORT

EXPLORING THE FAULT LINES

New book by Marquette Law School's Schoone Fellow delves deep into the history of tort law in the United States

By Joseph A. Ranney

1. The Five Eras of American Tort Law

My very first law school class was Torts, and I remember the oddness of being dropped into a strange new world of words and rules. How could the seemingly straightforward task of allocating responsibility for accidents be so complex?

As a law student and a litigator, I put that question aside and devoted my energies to mastering and using tort law. But the question kept nagging me, and when Marquette University Law School's Adrian P. Schoone Fellowship generously gave me time and resources to study the history of American tort law, I found that history to provide many insights and answers. I've written about my findings in *The Burdens of All: A Social History of American Tort Law* (Carolina Academic Press 2021).

The Burdens of All focuses on the social and economic forces that shaped tort law. Venturing broad conclusions about law and dividing law into eras is always a risky business. Nevertheless, I'm convinced that there's a central thread running through tort law history: namely, the debate whether accidents should be treated as a matter of individual fault and responsibility or, rather, as the inevitable product of industrialization and modernization, whose costs should be socialized. I'm also persuaded that American tort law's history can best be understood by dividing it into five approximate eras with some overlap.

- **Origins of modern tort law (1800–1870).** Early tort law evolved from common-law property rules and free-labor values, both of which emphasized individual rights and responsibilities. Its core, first fully articulated in an 1839 New York case, was contributory negligence: the rule that an accident victim who is at fault in any way

Joseph A. Ranney is a longtime adjunct professor at Marquette Law School and the school's Adrian P. Schoone Fellow in Legal History. This article is based on his newest book, *The Burdens of All: A Social History of American Tort Law* (Carolina Academic Press 2021). It includes two posts by Ranney from the Marquette Law School Faculty Blog about themes in the book and, with the publisher's permission, two lightly edited book excerpts touching upon issues that affect people's lives daily: auto insurance and product liability. The entries here conclude with a reaction by Professor Alexander B. Lemann of Marquette Law School.

Illustrations by Stephanie Dalton Cowan

During this period (1920–1970), tort law moved toward socialization through state-by-state abandonment of contributory negligence in favor of comparative negligence; adoption of strict products liability; abolition of familial, charitable, and governmental tort immunities; and judicial recognition that setting the parameters of accident causation was as much a matter of social policy as legal theory.

may not recover. But beginning in the 1850s, a few courts tried to soften the harsh effects of contributory negligence through liberalized concepts of causation, rejection of the fellow-servant rule, and other devices.

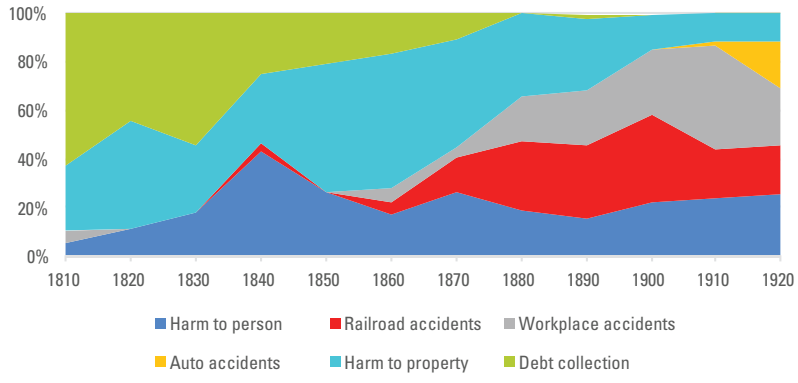
- **The softening of fault-based law (1870–1910).** Workplace and railroad accidents proliferated in an increasingly urban, industrial America, and they gradually sensitized lawmakers to the idea that accidents were an inevitable byproduct of modernization—socially manageable risks rather than matters of individual fault. State legislatures continued the work of softening contributory negligence by abolishing the fellow-servant doctrine for railroad workers and imposing safety duties on employers. Courts enforced the new laws strictly and created rejoinders to contributory negligence such as the distraction and emergency doctrines.

- **Progressivism and tort law (1900–1920).** Tort law plays an understudied but important role in the history of the Progressive Era. Progressives were primarily responsible for two fundamental changes in tort law: adoption of no-fault workers' compensation systems, which took workplace accidents out of tort law, and adoption of the first modern comparative negligence laws by Wisconsin (1907), the U.S. Congress (1908), and Mississippi (1910). Progressives also played an important role in expanding manufacturers' liability to consumers for defective products, thus further socializing the costs of accidents.

- **The golden age of socialization (1920–1970).** The Great Depression, World War II, and the rise of national highway, radio, and television networks made Americans more receptive to collective action and socialization of risk than ever before. During this period, tort law moved toward socialization through state-by-state abandonment of contributory negligence in favor of comparative negligence; adoption of strict products liability; abolition of familial, charitable, and governmental tort immunities; and judicial recognition that setting the parameters of accident causation was as much a matter of social policy as legal theory.

- **The struggle continues (1970–present).** By 1970, many jurists believed that complete socialization of accident costs was near, but that has not come to pass. During the past half-century, the United States has become embroiled in a struggle between socializers and traditionalists, the latter wishing to preserve the primacy of fault and individual responsibility in tort law as well as other areas of American life. The modern-era struggle over tort law has played out in many forums, including debates over medical malpractice liability, efforts to cabin strict products liability, and the revival of tort immunities. The struggle shows no sign of abating today.

Figure 1 – Five-State Survey: Tort Case Mix, 1810–1920



2. Changing Times Bring Changing Legal Realities

The Burdens of All looks not only at substantive law but at tort law in the courtroom. It includes a survey of supreme court decisions in five states—New York, North Carolina, Wisconsin, Texas, and California—at ten-year intervals from 1800 to the present. Its purpose is to determine what kinds of tort cases came before the courts and how judges handled them. Did the nature of tort cases change as society changed? Did judges tilt in favor of tort plaintiffs, defendants, or neither? The five-state survey is by no means definitive, but it provides some intriguing clues.

Tort dockets have consistently reflected social change

During the early 19th century, debt-related cases (most commonly suits against sheriffs and other officials for allegedly going overboard in their collection efforts) and land disputes dominated tort dockets. Application of tort law to personal-injury cases was still in its infancy. (**See Figure 1.**)

As the Industrial Revolution took hold, the old case mix disappeared. Railroad and workplace accident cases began to appear at midcentury and soon dominated tort dockets. Railroad cases' share of those dockets stabilized about 1880, but the share of the dockets involving workplace-injury cases continued to grow and outstripped railroad cases by 1900. Land disputes, business disputes, and other cases involving harm to property interests continued to appear, but they played less of a role in tort law than formerly, perhaps because they were increasingly resolved under contract principles.

The age of the automobile also became the age of auto accident cases. Auto cases first appeared on court dockets shortly after 1900; by 1960 they accounted for more than half of all tort cases in the five-state survey. Workplace accident cases declined after 1910 due to the advent of workers' compensation, but that decline was matched by an increase in suits for injuries incurred at stores, construction sites, and other public premises. (**See Figure 2.**)

Another new pattern emerged after 1970. Auto accident cases declined dramatically, partly because of an auto-safety campaign that climaxed with the passage of federal seatbelt and other auto-safety legislation in the mid-1960s. But the primary instrument of change was the rise of intermediate appellate courts and state supreme courts' increasing freedom to select the cases they wished to hear. Two of the survey states created intermediate appellate courts in the 1960s and 1970s, and supreme courts in all five states drastically reduced their caseloads after 1970. Since that time, those courts have selected tort cases for review based primarily on the cases' intellectual interest and value for law development and reform. For example, the prominence of professional malpractice cases in the modern tort mix reflects state legislatures' efforts to address medical malpractice insurance "crises" by cabining physicians' liability, together with state courts' desire to address constitutional challenges to those efforts.

Judges have consistently made use of their power to overturn tort verdicts

Tort law's history is intertwined with a longstanding debate over the proper balance of power between judges and juries. For more than 200 years, American judges have used procedural devices—including nonsuits, directed verdicts, orders for new trials, and, more recently, summary judgment—to dispose of cases without trial where they believe the result is clear, or to correct what they perceive to be jury error.

Occasionally these practices have triggered protest movements. During the early 19th century, several states enacted laws giving juries broad powers to determine issues of law as well as of fact, but courts struck down the laws as an infringement of judges' fundamental duty to declare and apply the law and correct jury errors. In 1902, at the height of the American Industrial Revolution, future North Dakota Justice Andrew Bruce observed that

Figure 2 – Five-State Survey: Tort Case Mix, 1920–2010

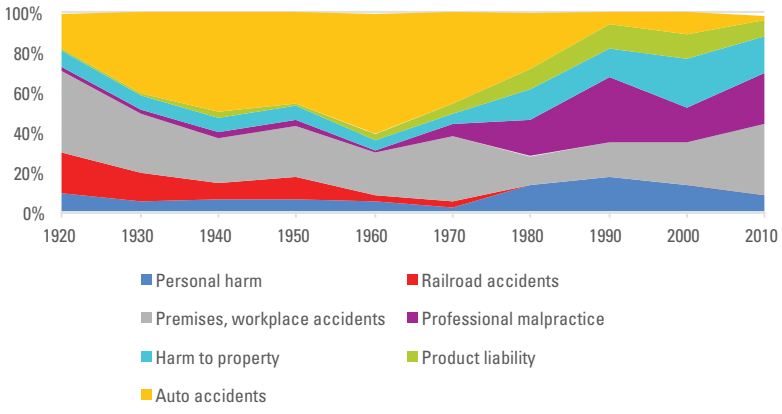
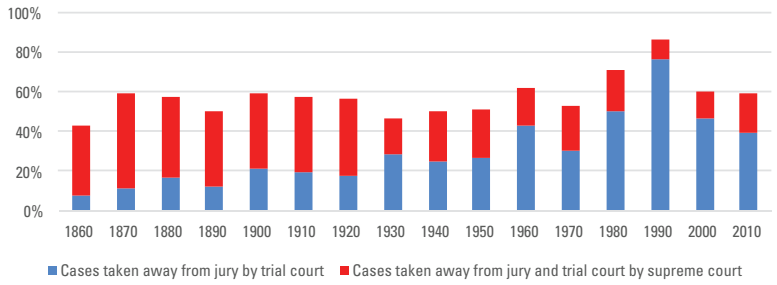


Figure 3 – Judicial Takeaway Rates, 1860–2010



judges "have come to believe that there is abroad a conspiracy against capital and employers." Judges regularly overturned jury verdicts in favor of injured workers and railroad accident victims. Public resentment of that trend led Bruce to conclude: "As things now are . . . every personal injury case is a factor in the increase of social discontent."

Public resentment of the judiciary contributed to the Progressives' campaign for popular recall of judicial decisions. That campaign failed, but jury defenders won a few victories during the Progressive Era. Judges were no longer allowed to opine to the jury on the credibility of evidence and the proper outcome of cases, and some jurisdictions revived an old rule that judges must let juries decide a plaintiff's claim if there was even a "scintilla" of evidence to support it. But judges across the nation firmly and successfully resisted other efforts to limit their power to take cases away from juries, and in recent decades they have continued to do so.

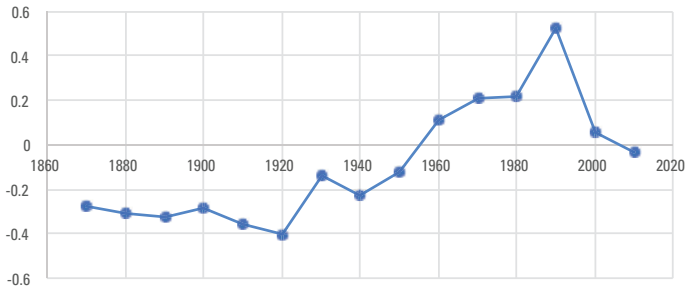
Figure 3, which is based on cases in the five states that were surveyed (again, involving only state supreme court decisions), is suggestive, if not authoritative, as to the rates at which trial judges and supreme courts have taken cases away from juries over time. Throughout America's history, judges have consistently taken away more than half of all tort cases from juries, either by deciding them before verdict or by overturning jury decisions. The takeaway rate decreased modestly during the golden age of tort socialization, perhaps as a belated response to Progressive criticisms of judicial overreach or because an age of increased trust in collective popular action produced a greater measure of judicial deference to juries. But since 1970, takeaway rates have returned to pre-golden-age levels. This may be a partial confirmation that the golden age has ended; or this may be due to supreme courts' increased case selectivity, which puts before them cases involving complex issues that often are not conducive to jury deference.

The shift index: Have judges used their powers to favor accident victims or defendants?

So which side, if either, have judges favored? In order to answer this question, I developed a judicial "shift index." In simple terms, the shift scale runs from +2 (cases in which a supreme court reverses a trial-court judgment for the defendant on the merits and orders judgment for the plaintiff) to -2 (supreme court reverses a trial-court judgment for the plaintiff and orders judgment for the defendant). Cases where plaintiff (+1) or defendant (-1) wins a partial victory on appeal—for example, a reversal of a trial-court dismissal and remand for a new trial—receive an intermediate score, and cases where neither side gains a net advantage on appeal (such as affirmance of the trial-court result) are scored as zero. The shift index provides a crude but useful way to examine whether state supreme courts tend to favor accident victims or defendants.

Figure 4 confirms Andrew Bruce's perception that late-19th-century judges were protective of tort defendants. The shift index's steady upward trend during the golden age of socialization is striking: it strongly suggests that the rise in American collectivist sentiment led judges to take a less suspicious, more sympathetic view of plaintiffs' claims to redress for injury during that era. The post-1970 shift figures should be viewed more cautiously than pre-1970 figures because they reflect a smaller and more selective body of cases, but they do raise the question whether judicial protectiveness toward defendants, many of which are corporations and institutions, is once again on the rise.

Figure 4 – Judicial Shifts, 1860–2010



3. Driving Tort Law to New Places

This is an excerpt from chapter 4 in The Burdens of All: A Social History of American Tort Law *(Carolina Academic Press 2021).*

The automobile's rise as a presence in tort law corresponded with its rise as a presence in 20th-century American life. Experimental motor vehicles first appeared in Europe and the United States in the 1890s. Their potential superiority to horses for purposes of farm-to-market, city, and interurban travel quickly became apparent, but producing affordable, reasonably reliable autos proved difficult at first. Prior to 1910, autos were generally regarded as a luxury suitable only for wealthy Americans; subsequent improvements such as Charles Kettering's invention of the self-starter to replace hand cranks and, most important, Henry Ford's adoption of assembly-line techniques for mass auto manufacturing eventually brought autos within the economic reach of middle-class Americans. The rise of the auto is best summarized by historian James Flink's conclusion that "most Americans first read about the car by 1900, first saw one in action by 1910, first rode in one by 1920, and first owned a car by 1930." Autos gripped the American imagination: they embodied speed, physical power, and the freedom to go where one wanted. They enabled city dwellers to commute to work and contributed to the rapid suburban growth that marked the 1910s and 1920s. Farmers and other rural Americans also came to rely on autos and trucks as an economic and social lifeline to the rest of the world.

Lawmakers quickly recognized the need to accommodate this flood of new machines and the accidents that followed in its wake. They had little difficulty fitting automobile law into the traditional framework of tort rules governing highway accidents. Thomas Cooley and other 19th-century jurists who had shaped tort law as it pertained to roads had recognized that roads would be used in ever-changing ways. Nineteenth-century laws requiring railroads to observe speed limits and use whistles, bells, and other devices to alert others to their presence provided guidance for auto laws. In 1901, Connecticut became the first state to enact speed limits for autos, and during the next 15 years nearly all states enacted rudimentary "rules of the road." Early laws focused on speed limits and basic safety equipment such as headlights, brakes, and horns and other warning devices. Many states also codified the common-law principle that all highway users would have "equal rights," and required motorists to register their vehicles. Between 1910 and 1925, Congress and the states appropriated millions of dollars to construct new roads and upgrade existing highways. This good-roads movement responded to existing demand but also fueled additional demand for autos and auto travel.

Figure 5 – Autos and Auto Accidents, 1920–1970

Year	United States		Wisconsin	
	(all figures in 1,000's)			
	Registered Automobiles	Auto Accidents *(Fatalities)*	Registered Automobiles	Auto Accidents *(Fatalities)*
1920	8,131	N/A (12.5)	277	N/A
1930	23,034	N/A (32.9)	677	N/A
1940	27,466	6,100 (34.5)	751	17 (0.8)
1950	40,339	8,300 (34.7)	961	74 (0.8)
1960	61,671	10,400 (38.1)	1,328	115 (0.8)
1970	89,244	16,000 (54.6)	1,854	107 (1.1)

The proliferation of autos and highways produced collisions, injuries, and deaths in startling numbers. Injury and death rates were particularly high during the first years of the auto age, due partly to the fact that early autos posed extensive safety risks: closed-cab autos did not become common until the late 1920s, and early tires were flimsy and prone to frequent blow-outs. Auto design improvements reduced death rates in proportion to the number of autos and miles driven, but the total number of deaths increased as auto use grew. How could the toll be reduced? Americans were not sure. At first, free-labor views of individual responsibility prevailed: careless drivers were seen both as the source of the problem and as holding its solution. Auto experts and the press denounced drivers who caused accidents as "motorized morons" and "road hogs"; and state legislatures prohibited driving under the influence of alcohol and enacted ever more-elaborate rules of the road.

But auto accidents proved to be a surprisingly intractable problem, one that public shaming and increased driver regulation failed to solve. The public rejected efforts to portray careless drivers as outlaws: in its view, most accidents involved ordinary citizens and resulted from bad judgment or bad luck, not outrageous behavior. Furthermore, many Americans instinctively viewed traffic police as an affront to the values of freedom and independence that autos represented, and they viewed traffic courts, sometimes with justification, as nests of corruption, incompetence, and class bias.

By the early 1930s, reformers realized that their efforts to reduce accidents by shaming had

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failed, and they redirected their energies to what became known as "the three E's": engineering, education, and improved traffic-code enforcement. Transportation planners tried to minimize opportunities for collision by constructing one-way streets and divided highways. They also made extensive use of sidewalks and pedestrian crossings, because collisions between autos and pedestrians were a large part of the accident problem. Pedestrians took the legal doctrine of equal road-use rights seriously, but many motorists felt at some level that pedestrians should yield to their greater power and their desire for speedy, uninterrupted travel. Reformers also promoted formal driver education and laws that made such education a requirement for driver licensing; uniform national traffic rules, a movement that gained little success before the 1960s; and more-user-friendly traffic courts.

Socialization of auto accident costs: the Columbia Plan

For tort law's purposes, the most important aspect of "the three E's" movement was that it reflected a shift from a free-labor-oriented view to a more socialized view of auto accidents. During the 1920s and early 1930s, reformers gradually accepted the fact that accidents were an inherent risk of auto use and, thus, could be viewed as a price that must be paid for the benefits of the automobile age. From this, reformers drew parallels between auto and industrial accidents and considered whether an equivalent of workers' compensation could be devised for automobiles.

Calls for a no-fault system for auto accidents arose as early as 1916, and in 1932 Columbia University's Council for Research in the Social Sciences studied the issue closely and formulated a model no-fault plan. The Columbia Plan would impose absolute liability for accidents on auto owners regardless of the extent of their involvement, but, like workers' compensation, it would also insulate them from tort litigation and would limit victims' compensation. Victims could recover their medical expenses, lost income, and other economic losses, but would be allowed no compensation for their pain and suffering, an item that the council believed was too difficult to measure and control.

The Columbia Plan had little success. A bill embodying most of its features was introduced in New York's legislature in 1938 but failed, and the plan was not introduced in any other state

legislature. The primary obstacle to a no-fault auto accident system was that auto owners, unlike employers, had no customers to whom they could pass on their costs. State-sponsored compensation funds and compulsory auto insurance were suggested as funding mechanisms, but the former seemed to many lawmakers to be too close to overt socialism. Laws requiring drivers to purchase auto insurance at prescribed minimum levels of coverage or to verify that they were able to pay accident costs out of their own resources as a condition of licensure appeared in many states during subsequent decades, but legislators could not bring themselves to require substantial levels of coverage or to couple such requirements with a no-fault system. Socialization of accident costs through insurance would remain largely a matter of individual choice.

The family-purpose doctrine

The ultimate lesson of the Columbia Plan was that any socializing of auto accident costs would have to be done incrementally and indirectly. In addition to enacting insurance laws, some states partially socialized accident costs within families by requiring parents to sponsor their children's driver's license applications and making them vicariously liable for any damage the young drivers caused.

But the "family-purpose" doctrine was the most important of the incremental socializing measures. Beginning about 1912, some courts expanded auto owners' liability by creating a legal presumption that autos were intended to be used by the entire family. They reasoned that the pleasure and convenience family members gained from auto use was also the owner's "affair and business." Accordingly, when family members used the auto with the owner's explicit or tacit permission, they became his agents, and he would be legally liable for any injuries they caused.

The new doctrine represented a major expansion of agency law, and it was controversial. Courts that adopted the doctrine generally refrained from characterizing it as a policy response to the automobile age, but they had difficulty reconciling it with traditional rules of agency, and they were criticized by many traditionalist judges. Even though "every good father makes it his 'business,' . . . to furnish so far as he can, for use by the members of his family, all those things that will contribute to their convenience and pleasure," said California Supreme Court Chief Justice Frank Angelotti, still, that did not mean that a family member who used the car "exclusively on a mission of his own," such as a personal errand or a date, was acting as the father's agent; and based on that logic, nearly half the states rejected the family-purpose doctrine. Courts that adopted the family-purpose doctrine often justified their decisions by stating, erroneously, that they were simply following the majority rule; this prompted commentator Norman Lattin to gibe that the doctrine was created "[b]y a wave of the wand, and by means of a fictional shellac for permanence." Some adopting courts relied on state statutes imposing vicarious liability on owners who loaned their autos to others, and a few frankly admitted that they were motivated by practical considerations. As early as 1918, Tennessee justice D. L. Lansden argued that:

> [T]he practical administration of justice between the parties is more the duty of the court than the preservation of some esoteric theory concerning the law of principal and agent. If owners of automobiles are made to understand that they will be held liable for injury to person and property occasioned by their negligent operation by infants or others who are financially irresponsible, they will doubtless exercise a greater degree of care in selecting those who are permitted to go upon the public streets with such dangerous instrumentalities.

Even traditionalist courts allowed a degree of flexibility: in close cases, they often deferred to jury determinations that a particular use of the family car benefited the owner as well as the driver, thus allowing accident victims to recover from solvent owners under traditional agency rules. As family auto insurance became more widely available, the debate over the family-purpose doctrine gradually became moot.

Liability to auto passengers

Another important battle over socialization involved drivers' liability to their passengers. Passengers entered autos as guests, and, under the common law, hosts were liable to invited guests if they caused an accident through lack of "ordinary care." During the early years of the automobile era, many courts applied the ordinary-care rule in auto cases, but a feeling grew among jurists and lawmakers alike that, if applied literally, the rule could lead to unfairness. Drivers performed a gratuitous service for passengers, and surely they

"If owners of automobiles are made to understand that they will be held liable for injury to person and property occasioned by their negligent operation by infants or others who are financially irresponsible, they will doubtless exercise a greater degree of care in selecting those who are permitted to go upon the public streets with such dangerous instrumentalities."

Tennessee justice D. L. Lansden in 1918

should receive some recompense in the form of reduced exposure to liability.

Accordingly, some courts held that ordinary care was limited to "active negligence"—that is, driver conduct that created dangers over and above the usual risks that motorists faced on public streets and highways. Other courts were uncomfortable with any reference to an ordinary-care standard, and held that drivers would be liable only for intentionally or recklessly putting passengers at risk. Passengers would be deemed to assume the risk of ordinary carelessness on a driver's part, such as failure to maintain an auto in good condition or a tendency to drive fast.

During the 1910s and 1920s, many legislatures enacted statutes immunizing drivers from liability to passengers, with limited exceptions for drunk driving and intentional harm. Oregon went the furthest, creating immunity without exceptions, but it returned to the immunity mainstream after its supreme court struck down the law as violative of a clause in the state constitution creating the right to a remedy for harms.

But advocates of a true ordinary-care rule, one more friendly to passengers and more likely to socialize the cost of accidents, persisted. C. P. Berry, the author of a leading early automobile-law treatise, argued in 1924 that "[i]t is a matter of every day occurrence in every part of the country for persons of ordinary prudence to rely greatly upon the person in control of the vehicle" and that "[i]t would be strange, indeed, to require every person in a vehicle to keep the same lookout that the driver naturally keeps."

Some courts explicitly or tacitly agreed, holding that almost any driver deviation from strict compliance with rules of the road would violate the ordinary-care standard and affirming jury verdicts that reflected that view. The spread of comparative negligence laws during the mid-20th century allowed a finer calibration of fault than did contributory negligence and reduced the need to protect drivers with high walls of immunity. Beginning in the late 1950s, many courts returned to a true ordinary-care standard for drivers.

Traditional negligence principles and reluctance to fully socialize auto accident costs proved surprisingly durable as the automobile age progressed. Nearly all states flatly rejected the idea of characterizing autos as dangerous instrumentalities, a tack that would have fit comfortably into existing tort law and would have allowed imposition of near-absolute liability on drivers. Some courts incrementally socialized auto accident costs by holding that violation of vehicle safety statutes automatically constituted negligence, thus easing accident victims' burden of proof; but other states held that such violations were nothing more than evidence of negligence which a jury could consider, and every state allowed drivers to invoke contributory or comparative negligence as a defense.

Between 1920 and 1970, many state supreme courts struggled with heavy workloads, but renewed calls for a no-fault system that would have eliminated auto cases from those workloads were met with a curious judicial silence. It is unclear whether that silence reflected a belief that auto accidents, unlike workplace injuries, did not lend themselves to socialization and extrajudicial resolution, or a belief that free-labor notions of individual responsibility must be preserved and that socialization of auto accident costs should be accomplished through insurance and other private means rather than legal change.

4. Product Liability Law: The Vertical Integration of Fault

This is an excerpt from chapters 3 and 4 in The Burdens of All: A Social History of American Tort Law *(Carolina Academic Press 2021).*

Product liability law was transformed during the Second Industrial Revolution (1870–1920) and the Progressive Era. The common-law rule of privity held that consumers harmed by an unsafe or defective product could seek compensation from those who were "in privity" with them—that is, had sold the product to them directly—but not from a manufacturer who had sold the product to an intermediate merchant. Consumers were also expected to examine goods before buying them and to assume nearly all risk of injury after the goods passed out of the seller's hands, although there were exceptions for some foods and drugs. Sellers and buyers could negotiate for contractual warranties of quality and fitness for a particular use.

Privity rules worked satisfactorily during America's pre-industrial and early industrial eras, when most Americans made their own tools, clothing, furniture, food, and other essential products or bought them directly from local artisans, but the rapid pace of industrialization after the Civil War brought the privity rule into question. Mass manufacture of goods for regional, national, and

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international markets was a central feature, indeed a central purpose, of the Industrial Revolution. During the late 19th century, manufacturers enlisted an army of intermediate sellers as mass markets became the norm, and a rising consumer culture required manufacturers to appeal directly to customers through product branding and advertising in order to succeed.

Beginning in the 1850s, products of regional and national manufacturers, labeled as such, occupied an ever-increasing amount of shelf space in the department stores that were becoming common in large cities and in country and village general stores throughout the United States. Advertising agencies dedicated to regional and national product promotion soon began to appear, as did mail-order giants such as Montgomery Ward & Co. and Sears, Roebuck & Co., which created the first truly national product distribution systems.

The increasingly direct nature of communication between manufacturers and consumers, and increasing popular recognition that intermediary sellers were no more than a link between them, raised two important questions: first, should product liability be governed by contract rather than tort law, and second, should the law eliminate privity rules and make manufacturers directly liable to consumers for defective products?

Because pre-industrial England and America had never viewed product quality as exclusively a matter of contract, early-industrial-era British and American courts did not fence off product liability from tort law. But they saw no reason to modify privity either. In *Winterbottom v. Wright* (1842), the first important case to address the issue, Lord Abinger defended privity in instrumentalist terms. Without privity, he said, "the most absurd and outrageous consequences, to which I can see no limit, would ensue."

After *Winterbottom*, the steady shift to mass production, to regional and national product distribution, and to a consumer-oriented economy created subtle but powerful currents against privity, and it soon began to erode, albeit slowly. In *Thomas v. Winchester* (1852), New York's highest court, relying heavily on pre-industrial food-and-drug statutes and court decisions that had imposed heavy responsibilities on drug manufacturers, held that a manufacturer who had mistakenly filled a bottle labeled as dandelion extract with belladonna was directly liable to a consumer poisoned by the drug, even though the consumer had purchased the bottle from a pharmacist.

American courts interpreted *Winchester* not as challenging the concept of privity, but as creating an exception for products deemed inherently dangerous. Between 1860 and 1900, the courts carved out additional exceptions for other poisonous drugs, for food, and for fuel and illuminating oils such as kerosene and naphtha,

which could explode when mixed improperly or stored at high temperatures. Many of the products so classified were not, strictly speaking, inherently dangerous but became so only if stored or used improperly. This was a tacit expansion of the scope of liability envisioned by *Winchester,* and courts that participated in the expansion sometimes obscured the expansion by referring interchangeably to "inherently" and "imminently" dangerous products.

Accidents involving construction equipment became increasingly frequent as the industrial age advanced. Beginning in 1882 with the New York case of *Devlin v. Smith*, courts created another privity exception for construction-equipment defects, based on the premise that manufacturers knew exactly how their equipment would ultimately be used. Some early cases also suggested it would be appropriate to make manufacturers directly liable to consumers where they actually knew of the product defect or overlooked a visible defect.

But the emerging consumer economy raised a broader question: should courts also eliminate privity where the manufacturer didn't actually know of the defect but could have discovered it through ordinary care—in other words, where the manufacturer was negligent? Judges in some early construction-equipment cases arguably did so, but they shied away from saying as much: instead, they chose to slot their cases into the imminent-danger category.

The frontal assault on privity begins

The first direct attack on privity occurred in *Heaven v. Pender*, an English construction-equipment case decided the year after *Devlin*. Master of the Rolls William Brett, relying on the industrial-era concept that duties of care were not confined to pre-industrial, status-based relationships but potentially extended to everyone directly harmed by a wrongdoer's conduct, suggested that where "everyone of ordinary sense would . . . recognize at once" that, absent use of "ordinary care and skill with regard to the condition of the thing supplied . . . there will be danger of injury to the person . . . for whose use the thing is supplied," then failure to use ordinary care would render the supplier liable to anyone injured by the product.

Brett's colleagues declined to adopt his suggestion as law, but other courts took notice, and in *Schubert v. J. R. Clark Co.* (1892), another construction-equipment case, Minnesota's supreme court became the first American court to squarely

eliminate privity for manufacturer negligence. The *Schubert* court declined to rely on the imminent-danger doctrine and adopted Brett's rule: companies that offered a defective product, said Justice Daniel Dickinson, would be "deemed to have anticipated that . . . it would come to the hands of a purchaser, either directly from the defendant [manufacturer] or from some intermediate dealer, for actual use, and with the consequences which actually were suffered." Standing alone, that statement might have fit within the imminent-danger or actual-knowledge exceptions, but Dickinson put the court's intent to forge new ground beyond doubt:

> [I]t would be difficult to distinguish such a case [where the manufacturer did not sell directly to the consumer] in principle from one where the transaction is directly between the wrongdoer, then knowing the danger, and the party who is injured. If any distinction is to be made it must rest upon grounds of expediency, the arbitrary fixing of a limit to the liability of the wrongdoer, but we consider that in principle the defendant should be held to responsibility for an injury resulting proximately . . . from its confessedly negligent act, which was such as to expose another to great bodily harm.

The steady advance of the consumer economy and Progressives' focus on food and drug safety played important roles in privity's continuing erosion after *Schubert*. Beginning in the 1880s, product-safety statutes appeared with increasing frequency, and between 1900 and 1915, most states enacted laws regulating the manufacture and sale of oleomargarine, narcotics, commercial feeds, and fungicides. Support for a federal food-and-drug act (FDA) grew rapidly after 1900: popular magazines such as *Ladies Home Journal* and *Collier's Weekly* devoted extensive space to the topic, and Upton Sinclair's book *The Jungle* (1906), describing horrific dangers and health hazards in the meat-packing industry, became a best seller. A series of experiments conducted under U.S. Department of Agriculture chief chemist Harvey Wiley starting in 1902, known as the "poison squad" tests, also dramatized the hazards of mislabeled and adulterated drugs and attracted national attention. In Washington, President Theodore Roosevelt and North Dakota Senator Porter McCumber pressed for congressional enactment of an FDA applying to nearly all food- and drug-related products in interstate commerce, and in 1906, Congress complied. Between 1906 and 1911, no fewer than 40 states enacted "little FDA" laws for intrastate commerce that borrowed heavily from the federal model. Food and drug laws were one of the few categories of reform laws that escaped judicial criticism during the era: judges of all political faiths agreed that such regulation fell squarely within the states' police power over public health.

The pure-food-and-drug movement's advance during the Progressive Era did not immediately convince American judges to abandon privity in product liability cases, but it made them more open to doing so, and after 1900, jurists and a few courts began to edge toward *Schubert*. In 1906, an unsigned article in the *Harvard Law Review*, relying in part on *Schubert*, called openly for abolition of privity in cases involving manufacturer negligence as well as those involving defects known to the manufacturer, and, in 1913, Thomas Shearman and Amasa Redfield suggested in their influential tort law treatise that privity should be eliminated in all cases where "it is contemplated that the thing shall be resold." In *Watson v. Augusta Brewing Co.* (1905), Georgia's supreme court held a soda bottler directly liable to a consumer who swallowed broken glass inside the bottle, stating that privity "does not matter" because the public, for whom the product was intended, had "the right to rest secure in the assumption that [it] will not be fed on broken glass." New York's highest court, where the erosion of privity had begun more than 50 years earlier, inched toward abolition in *Torgesen v. Schultz* (1908) and *Statler v. George A. Ray Manufacturing Co.* (1909), cases which involved, respectively, an exploding seltzer siphon and an exploding coffee urn. In *Torgesen*, the court spoke favorably of Brett's opinion in *Pender* and stated broadly that manufacturers must "take reasonable care to prevent the article sold from proving dangerous when subjected only to customary usage." In *Statler*, it went a step further: manufacturers of products "liable to become a source of great danger to many people if not carefully and properly constructed," said Justice Charles Hiscock, were "chargeable with knowledge of defective and unsafe construction" whether or not they had actual knowledge.

In 1916, the New York court made another important contribution to the erosion process in *MacPherson v. Buick Motor Co.*, holding Buick directly liable to a driver who was injured when one of his auto's wooden-spoked wheels broke. Justice Benjamin Cardozo, who would finish his career by

But the emerging consumer economy raised a broader question: should courts also eliminate privity where the manufacturer didn't actually know of the defect but could have discovered it through ordinary care—in other words, where the manufacturer was negligent?

joining the U.S. Supreme Court and would become one of the most celebrated American jurists of the 20th century, reviewed his court's previous decisions and held in forceful, direct prose that their logic compelled complete abolition of privity in all cases of manufacturer negligence. Cardozo explained that:

> If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully.

This was too much for Chief Justice Willard Bartlett, who had authored the *Torgesen* decision. He noted that a Buick vendor, not Buick, had made the defective wheel, and he argued that seltzer siphons and coffee urns were inherently dangerous (being intended for use under pressure) in a way that autos were not. But those of Bartlett's colleagues who had joined in the *Torgesen* and *Statler* decisions did not see it that way, and they agreed with Cardozo.

Most modern scholars regard *MacPherson* as a watershed case, the case that definitively pulled down the barrier between manufacturers and consumers in personal injury cases, but the *Schubert* and *Watson* cases put that in question; and, consistent with the gradual nature of privity's erosion, *MacPherson*'s rise to fame was slow. *MacPherson* received immediate attention from writers in Harvard's and Yale's law journals: one writer viewed it as a potentially transformative case, but others viewed it as merely creating a new category of imminently dangerous products. No other state supreme court would abolish privity in reliance on *MacPherson* until 1927, and the first law review article anointing it a watershed case did not appear until 1929. Privity eroded substantially during the Progressive Era due to Progressives' receptivity to socialization of accident costs and industrialization's role in breaking down economic walls between manufacturers and consumers, but at the end of the era it was still alive, if enfeebled, in most states. Privity's death would be a major focus of attention in the American legal community during the decades to come. ■

TORT LAW'S PAST—AND FUTURE

Some observations on Joseph Ranney's *The Burdens of All*

By Alexander B. Lemann

One of the great merits of Joseph Ranney's *The Burdens of All* is its breadth. The book pulls back from the doctrinal squabbles that fill the pages of most torts casebooks and presents a broader history of the law of torts in its social context. In doing so, Ranney offers a history that illuminates forgotten corners of tort law while also reminding us of its inseparability from the generation-defining preoccupations of law—and indeed of American life—more broadly.

One theme that comes across strongly, thanks to Ranney's creative and exhaustive use of data, is a sense of the almost tidal ebb and flow of ideas that have shaped the law of torts. This is a story that historians of tort law have long told, and it gets new support and clarity in Ranney's data. Seemingly disparate doctrines such as the privity rule and contributory negligence began to fall during the Progressive Era, a trend that continued as the legal realist movement and an embrace of technocratic governmental approaches to solving societal problems reached its apex in the postwar period. Many scholars during this time both predicted and advocated for the advent of strict liability, seeing it as the logical next step in tort law's project of socializing risk. But to the surprise of many, this trend petered out, and starting in the 1980s the pendulum began swinging back in favor of fault-based principles and thus largely in favor of defendants. All these fluctuations can be traced in Ranney's ingenious "shift index."

Another theme of Ranney's work is the importance of technology in influencing developments in tort law. The history of the automobile provides an illuminating example. In Ranney's telling, the physical dangers associated with cars led first to a moralistic vilification of reckless drivers. This gave way, in keeping with the broader trends outlined above, to a more dispassionate, scientific view of the problem, one focused less on individual bad actors and more on the role of controllable variables like roadway and vehicle design.

This approach has worked tremendously well. Americans drive far more miles per year than they did in the middle of the 20th century, and yet the number of highway fatalities has remained flat, meaning that driving is now dramatically safer than ever before, on a per-vehicle-mile-traveled basis. Indeed, the National Highway Traffic Safety Administration recently published a report showing that its own regulatory interventions in vehicle and roadway design have saved lives on a scale comparable to advances in treating and preventing heart disease and significantly exceeding advances in fighting cancer.

In another sense, though, this scientific approach to risk has never made its way into the heart of tort law, as Ranney documents. Efforts to push tort law away from the fault principle and toward socialization of risk have, in the automobile context at least, always failed. To the familiar example of no-fault insurance schemes, Ranney adds now largely forgotten ideas such as the family-purpose doctrine and passenger liability. The broader principle shows up in other areas of tort law as well: efforts to instantiate a set of rules-based optimal incentives have always failed, and the concept of fault remains stubbornly enmeshed in the law of torts.

One of the pleasures of delving into the past in a work like Ranney's is the nuance that it brings to any thinking about the future. The next great leap forward in automobile technology is today gradually making an appearance on American roads. Autonomous vehicles are widely expected to usher in a new era in safety, since the vast majority of car accidents are caused by human error. But while perfectly adept, highly autonomous vehicles exist mostly in theory, "semiautonomous" vehicles with more limited capabilities have already begun carrying passengers—and causing fatalities.

Unsurprisingly, in light of Ranney's work, experts have already begun arguing that traditional tort doctrines such as negligence are not suited to the autonomous vehicles of tomorrow. Instead, they propose the legislative creation of liability schemes akin to workers' compensation or no-fault insurance for autonomous vehicles. The social history of tort law as Ranney tells it counsels, in my view, a more cautious approach. Negligence—the fault principle—has had remarkable staying power, arguably because it aligns with basic, commonly held instincts about right and wrong, and the need to hold wrongdoers to account. History gives us little reason to think this idea will lose its appeal every time a new technology comes along. ■

Alexander B. Lemann is assistant professor of law at Marquette University.

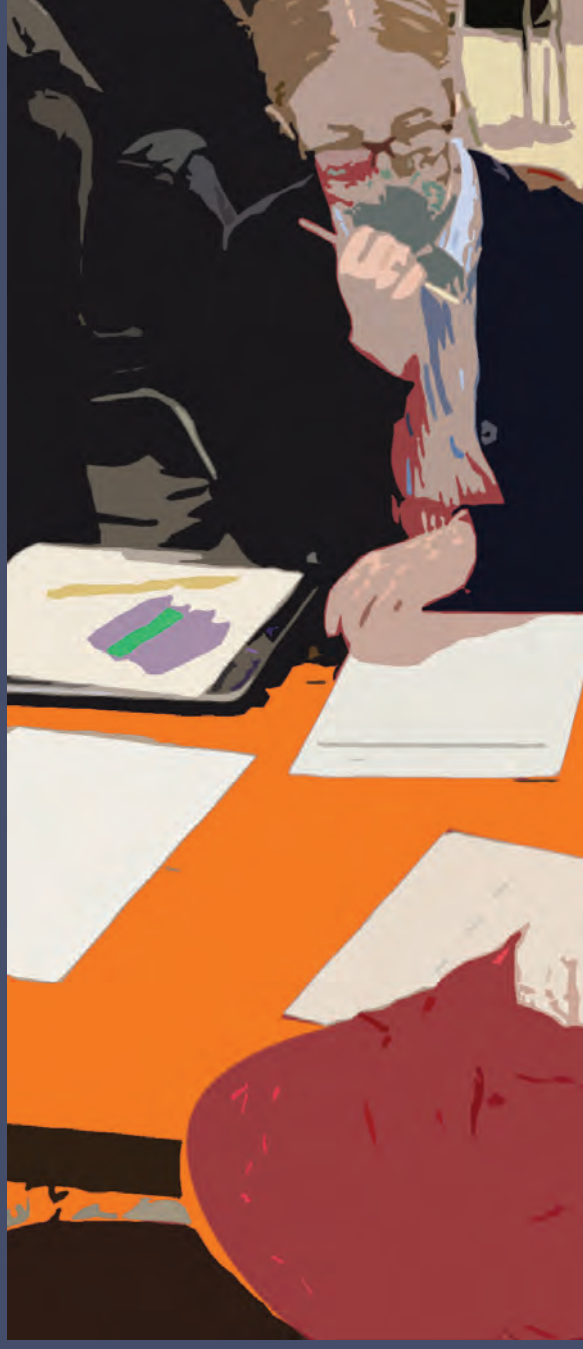
Helped Today; Gone Forward Tomorrow

MARQUETTE LAW STUDENTS PITCH IN AT A RURAL ARMY BASE TO HELP AFGHANS LAUNCH LIVES IN THE UNITED STATES

By Alan J. Borsuk

Reid Hazelton, a Marquette Law School student, sat for hours each day during most of a week, helping the people who sat on the other side of the table. He was struck by how much what they wanted in life was similar to what he and his brother wanted, how much the people were "just like us."

But there were big differences. For example, the identification papers shown to him by two people—brothers themselves—were blood stained. That was a small if dramatic sign of the big issue: Those being helped were all people who had made it out of Afghanistan as civil order collapsed in what one compared to "a movie at the end of the world." Hazelton was making a contribution with the skills available to him to help some of these people build new lives.



On a nearly colorless stretch of land in west central Wisconsin, in dozens of nearly colorless buildings, a city arose quickly in the late summer and fall of 2021, larger than any of the nearby cities, such as Tomah and Sparta. A few months later, at winter's end, the city was gone.

The nondescript features of the area's fall and winter landscape belied the vivid human stories in the city—stories both of past terror and tumult and of the present strains of launching new lives in a country half a world away from Afghanistan, where the city's residents had lived before being transported to rural Wisconsin. Each story was part of a great international crisis.

Marquette Law School students played a part in helping residents of the short-lived city move forward.

Fort McCoy, a U.S. Army base about 100 miles northwest of Madison, Wis., was one of seven centers in the United States where people from Afghanistan were taken after the Afghan government collapsed and the Taliban took over

"How do you know it was the Taliban?" Filali said, "It seemed like such a silly question. They were like, 'Of course it was the Taliban.'" Some had had family members killed in front of them, all of them had had guns pointed at them . . . .

From discussion with Noelle-Nadia Filali

in August 2021. In the fall, the area swelled to 13,000 people living at Fort McCoy. Name a need, and it was among the things having to be addressed for all of these people.

A threshold legal issue for each one of these individuals was to obtain permission to live in the United States on a long-term basis. They had been granted two-year emergency residency permits, with one year to start the often-prolonged process of receiving asylum or other permanent status in the United States.

That's where the Marquette law students sought to help.

Wes Haslam, a second-year law student and Coast Guard veteran, said he hopes to work as a lawyer involved with immigration issues. He was eager to take part when he heard about the chance to do pro bono work at Fort McCoy.

It was eye-opening, he said. Americans aren't used to hearing stories of murder, of houses being burned down, of people being forced to flee for their lives, loved ones left behind.

Working with two boys about 11 or 12, who came to the United States by themselves, "was gut wrenching." And she helped a 19- or 20-year-old woman who had brought her 3-year-old brother with her. "There was just so much on her."

From discussion with Aiyanah Simms

What if the people had to go back to Afghanistan? He said they told him "they'd die, they'd be killed."

Were you helpful? "I hope so," Haslam said. Would you do something like this again? "I'd do it again in a heartbeat. . . . This was not the type of event anyone is going to forget anytime soon."

There are several routes that the people from Afghanistan can use to gain long-term residency in the United States. They were advised to try all of them—you don't know which one might work. The paths are complex and require the involvement of lawyers.

Shannon Farrell, a former Wisconsin attorney, has served 19 years as a Foreign Service Officer with the U.S. Department of State. As the State Department's Continental United States Director for Operation Allies Welcome, Farrell coordinated legal efforts for Afghan "guests," as they were called, at the various U.S. safe havens, including Fort McCoy.

Due to the relatively quick resettlement timeline from safe havens like Fort McCoy, guests would not be able to file their applications until they resettled to their permanent residences in local communities. Yet guests were encouraged to begin the initial paperwork while at Fort McCoy, to get a start on the process. Licensed attorneys were not needed for that work, but an affinity for legal processes was helpful. So law students were good candidates to participate.

And Marquette law students were good candidates to want to do so. In October, Farrell contacted Marquette Law School Dean Joseph D. Kearney, asking if there were students who would help the guests as pro bono volunteers. The dean had met Farrell through her father, Bill Farrell, L'68, whom he knew through Farrell's late law partner in Port Washington, Ralph J. Huiras, L'41. Kearney turned to Angela Schultz, the Law School's assistant dean for public service. Farrell also asked her good friend and former law colleague, Amelia (Amy) McCarthy, L'94, to assist Marquette law students working on the project, by overseeing their work with Afghan guests, which McCarthy did for three weeks at Fort McCoy's legal clinic.

In very short order but with a good deal of planning, 49 law students—approaching 10 percent of the total enrollment in the Law School—traveled to Fort McCoy, in December and January, to help.

The students were not paid, did not receive academic credit for the work, and were all there during the break between semesters, meaning they were not excused from any classes. They went in three groups, for up to a week at a time (and three of the students went two separate weeks), staying on the base or nearby. Some finished final exams in December one day and headed to Fort McCoy the next; some postponed travel home for the holidays to spend time in the fairly spartan and definitely wintry conditions of Fort McCoy.

Aiyanah Simms, a first-year law student from Nashville, Tenn., recalled that when she heard about the Fort McCoy project, she said, "This is an opportunity I can't pass up." She changed her plans for flying home for the Christmas season so she could be "part of this journey."

"It was eye-opening," she said. She felt welcomed into the families of people she met. They showed her family photos. One gave her an apple, about the only present that was available. "They were so grateful."

She described working with two boys, about 11 or 12, who came to this country by themselves. "It was gut-wrenching," she said. They were taken in by a family and were doing reasonably well. She also worked with a 19- or 20-year-old woman who had brought her 3-year-old brother with her. "There was just so much on her," Simms said.

How was she feeling about the experience in retrospect? "I just want to go back. I think about it all the time."

This was the principal duty for the law students: Generally working in pairs, the students met with people, either individually or two at a time. Often with the help of interpreters, the students worked for two hours or more with each person on filling out applications, for either asylum or another legal standing, that would allow them to stay in the United States. Although it was not yet possible to fill out the final version of the forms, these sessions would help capture details and would save time for both the Afghan people and the attorneys who would become involved when the people went to their new communities.

There were two main tasks. One consisted of answering four pages of very detailed questions about the applicant's prior life, including employment history, family history, and education. There were requirements such as listing every address at which the person ever had lived. Some of the people spoke English; many did not and could converse only through the interpreters. Some had important papers such as birth certificates or passports; many did not. A number had photographed important papers on smart phones before they fled, which was helpful.

Then came the section of the application requiring the Afghans—each of them individually—to describe why they had fled and why they believed they would be in danger if they returned to Afghanistan. The law students were told that the statements could be of any length but needed to present compelling cases, with particulars, for why the Afghans couldn't go back.

Write down every detail of what happened to you in Afghanistan that makes you want to never go back. Write down everything you remember, Malin Ehrsam, one of two Marquette law students on one side of a table, said to the young woman on the other side.

"I don't want to remember," the woman said matter-of-factly in English.

For this, you have to remember, Ehrsam said. Then, when you are finished, you can forget.

Ehrsam wrote in a reflection afterward, "Filling out four pages of a form and conducting a brief interview may seem trivial, but based on our interactions with guests and the gratitude that they shared, we have definitely made an impact. . . . Just listening can be so powerful. Listening is so important."

On the first day that law students arrived at Fort McCoy, they received training from lawyers who were leading the work.

Farrell, the State Department official, spoke to the first group to arrive in December. She told the students that they might not think themselves to be making much difference for the people they met. She was emphatic that that would not be the case. More good would come than this, but even just listening was a big help, she said.

"Years from now, they will remember you," she said.

Noelle-Nadia Filali, a second-year law student, said that asking specific questions was challenging. After hearing some of the people's experiences, she would ask, "How do you know it was the Taliban?" Filali said, "It seemed like such a silly question. They were like, 'Of course it was the Taliban.'" Some had had family members killed in front of them, all of them had had guns pointed at them, Filali said. Taliban members had personal information about them.

One person who stood out to Filali was the translator who helped her. He had worked with Americans in Afghanistan, which made him a target of reprisals. He was threatened by the Taliban, his name was on Taliban lists, they knew the places he frequented. His parents were dead. He came to the United States with one sibling. He and Filali exchanged email addresses. She said she "absolutely" plans to stay in touch with him.

"As a whole, every one [of the Afghans] handled this far better than I would. . . . I'm not going to complain about anything for a very long time."

Reid Hazelton

"Filling out four pages of a form and conducting a brief interview may seem trivial, but based on our interactions with guests and the gratitude that they shared, we have definitely made an impact."

Malin Ehrsam

". . . Just listening can be so powerful. Listening is so important."

The students were told that the sessions might be emotional. Some of the law students said they did have conversations of that sort. But many of the Afghans were focused on moving forward and working on the processes intended to accomplish that. Some were pleased to get personal attention—much of what they had been through was impersonal.

"As a whole, every one of them handled this far better than I would," said Hazelton, the student who found the newcomers to have similar hopes to his own. He said the people he met were not bitter or resentful—they generally were just glad to be here. Some were almost casual in describing what they experienced—what they had witnessed and how close they were to attacks—Hazelton said. The Afghans were appreciative of the help they were getting and seemed to regard themselves as lucky ones who had made it out of Afghanistan.

Hazelton said that listening to what the people had experienced gave him perspective on the problems faced by himself and people around him. "I'm not going to complain about anything for a very long time," he said.

After the work at Fort McCoy was over, Schultz, the Law School's assistant dean for public service, said she was struck by "just how many students came back and said, 'What's next? What can we do to be of more service to these people?'"

Returning to Fort McCoy is not an option since all the Afghan residents have been relocated. Schultz said that she is working on possibilities for interested students, such as internships with agencies that are serving people seeking citizenship.

Schultz said that for many of the students, it was "an eyes-wide-open experience." One part of that was "the immersion aspect" of being at Fort McCoy for several days, compared to pro bono work in Milwaukee that involved a few hours at a time and no residential component. Another was a matter of the people and their stories.

In the big picture, were the students helpful to the Afghan people? Were the Fort McCoy experiences ones that will motivate students to do more to help others and to use their legal skills for purposes such as this in the future?

"There's no doubt in my mind," Schultz said. The unconventional Afghan city in Wisconsin has come and gone, but its impact will live on, one imagines, for both its former residents and those who volunteered to help them that winter. ■

"I'd do it again in a heartbeat. . . . This was not the type of event anyone is going to forget anytime soon."

Wes Haslam

Joseph D. Kearney

Celebrating a Colleague Who Hit the Right Notes

This past fall, Marquette University's vice president for inclusive excellence, William Welburn, and the dean of Raynor Memorial Libraries, Janice Welburn, retired from their positions at Marquette University. Both were friends and champions of the Law School during their long tenures, and the provost, Kimo Ah Yun, invited Dean Joseph D. Kearney to be one of the speakers at the event celebrating William Welburn. The following were Dean Kearney's remarks, delivered August 31, 2021, in the Henke Lounge of the Alumni Memorial Union.

William Welburn, retired vice president for inclusive excellence.

It's a privilege for me to say a few words celebrating William Welburn. As a certain singer once said, if we don't know him by now—with all the things that we've been through . . . . We'll come back to that.

I wish to emphasize just how hard Dr. Welburn has worked to be a *collaborator*. The Law School can provide a representative example. At times, we have provided him a forum for university-wide activities: Just last week, though about to retire, Dr. Welburn was planning an event in the Law School's Lubar Center for next spring, as with some of the university's past Ralph H. Metcalfe Lectures. At other times, the Law School has led, such as in the events involving Professor Paul Butler two years ago, about prison abolition, or our annual diversity receptions—and Dr. Welburn (together with Dean Janice Welburn) always supported us. We needn't use the past tense, as both of them will be with us, along with Provost Ah Yun, once again for the diversity reception, in two weeks. And still other times, the Welburns' work collaborating with the colleges and schools has been extensive on both sides, such as with the university's Freedom Project.

Let me distill the point: Dr. Welburn has much influenced us, far more than would have been the case if he had (mis)conceived his role as vice president as being to tell the deans precisely what they (we) are to do. His approach has been consistent with the presidents whom he has served, including Dr. Michael Lovell. This is not a command-and-control administration, in my grateful experience, except where clear university interests have required uniformity.

All this seems worth mentioning today and remembering hereafter. For example, Dr. Welburn's suggestion to the campus community in the wake of George Floyd's death last summer much affected me: Among other things, he wrote us all that "we need conversation now more than ever." This was powerful and effective, far more than if his message had been a set of specific prescriptions that as dean I was expected to administer.

On diversity and inclusion, we must keep conversing, even though Dr. Welburn's run here is coming to an end and my own brief time today at the podium is just about up. To return to the music, you "gave [your] heart and soul to [us], now didn't [you]?" And for those of you who did not get the musical allusions, at the beginning or just now, they were, respectively, to Harold Melvin and the Blue Notes and to the Delfonics. (For the second allusion, I *so* wanted to say, "Didn't I blow your mind this time?") The allusions were, that is, to the "Philadelphia sound" of the 1970s. If the Law School ever did anything that impressed Dr. Welburn, at the top of the list was in 2014 when we hosted Kenny Gamble—activist, educator, and, most famously, contributor to the Philadelphia sound. Dr. Welburn has a hometown claim to that music.

William, thank you for sharing your own smooth "Philadelphia sound" with Marquette University. Without suggesting that we, your colleagues, never have hit a discordant note, we have made much better music because we have been with you. We are most grateful. ■

David Strifling is photographed in his Marquette Law School office.

EVEN THE KITCHEN SINK

Marquette's Water Law and Policy Initiative Pursues an Ambitious Agenda of Teaching, Research, and Convening Public Events

As mundane as whether it's better to put food waste down your sink's garbage disposal or to throw it out. As sophisticated as the use of nanotechnology in drinking-water treatment.

On every level, Marquette Law School's Water Law and Policy Initiative, as part of Marquette University more generally, has been addressing a wide range of policies and practices involving that key to life—water.

That includes offering courses in water law and related environmental subjects and providing curricular internships for law students in water-related projects. It embraces convening noteworthy conferences and events that have affected the course of water policy in the Law School's city and the region. And it goes beyond these approaches to include other work on some of the current big issues in water policy.

With a key role in a new cross-campus, interdisciplinary $3.8 million federal grant, the Water Law and Policy Initiative is adding another important aspect to its work with multiple partners.

Consider this a "state of the water initiative" report, starting with a conference in 2009 that focused on the role of water in the economic future of southeastern Wisconsin and proceeding to the diverse aspects of the effort today.

Launching the Initiative

The Law School's 2009 conference, convened by Mike Gousha early in his long tenure as distinguished fellow in law and public policy, brought together an array of leaders, including Wisconsin's then-governor, Jim Doyle, and key players in higher education and the private sector. The focus was the vision in which the Milwaukee area would become a world-class center for water enterprises, focusing on environmental policy work, water technology, and economic development. While the region's initial hopes may have been somewhat more optimistic than what has been achieved so far, there certainly has been positive development of the public and private water sectors. And Marquette Law School has been part of the action.

By the time of that 2009 gathering, the Law School had begun to offer courses intended to introduce students to the subject of water and the law. Then, in 2014, new Marquette University President Michael R. Lovell challenged all parts of the university to become more deeply engaged in studying and solving the world's water problems. This was a formidable task for the Law School, lying outside the school's traditional areas of expertise.

The Law School's response centered on the appointment of Professor David A. Strifling as director of a newly denominated Water Law and Policy Initiative. Strifling, who also holds a master's degree from Harvard Law School, is a Marquette engineer and a Marquette

lawyer. Strifling created ambitious goals around establishing the Law School as a regional center for study, exploration, discussion, and education concerning issues of water law and policy.

Today, using an interdisciplinary and collaborative approach, the initiative seeks to assess the legal and regulatory aspects of water policy, to pursue opportunities for information exchange and collaboration within and outside the university, and to provide the means for the public to become better informed on legal and policy aspects of critical water-related issues.

The benefits generated by this work have spread far beyond the walls of Eckstein Hall, with dozens of public presentations, media appearances, and academic publications. Many programs have been held in conjunction with the Law School's Lubar Center for Public Policy Research and Civic Education, and the Marquette Law School Poll has frequently surveyed public opinion on water issues. During the COVID shutdown, the initiative convened several online programs, including, this past semester, a continuing legal education seminar that attracted some 300 people.

An earlier highlight was the initiative's 2016 conference, "Public Policy and American Drinking Water," which prompted Milwaukee's then-mayor, Tom Barrett, a conference participant, to change and accelerate the city's response to its lead-lateral-pipes crisis. A host of other water-related events have examined a range of topics, including water policy in the Chicago Megacity, the evolution of the Great Lakes Compact, and water-fueled economic development in the region.

The Law School's central purpose—educating people to become lawyers—has been very much part of the water initiative. In fact, the curricular program has grown, reflecting both the institutional commitment to the subject and student interest.

In recent years, Strifling has taught courses in environmental law, water law, natural resources, and water technology and policy, reaching many students. Graduates who have taken the courses have gone on to hold related positions in the legal departments at government agencies, law firms, and corporations.

In addition, 35 students have worked with Strifling as research assistants on various projects and grants. Most were law students, but some have been Marquette University undergraduate and graduate students from other disciplines such as engineering. The research assistant positions generally have been funded by grants to the Water Law and Policy Initiative.

Strifling also has engaged a broad set of external partners in event sponsorship and planning, research work, and general outreach. These partners include The Water Council, Chicago Current, the Milwaukee Metropolitan Sewerage District, the Wisconsin Department of Natural Resources, and the *Milwaukee Journal Sentinel*, among many other organizations. And the initiative also has collaborated with water researchers in other disciplines at Marquette, including environmental engineering, biological sciences, hydrology, chemistry, education, and the social sciences.

Jeanne Hossenlopp, professor of chemistry and Marquette University's vice president for research and innovation, said, "Because of the global issues around water sustainability and access to clean water, the water initiative is only going to continue to grow here at Marquette. One of the really important things about our water initiative is that it engages people from a wide array of disciplines."

"All of these issues don't get solved just technically," Hossenlopp said. "There are always policy questions. That's where the Law School comes in." The involvement of the Law School broadens the focus of scientific work to include law, regulatory action, and engagement with the public.

Daniel Zitomer, professor in Marquette University's Opus College of Engineering, said the National Science Foundation has provided funding for 70 cooperative water research centers around the country, each with a specific focus. "Ours in Milwaukee is in water equipment and policy," he said. "Out of all of the 70 centers, ours is the only one that includes a thrust area in water policy. It's unique."

The involvement of Strifling and the Law School is important to that policy work, Zitomer said. "In terms of research, teaching, and service, we feel fortunate to have Dave with us here at Marquette."

Since 2015, the initiative has secured a series of grant awards supporting significant research projects. Many of these projects have had a technical bent, reflecting Strifling's own background in both law and engineering. They have included analysis of the legal and policy aspects of chloride transport to waterways that is caused by winter deicing and water softening; integrated water resources management; the food-energy-water nexus; real-time control of stormwater infrastructure; and the use of nanotechnology in drinking water treatment applications.

These projects also served as the starting point

for a variety of conversations that became the foundation for interdisciplinary partnerships with researchers in other university departments. Law student researchers often have been paired with undergraduate and graduate researchers from other disciplines. This has provided students with an opportunity for interdisciplinary team-based research that is rarely found in the law school curriculum but can be invaluable in preparation for practice, where lawyers are frequently engaging or collaborating with experts in other fields. The substantive results of the research projects have been widely disseminated in academic journals and regional stakeholder communities.

Marquette water researchers' collaborative and interdisciplinary efforts have yielded a variety of benefits. So far, the biggest of these came this past winter, in December 2021, when Marquette University announced its largest-ever federal award for water research: a $3.8 million award from the U.S. Army Corps of Engineers to fund an interdisciplinary research program titled "Novel Technologies to Mitigate Water Contamination for Resilient Infrastructure."

The Law School's role in this major new project involves exploring and evaluating legal and policy strategies to prevent or mitigate "nonpoint source pollution." Nonpoint source pollution results from diffuse sources such as precipitation runoff and carries impurities such as agricultural fertilizers or oil and grease from city streets. It is much more difficult to measure and manage than traditional "end of pipe" sources such as factories and wastewater treatment facilities. The Law School's project team will particularly focus on legal strategies to prevent or mitigate the formation of harmful algal blooms like the ones in Green Bay, Lake Erie, and many other parts of the Great Lakes and the country, which are largely caused by nonpoint source pollution.

Growing the Research

What follows is a brief glimpse into some of the initiative's projects leading up to its role in the major new grant.

The Trouble with Salt

Greater environmental protections and increased public safety are often believed to be synonymous, or at least to go hand-in-hand. Sometimes, however, those two goals are in tension—for example, when the excess application of salt for winter deicing, in combination with other chloride sources, causes elevated chloride concentrations in waterways.

Sodium chloride, commonly known as salt, has often played a critical role in human culture, trade, religion, economics, public safety, and even warfare. It is naturally found in both fresh and salt water, and at modest concentrations is essential to biotic life. But it has a complicated legacy that includes potentially serious consequences for human health and the environment, including deteriorated water quality, toxicity to aquatic and benthic organisms, adverse effects on vegetation, and impacts on drinking water supplies.

Moreover, environmental chloride concentrations are on the rise, having approximately doubled over the past two decades. Hundreds of scientific studies have examined potential risks to human health and the environment associated with excess chlorides in the environment, especially those sourced from deicing operations. Yet little, if any, of that work had been directed toward developing legal and policy strategies to address the chloride issue.

In the initiative's first major grant-supported project, which was awarded in 2015 and had work extending into 2018, Strifling and several law students examined the underlying causes of unsustainable chloride pollution from a scientific and engineering perspective, and they then proposed a menu of responsive legal and policy options. These options include incentivized self-governance at the community or individual levels; informational strategies to encourage optimal chloride use levels for deicing and in water softening applications; direct legal and regulatory mechanisms or mandated best practices issued pursuant to the Clean Water Act, state regulations, or municipal ordinances; use of chloride alternatives such as green infrastructure and substitute deicing substances; integrated watershed management; and direct economic measures.

In keeping with the Water Law and Policy Initiative's identity as a nonpartisan and disinterested observer, the results of the project did not suggest that all these options are appropriate in every context, nor did it rank them from most to least useful. Those decisions, Strifling believed, are best left to affected stakeholders. In that spirit, the resulting publication examined the technical and legal contours of each option, and linked the legal and policy dimensions to the scientific underpinnings. This science-based approach increases the likelihood that ultimate

"ALL OF THESE ISSUES DON'T GET SOLVED JUST TECHNICALLY. THERE ARE ALWAYS POLICY QUESTIONS. THAT'S WHERE THE LAW SCHOOL COMES IN."

Jeanne Hossenlopp, professor of chemistry and Marquette University's vice president for research and innovation

policy decisions can be both legally defensible and scientifically sound.

The extent of local and regional interest in the subject became apparent after the initiative's research was published. Strifling was invited to present the research in numerous settings, and he also accepted an invitation from the Southeastern Wisconsin Regional Planning Commission to serve on its Technical Advisory Committee studying chloride problems in the region.

Integrated Water Resources Management

Recent efforts to study and optimize water resources management have largely endorsed an integrated approach that is implemented at the watershed level and necessarily crosses traditional geopolitical and agency boundaries. Known as Integrated Water Resources Management (IWRM), this methodology generally aims to coordinate development and management of diverse water and water-related resources to maximize economic and social welfare without compromising environmental sustainability. Although its precise scope and content remain unclear, policy makers attempting to implement IWRM must adopt innovative and cooperative governance mechanisms.

Starting from an analysis of existing programs and interviews with involved regulators, the Water Law and Policy Initiative's researchers drew on recent literature in a variety of fields to inform and evaluate legal and policy strategies for integrated watershed management. Applying integrated management strategies and fostering intergovernmental cooperation could lead to important environmental and technological advances while conserving socially valuable resources.

Although progress toward implementing integrated solutions has generally been slow, the initiative's researchers distilled three important lessons learned from earlier integrated water resources management projects. These involved the need to create an enabling regulatory environment, ensure the availability of adequate resources, and build management capacity. Incorporating those lessons learned could significantly further similar efforts in the future.

The Food-Energy-Water Nexus

Another of the initiative's grants led not to an academic publication but to a conference of regional leaders on a subject of great long-term importance: the food-energy-water nexus. It attracted professionals and academic figures from across Wisconsin and the country who work in these tightly related fields. The daylong session, organized by Strifling and an advising committee, had a broad theme of how leaders and researchers in these crucial fields could work together and stretch their vision to serve the best and broadest sense of the public good.

Speakers at the event covered a variety of topics, including energy recovery at wastewater treatment facilities, the importance of groundwater, ethical aspects of decisions about natural resources, and the deep links between agriculture, water, and energy. Yet for the handful of people in the audience who were less technical in their background, the most practical piece of wisdom may well have been a bit of advice on how to use a garbage disposal.

In the question-and-answer session at the end of a panel discussion on environmental issues, an attendee asked if it was better for the environment to put food waste into one's garbage disposal, sending it to a wastewater treatment facility, or into one's garbage, sending it to a landfill. The questioner related that her garbage disposal sometimes got clogged, causing flooding in her basement, so she had stopped using it.

One of the panelists was Michael Keleman, manager of environmental engineering for InSinkErator, a leader in the garbage disposal field. The company is headquartered in Sturtevant, Wisconsin, in Racine County. Not surprisingly, Keleman is partial to garbage disposal units and putting most food waste down the sink. Yet he explained his answer. Keleman said food waste is 70 to 90 percent water. "Why are we handling this as a solid waste?" he asked. "It's not really solid any more if you're using the disposer right." Its density is about the same as water, and it will be successfully transported to a treatment facility that can recover resources—including clean water and energy—from it, and simultaneously avoid land use problems.

Real-time Control of Stormwater Infrastructure

When it rains or snows, the resulting runoff can collect pollutants, including salts, fertilizers, chemicals, oils, and sediment. These contaminants have the potential to impair surface water and groundwater that receive the runoff. Communities in the United States face growing challenges to effective stormwater management as a result of aging infrastructure, increasing urbanization, changing climate, and shrinking budgets, among

other factors. These changes have increasingly stressed existing "static" stormwater management systems, such as pipe networks and ponds, which are intended simply to convey storm flows to nearby receiving waters without regard to overall system conditions.

Dealing with these stressors requires innovative and resilient solutions such as real-time control (RTC) or "dynamic" stormwater management systems. RTC systems are typically automated or semiautomated and involve the use of sophisticated models to operate stormwater controls in real time, such as modifying set points to open and close valves or routing stormwater differently under particular system conditions. The goal of an RTC system is to continuously regulate the flow in the various branches of a network based on real-time information related to system capacity and weather conditions. This reduces the magnitude of outflows during storms and relieves other stresses on the system.

An interdisciplinary team of Marquette law faculty, engineering faculty, and students from both disciplines studied dozens of examples involving RTC implementation in the United States and abroad. The team also examined the literature detailing institutional barriers to RTC innovation. And it reviewed numerous legal decisions related to municipal liability for stormwater management (or mismanagement). The resulting publications suggested a variety of strategies to combat these institutional and legal barriers to smooth the transition to RTC systems.

As an initial matter, the research team found that RTC systems have not been widely adopted. Some analysts have blamed historical resistance to innovation, especially among governmental system operators responsible for protecting public health and safety. Other factors inhibiting innovation include the risk-averse nature of water managers, the long life expectancy and significant complexity of most water systems, geographic and functional fragmentation, water-pricing practices, absence of incentivizing regulations, and insufficient access to venture capital.

From this foundation, the team distilled several institutional and legal barriers that prevent municipalities from embracing innovative stormwater management systems. Key institutional barriers include regulatory fragmentation, workforce readiness, resistance to innovation, data management, cybersecurity, and cost. Municipalities considering RTC innovations must be ready to address those challenges.

On the legal side, the team found, two considerations should concern a stormwater management system operator considering RTC: first, that by actively making decisions to control and route the flow of stormwater in its system, it increases the likelihood of liability for negligence or nuisance claims; and second, that the sheer amount of data collected by RTC networks effectively puts the municipality on notice of problems within its system, increasing the likelihood of legal liability connected with future claims.

Some of the lessons learned in overcoming these barriers may be applicable to analogous situations involving other innovative technologies capable of improving public health and the environment.

Nanotechnology and Drinking-Water Treatment

Then there are engineered nanomaterials (ENMs)—products designed and manufactured at an extremely small scale, measuring between 1 and 100 nanometers in at least one dimension. ENMs have a very high surface-to-volume ratio and sometimes exhibit unique chemical and physical properties. They have shown promise in a variety of applications, including for treatment of drinking water. Specifically, ENMs have proved effective at contaminant removal and disinfection, as well as contaminant detection and corrosion control. However, despite their great promise, many uncertainties remain about utilizing ENMs in products for treating drinking water; these points of doubt include possible pathways of release to the environment, the fate and transport of ENMs once in the environment, and unclear governance via voluntary and mandatory regulatory frameworks.

As nanotechnology advances and is incorporated in more products, questions have arisen surrounding the appropriate balance between protecting public health and the environment, on the one hand, and incentivizing ENM-driven innovation and economic development, on the other. Although some authorities have begun to monitor and regulate the use of ENMs, these efforts have been fragmented and largely unsuccessful. The resulting regulatory uncertainty negatively affects the ability of the regulated community to develop and use ENMs.

The Water Law and Policy Initiative developed a project to address and resolve some of this uncertainty, in order to help streamline the implementation of ENMs in applications for drinking-water treatment. First, the research team

SINCE 2015, THE INITIATIVE HAS SECURED A SERIES OF GRANT AWARDS SUPPORTING SIGNIFICANT RESEARCH PROJECTS.

examined existing literature related to the uses of ENMs in treating drinking water and their ultimate fate and transport in the environment. This identified key knowledge gaps for future investigation. It then evaluated existing regulatory frameworks, especially in jurisdictions farther along in regulating ENMs. Finally, it proposed a menu of policy options to help mitigate regulatory uncertainty related to utilization of ENMs in the drinking-water context. These policy options include both difficult-to-enact "hard" policy instruments, such as statutes and regulations, and self-enabling but potentially less effective "soft" instruments. The latter can involve industry or organizational codes of conduct, best practices, aspirational guidelines, voluntary reporting or risk management standards, nonbinding standards, and licensing or certification programs.

This series of successful grant-funded projects has well prepared the initiative's team to tackle its role in the university's major new project underwritten by the grant from the U.S. Army Corps of Engineers.

And it reflects just how far the Law School has advanced in its efforts to help fulfill President Lovell's challenge to Marquette University, first issued in 2014, to help study and solve the world's water problems. "Its location on the Great Lakes and its impressive cohort of water researchers make Marquette an ideal place for immersion in the study of water law and policy," Strifling said. "I look forward to the initiative's continued growth."

As is true of so many rivers, the Law School's water efforts started out modestly. The stream has grown, fed by sources such as the new federal grant, and it is flowing toward broader and deeper work on environmental policy. ■

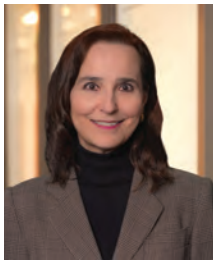
"ITS LOCATION ON THE GREAT LAKES AND ITS IMPRESSIVE COHORT OF WATER RESEARCHERS MAKE MARQUETTE AN IDEAL PLACE FOR IMMERSION IN THE STUDY OF WATER LAW AND POLICY."

David Strifling
Director, Water Law and Policy Initiative

CLASS NOTES

Kent A. Tess-Mattner

Kathy L. Nusslock



Christina M. Lucchesi

71 **Mary L. Staudenmaier** of Stephenson National Bank & Trust, in Marinette, Wis., was inducted into the Wisconsin Banking Association's Leaders in Banking Excellence.

72 **James R. Beer** retired after serving as a judge of the Green County Circuit Court, Wis., for 25 years. He previously served as the district attorney, the family court commissioner, and a county board supervisor and now has been appointed a reserve judge.

73 **Robert D. Donohoo** received the Wisconsin District Attorneys Association's Lifetime Achievement Award for 2021.

77 **Patricia J. Gorence** received the Faithful Servant Award from the St. Thomas More Lawyers Society of Wisconsin.

80 **Kent A. Tess-Mattner**, who retired from the active practice of law at the end of 2020, has been installed as moderator of the Presbytery of Milwaukee. The Presbytery of Milwaukee includes more than 40 Presbyterian Church (USA) congregations and serves more than 7,000 members living in 11 counties in southeastern Wisconsin.

81 **Mark D. McGarvie** published his fourth book, *The Pragmatic Ideal: Mary Field Parton and the Pursuit of a Progressive Society* (Cornell University Press 2022). He is a visiting scholar at the American Bar Foundation in Chicago.

85 **Andy N. Herbach** has written more than 50 travel guides to Europe. Because of travel restrictions during the pandemic, he has released three guides to Southern California.

Kathy L. Nusslock has formed Concurrence ADR, a dispute resolution and appellate consulting practice. Joining Nusslock in this new venture are Paul Reilly and Jeff Davis, former judges of the Wisconsin Court of Appeals.

89 **Leslie M. Van Buskirk**, Wisconsin securities administrator and board member of the North American Securities Administrators Association, was elected vice chair of the Securities and Exchange Commission's Investor Advisory Committee.

90 **Christina M. Lucchesi** is now in practice in the Milwaukee office of von Briesen & Roper. She represents government entities, nonprofits, and for-profit corporations in taxable and tax-exempt bond issuances.


Joshua B. Fleming


Amanda M. Dorio


Jeffrey B. Norman


Danielle M. Bergner


Aaron J. Foley


Geraldo F. Olivo

91 **David L. Borowski** was elected president of the Wisconsin Trial Judges Association. The association represents the interests of Wisconsin trial court judges with the Wisconsin Supreme Court, the state legislature, and other entities.

97 **Kathryn H. Amato** took a position as a law librarian at the U.S. Courthouse in Milwaukee.

00 **Joshua B. Fleming**, based in Indianapolis, Ind., has been named national chair of Quarles & Brady's product liability practice group.

01 **Amanda M. Dorio** joined Henderson, Franklin, Starnes & Holt in its estate planning department. She is licensed to practice law in both Florida and Wisconsin and is based in the firm's office in Naples, Fla.

02 **Daniel A. Kaminsky** joined Quarles & Brady as a partner in the firm's Milwaukee office. His practice focuses on clients acquiring and developing retail, office, industrial, health care, and multifamily residential properties.

Peter J. Kujawa started a new position as vice president of ConnectWise in its Service Leadership, Inc., business unit, based in Plano, Texas.

Jeffrey B. Norman was named police chief of Milwaukee by the Milwaukee Fire and Police Commission. He previously served as acting chief.

03 **Jessica M. Zeratsky** joined the Milwaukee office of the national law firm Dykema. She is a commercial finance attorney representing both lenders and borrowers.

05 **Danielle M. Bergner** joined the health care law firm Hall, Render, Killian, Heath & Lyman as a shareholder to support development of more housing around hospitals and clinics.

James R. Johnson joined Sidley Austin as a partner in the firm's Washington, D.C., office, where he works with life sciences companies on complex FDA regulatory, compliance, and enforcement matters.

Annie L. Owens was named chief counsel to U.S. Senator Sheldon Whitehouse in his service on the Senate Judiciary Committee.

Theodore Perlick Molinari was featured on TMJ4 Milwaukee for his involvement in the 105-year-old Perlick Corporation, a family-owned Milwaukee luxury bar appliance manufacturer.

06 **Kristina V. Giddings** was named the senior associate commissioner – governance and legal affairs/ senior woman administrator for the Big West athletic conference, based in Irvine, Calif.

Christopher J. Seibold was elected shareholder at Brown & James in Kansas City, Mo.

07 **Eric A. Berg** and **Ben W. Proctor** were featured in the *Milwaukee Journal Sentinel* for developing a Wisconsin vermouth called Lasdon.

Aaron J. Foley was promoted to shareholder of von Briesen & Roper, Milwaukee. He is a member of the firm's trusts and estates section.

Lee Greenwood was named director of government affairs at Associa, the nation's largest management company for homeowner associations. He continues to live in Boston, Mass., with his family.

08 **Jessica A. Kumke** took a position as associate commissioner of governance, compliance, and legal strategies with the Horizon League athletic conference.

Steven W. Laabs joined the Milwaukee office of the national law firm Dykema. His practice focuses on M&A and other strategic transactions.

Geraldo F. Olivo was elected stockholder with Henderson, Franklin, Starnes & Holt, in Fort Myers, Fla.

09 **Melissa A. McCord** was named national vice-chair of Quarles & Brady's business law practice group. She is a finance attorney in the firm's Milwaukee office.

10 **Andrew T. Frost** joined the Milwaukee office of the national law firm Dykema. His practice includes corporate growth matters, joint ventures, and reorganizations.

Peter J. O'Meara has been named senior counsel at Aon in Chicago.

11 **Laura A. Bautista** was promoted to assistant general counsel at Vanguard, a financial services company, in Philadelphia, Pa.

SHARE SUGGESTIONS FOR CLASS NOTES WITH CHRISTINE.WV@MARQUETTE.EDU.

We are especially interested in accomplishments that do not recur annually. Personal matters such as weddings and birth or adoption announcements are welcome. We update postings of class notes weekly at law.marquette.edu.

CLASS NOTES


Alyssa A. Johnson


Rebeca M. López


Nicole L. Cameli


Denise Chandler


Makda Fessahaye


René F. Jovel

Paul S. Crawford launched the firm of Garuz Crawford, a Waukesha-based criminal defense firm. His partner in the firm is Alexis M. Garuz, L'17.

Lucas J. Kaster was named partner at Nichols Kaster, in Minneapolis, Minn. He is a member of the individual rights team.

Danielle White was promoted to assistant general counsel at Rockwell Automation, based in Milwaukee.

12 **Alyssa A. Johnson** was named senior counsel in the Milwaukee office of Barron & Newburger.

Rebeca M. López was promoted to shareholder of Godfrey & Kahn, Milwaukee. She is a member of the labor, employment, and immigration law practice group.

Ashley Marie Marshall was promoted to administrative law judge for the Illinois Department of Children and Family Services.

Amy Rogan-Mehta was named vice president of university advancement at Chapman University in Orange, Calif.

13 **Shannon C. Blevins** is assistant director of executive affairs for the NCAA in Indianapolis, Ind.

Nicole L. Cameli was promoted to senior associate general counsel at Emerson Automation Solutions.

Michael J. Gentry was promoted to shareholder of Reinhart Boerner Van Deuren, Milwaukee. He represents clients through all stages of employment counseling and is a member of the firm's data privacy and cybersecurity group.

Lauren E. Raupp was named a partner at the Milwaukee-area law firm MacGillis Wiemer.

Ariane C. Strombom is commercial counsel at Google, based in the company's Chicago office.

14 **Denise Chandler** accepted a position at Stanford Law School's Center for Racial Justice.

Makda Fessahaye was named associate vice chancellor for human resources at the University of Wisconsin-Milwaukee.

Matthew J. Jann was promoted to partner in the M&A and corporate transactions group at Glaser Weil, Los Angeles.

René F. Jovel was named deputy general counsel and director of legal operations at Goodwill Industries of Southeastern Wisconsin.

Britany E. Morrison was promoted to shareholder at O'Neil, Cannon, Hollman, DeJong & Laing in Milwaukee.

Jack T. Murphy was promoted to shareholder of Reinhart Boerner Van Deuren, Milwaukee. He represents clients in mergers and acquisitions, divestitures, and other business matters.

Brianna M. Schonenberg joined Brady Corporation in Milwaukee as intellectual property counsel.

15 **Xheneta Ademi** joined the Washington, D.C., office of Quarles & Brady as an associate.

Kat Connor was featured in *Authority Magazine* as part of a series called "Making Something from Nothing." She is the cofounder of XO Marshmallow, a leading purveyor of handmade, gourmet marshmallows.

Sean A. McCarthy was named director of eligibility at the University of Michigan Department of Athletics.

16 **Alexandra N. Don** joined the real estate team at the Mallery law firm in Milwaukee.

Christopher "Chal" R. Little joined Quarles & Brady, Milwaukee. He is a business law attorney.

Lauren E. Maddente was elected a shareholder of Fox, O'Neill & Shannon in Milwaukee. Her practice focuses on business law and litigation.

Molly R. Madonia accepted a position as corporate counsel with GMR Marketing, based in New Berlin, Wis.

Sean P. McCarthy is an associate athletic director for compliance at Seton Hall University, in South Orange, N.J.

Brian A. Nolasco was named the senior associate athletic director of institutional support services at Central Michigan University in Mt. Pleasant, Mich.

Kasey A. Parks was named counsel with the Nashville Predators professional hockey team.

Meghan M. Pirics was promoted to senior associate attorney of the Milwaukee Brewers Baseball Club and will teach at the Law School in the fall as an adjunct faculty member in the sports law program.

17 **Alexis M. Garuz** launched the firm of Garuz Crawford, a Waukesha-based criminal defense firm. Her partner in the firm is Paul S. Crawford, L'11.

John P. Kreuser became a shareholder with Hynes & Kreuser, Elm Grove, Wis.

Chrissy L. Wabiszewski joined Foley & Lardner's Milwaukee office as a member of the labor and employment team.

Employment data for recent classes are available at law.marquette.edu/career-planning/welcome.


Molly R. Madonia


Ashley A. Smith


Erica D. Kolo


Sergio M. Quiñones


Jordyn A. Janikowski


Xavier E. Prather

18 **Sara E. Dilanjian** is an executive in business affairs with Creative Artists Agency in New York, working on name, image, and likeness (NIL) contracts for student-athletes, along with endorsement/sponsorship agreements for football players.

Samantha C. Huddleston became a partner at OVB Law & Consulting in Milwaukee. She counsels closely held businesses and entrepreneurs on business law matters.

Kelsey R. Kerr is a freelance attorney in the Milwaukee area. She assists other attorneys with research, writing, and document review projects.

Ioua Alen Marcyn Lagazo joined AMR Agency, a sports agency representing NBA and professional basketball players. He continues his in-house counsel duties at CNH Industrial as well.

Jessica S. Lothman joined the public finance and finance practices at Foley & Lardner in Milwaukee.

Ashley A. Smith was named president-elect of the Wisconsin Association of African American Lawyers.

19 **Jacob T. Armellani** is contract manager with Amazon Prime Video Legal, supporting "Thursday Night Football" and other sports properties.

Taylor D. Brisco joined Macdonald Devin Madden Kenefick & Harris, in Dallas, Texas.

Megan (Pontius) James joined Miami University, in Oxford, Ohio, as assistant director of compliance.

Randy Jones is an attorney with the Wisconsin Department of Health Services in Madison.

Aurusa Kabani was named the associate general counsel for Orlando City Soccer Club (MLS) and Orlando Pride (NWSL).

Michael M. Kennedy joined O'Neil, Cannon, Hollman, DeJong & Laing in Milwaukee.

Sara E. Kirtley joined Union Bank of Switzerland (UBS) in Nashville as employee conduct compliance officer.

Erica D. Kolo joined the corporate law and mergers and acquisitions practices in Reinhart Boerner Van Deuren's Milwaukee office. Kolo advises business owners in transactional matters, mergers and acquisitions, and tax strategies.

Frank J. Portera, with Lavelle Law in Schaumburg, Ill., was named to the board of directors for Gerry's Café in Arlington Heights, Ill., a planned coffee shop that will employ adults with intellectual and developmental disabilities. He also was appointed to the Arlington Heights Zoning Board of Appeals.

Sergio M. Quiñones joined NIKE as associate general counsel.

Michael P. Van Kleunen joined Axley Brynelson as an associate in the Waukesha office. He practices municipal law, real estate law, and civil and commercial litigation.

20 **Jordan M. Daigle** is an associate at Degan, Blanchard & Nash, in the firm's office in Lafayette, La.

Van Donkersgoed, a De Witt attorney, coached the Brookfield Central/East Co-op to the Wisconsin Division 1 boys swimming and diving team title.

John "Jack" R. Faulkner was named director of compliance at Stephen F. Austin State University in Nacogdoches, Texas.

Patrick P. Hankins took a position as junior legal counsel at Color Tokens in Houston, Texas.

Mario B. Harmon joined Intersport, Inc., as associate corporate counsel, in Chicago.

Jordyn A. Janikowski became an associate in the Milwaukee office of von Briesen & Roper.

Audrey C. Johnson joined Fried Frank in New York as an associate in corporate, mergers and acquisitions, and private acquisitions and private equity.

Danielle C. Kasprzyk was named assistant corporation counsel for Monroe County, Wis.

Kelly L. Krause joined Milwaukee Tool as corporate counsel.

Kieran M. O'Day is an assistant attorney general with the Wisconsin Department of Justice in the Criminal Appeals Unit, after serving as law clerk for Wisconsin Supreme Court (Chief) Justice Patience D. Roggensack.

Xavier E. Prather was the winner of season 23 of the television show *Big Brother*. He was the first Black houseguest in the show's history to win the game and received the largest prize ever ($750,000).

Michael V. Viverito joined Power & Cronin as an associate in the Chicago office.

MARQUETTE UNIVERSITY LAW SCHOOL

Marquette University
P.O. Box 1881
Milwaukee, WI 53201-1881 USA

REMEMBER 2020?

DON'T WE ALL. The back cover of the Fall 2020 *Marquette Lawyer* talked about what had changed (masks) and what had not (the high standards of Marquette Law School and the commitment to guiding people to careers as lawyers).

Some things have continued to change as we navigate the pandemic with overall success in fostering both education and health. It hasn't been easy. But thanks to the faculty, the staff, and—especially—the students, the Law School has moved forward.

And, of course, the big things haven't changed, especially our commitment to advancing Marquette University's mission of excellence, faith, leadership, and service.

THE BOTTOM LINE IS ESSENTIALLY UNCHANGED:

***NOTHING* MASKS OUR CHARACTER AND SUCCESS.**