Marquette Lawyer

Summer/Fall 2006

Marquette University Law Alumni Magazine

Joseph J. Zilber

Marquette Lawyer and Milwaukee Legend

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Correction: The Fall 2005/Winter 2006 issue of *Marquette Lawyer* incorrectly identified the author of the profile of alumni Art and Sheila Wasserman (pp. 44-45). The article was written by Richard W. Knueppel, L'06. We regret the error.

On the cover: **Marquette Law School graduate Joe Zilber, L'41, in his office in Milwaukee this past May. Article starts on p. 4.**

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Building the law school

My favorite workday of the year is also my least efficient: When I have the privilege to appear before the Wisconsin Supreme Court and move the admission of Marquette law graduates to the practice of law, the number of well-wishers and the size of the courtroom mean that the Justices and I go through these sessions four or five times. No one involved seems to mind much: If I recall correctly, each time I have done this as dean the entire Court has been on the bench for the entire session, when only one Justice is strictly necessary.

The day is a perfect reminder, of course, of our primary undertaking as a law school—helping our students to transform themselves into Marquette lawyers. It is an undertaking of which, when I became dean three years, I pledged never to lose sight. In fact, much of our effort as a law school during that time has been directed toward improvements to the curriculum and academic offerings of the Law School. A leading example of this can be seen in our excellent intramural moot court program, which culminates in the Jenkins Moot Court Competition. (See article beginning on p. 7.) The desire to grow stronger academically pervades the law school community.

But we are about even more than this primary undertaking. Marquette University Law School is the premier civic institution in this region for exploring matters involving law and public policy. Thus, we carry out our core responsibility of research and teaching about law and public policy not only in classrooms and libraries, but also in scholarly publications and conferences, in public meetings, and in community service projects.

Our concentration is intense, and our reach is extensive and growing. Even just recently:

- If you wanted the best analysis of school desegregation in Milwaukee, you came to the *Brown v. Board of Education* conferences at Marquette Law School.
- If you wanted to hear Judge Richard Posner's latest ideas on intellectual property law, you came to the Nies Lecture at Marquette Law School.
- If you wanted to hear Wisconsin leaders candidly discuss Wisconsin tax policy, you came to the Wisconsin Tax Policy Colloquium at Marquette Law School.

- If you wanted to hear experts assess the progress and problems with the new Medicare drug benefit, you joined a diverse group of professionals in a conference at Marquette Law School.
- If you wanted to hear the Solicitor General of the United States discuss the role of public service in the life of the lawyer, you came to the Marquette Law School commencement ceremony.
- If you wanted to hear Judge Diane Sykes, now of the United States Court of Appeals for the Seventh Circuit, critique the recent jurisprudence of her former court, the Wisconsin Supreme Court, you came to the Hallows Lecture at Marquette Law School.

In fact, to benefit from these events it was not even strictly necessary for you to have attended any of them. In each of these instances, most of the speeches or proceedings were (or soon will be) available in the pages of the *Marquette Law Review*, *Marquette Intellectual Property Law Review, Marquette Sports Law Review*, and *Marquette Elder's Advisor*, along with this magazine, *Marquette Lawyer*. (The last item mentioned, Judge Sykes's Hallows Lecture, closes out this issue of the magazine.)

In short, through these and many other programs, we mean to give students, lawyers, judges, public officials, scholars—and every citizen who wishes to further build the civil society—reason after reason to come to Marquette Law School. We are building Marquette Law School into the intellectual powerhouse that Wisconsin needs and the nation and the world will notice.

To be sure, it is not a story of continual progress in every particular. We have our setbacks, like any complex institution performing in a competitive environment. This past year, for example, two of our top young faculty members were recruited away by other law schools; as we hire more stars on our faculty, this has become a greater problem. And, even as we work vigorously with the University to address the deficiencies of the Law School's physical facility, our physical plant restrains some of our progress.

Nonetheless, the conclusion that we have made great strides as an institution is inescapable to those familiar with the Law School. The generosity of hundreds of alumni and friends in supporting us financially (also reflected in this issue of the magazine) has been a huge contributor to our progress. We are also deeply grateful to our many alumni and friends who teach on the adjunct faculty, judge moot court arguments, supervise externs, hire our grads, work at the Marquette Volunteer Legal Clinic, and commend us to law school applicants. With the help of this vast network of caring alumni and friends, we seek to be good stewards and even builders of the vital civic treasure that is Marquette University Law School.

J.D.K.

JOE ZILBER

A life in real estate

Marquette Law School graduate Joseph J. Zilber boasts an unbroken record in the 65 years since he graduated. "I have never lost a case," the 88-year-old Zilber proudly states.

With a smile, he quickly confesses, "But then, I've never had one."

What he has instead is a real estate empire, which has grown during the past 57 years to include operations in Wisconsin, Hawaii, California, Arizona, Nevada, Texas, Florida, Indiana, and Illinois. Zilber is the chairman of Zilber Ltd., which includes Towne Realty Inc. "I believe we've got the best organization in the state of Wisconsin," Zilber said, adding he believes it might be the best in the country. His comments came during a recent interview in his Milwaukee office, the home base of his real estate operations. He now spends most of his time at his residence in Hawaii where he directs activities throughout the islands and spends hours on the phone every day with his mainland management team.

The business has come a long way since the days when Zilber began it in 1949. He sold his first house at 39th and Fairmount for $5,950. He actually lost $100 on the deal, but he learned a valuable lesson. "It taught me that you could not build one house and survive," Zilber recalled. "You had to build hundreds of houses—you had to build thousands of houses. So that's what I did."

Throughout the years, Zilber's company grew, always sensitive to changes in the marketplace and looking for new opportunities to be innovative and creative. From building homes for returning GIs in the 1950s, to owning a chain of movie theaters in the Fox Valley, to creating a publicly owned health care company, to creative remodeling of many of Milwaukee's most famous downtown office buildings, Zilber took on the challenges of virtually every phase of the real estate business. Today, the company is involved in significant residential and commercial projects nationwide.

Although the business lessons Zilber learned with the sale of that first home were significant, he says that he learned quite a few other important lessons, prior

to starting his business, both from his parents and from Marquette University.

Zilber is the son of Russian immigrants who taught him the value of hard work. His father, Sam, came to the United States in 1898. Two years later, his mother, Sonia, followed. His parents owned a grocery store, at what is now 10th and Meinecke, and he recalls his mother working from 6:00 in the morning until 11:00 at night. In addition to running the store, his father also worked with a horse and wagon, hauling scrap out of Nordberg Manufacturing Co. and then selling the scrap. That work ethic served Zilber well as he studied business administration at Marquette University during the late 1930s. He then went on to the Law School, where he graduated with a law degree in 1941. Zilber recalled working two jobs at a golf course and a grocery store while at Marquette, so that he could afford the $15 quarterly tuition. He remembered how significant it was when President Franklin D. Roosevelt set the minimum wage at 31 ¼ cents per hour. "I was making 25 cents an hour before that, so that was a big raise," Zilber said.

Although he was a Jewish student coming to a Jesuit institution, Zilber recalled Marquette providing a comfortable atmosphere where he could study business administration and law. The Law School provided an important lesson in how to think. Rather than insisting that answers to most legal questions were "right or wrong," the professors were looking for him to be able to articulate and defend the positions he took, Zilber recalled. One of the law school instructors, who continues to stand out in his memory, was Dean Francis X. Swietlik. In the end, Zilber graduated at the top of his class. "I received a great education at Marquette," Zilber observed. "It was more than I could have hoped for."

Throughout the years, Zilber has maintained lasting relationships with each of the presidents at Marquette, including the late Rev. John P. Raynor, S.J., and, for the past decade, Rev. Robert A. Wild, S.J. "When we have an important family or business gathering, Father Wild is there as part of my greater family to give the blessing along with my Rabbi," Zilber said. "It's always been that way."

Zilber formed his most significant relationship while at Marquette, when he met his future wife, Vera. She transferred to Marquette intending to study medicine, but the two fell in love and were married in 1942. They had three children and enjoyed 61 years together until Vera passed away in 2003.

Sign in Joe Zilber's Milwaukee office

Despite his outstanding law school performance, Zilber was rejected by a local law firm. With that, the course of Joe Zilber's life changed. He went to work as a broker for George Bockl's real estate company. During World War II, Zilber joined the military and served in Army Air Force Intelligence. In 1944, he started a real estate company with another former Bockl employee. Five years later, he went off on his own and started Towne Realty at 12th and Vliet in Milwaukee. Nearly six decades later, he has managed the ups and downs of the real estate market and built his business into a company with more than 1,000 employees. Dozens of those employees, he notes, are Marquette alumni.

In addition to looking for people who have a vision of the future, Zilber looks for his employees to have good family relationships. Once they join his business, he considers them as part of his family. Looking at their own family dynamics is important to him.

"We are a family," he explained. "I like to look at everyone in this organization as part of my family."

Zilber's success has enabled him to give something back to the community and to others. He and his late wife created the Joseph and Vera Zilber Family Foundation, Inc., which provides charitable contributions in a variety of areas. Working in conjunction with Aurora Health Care and the College of Nursing at Marquette, the charitable foundation helped develop an innovative hospice in Wauwatosa that provides end of life care for adults and children in the same facility. The Foundation has also provided strong financial support to Congregation Emanu-El B'ne Jeshurun.

"I received a great education at Marquette. It was more than I could have hoped for."

Zilber's charitable activities have placed a strong emphasis on his alma mater as well. Since 1984, he has funded scholarships for Marquette students. During that time, he has awarded scholarships to 217 law school and 94 business school students, an activity he views as investing in people. "The students needed financial help, and I wanted them to have the same opportunity I had," Zilber said.

Although he never used his degree to practice law or try cases, Zilber said, it was a valuable educational experience, which helped him in his business. "I actually could read contracts and that helped me cope with business situations," he said. "Where otherwise I would have had to hire lawyers in the early days, I was able to do it all myself. As we have grown, we have created an unbelievably effective, internal legal staff (all Marquette Law School grads) and if needed, we go outside for specialized assistance." In the end, the undergraduate and law school experiences served him well. "Marquette was as good a school as I possibly could have wanted," Zilber said.

JENKINS

Moot Court Competition

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

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

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

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

"Initially, our desire was based as much on an intuition—that this was the sort of thing a law school should do—as on an articulated sense," Kearney said during an interview. "In working with the faculty during the 2004–2005 academic year, it became clear to all of us why we should do it and what it should look like."

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

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

The team of Joseph M. Peltz and John R. Rather took top honors in Marquette University Law School's Jenkins Moot Court Competition. Peltz and Rather competed against Daniel J. Chapman and Jason E. Kuwayama in the final round of the competition, held April 4 in the Ceremonial Courtroom at the United States Courthouse in Milwaukee.

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

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

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

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

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

Faculty Leadership

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

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

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

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

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

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

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

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

A Two-Pronged Program

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

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

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

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

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

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

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

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

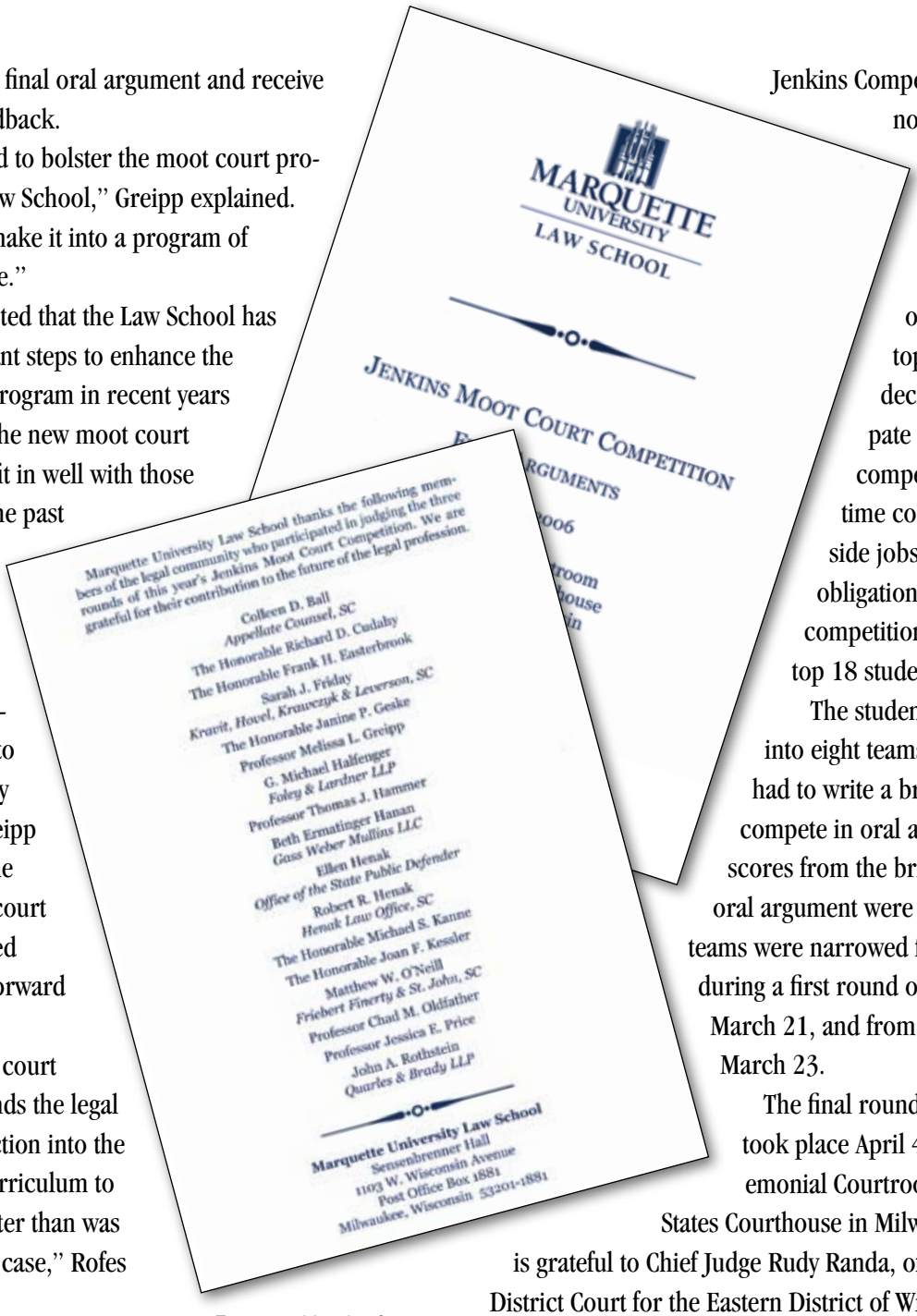
- Michael D. Aiken
- Amanda J. Ault
- Eric M. Aschenbrenner
- Eric A. Berg
- Jesse B. Blocher
- Kristin J. Eisenbraun
- Garet K. Galster
- Randall H. Green
- Aaron E. Hall
- Kyle R. Hartman
- Aileen G. Henry
- Jeffrey F. Herbert
- Michael T. Hess
- Rex R. Holmes
- Carrie E. Lerand
- Kyle A. Lindsey
-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

a practice and final oral argument and receive additional feedback.

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

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

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



Front and back of program from final round of Jenkins Competition

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

The Jenkins Moot Court Competition

The students in the class were evaluated on the basis of their brief and oral argument, and the top-ranking students were eligible for the 16 positions in the spring Jenkins Competition. Although no academic credit was associated with the Jenkins Competition, only two of the top 16 students declined to participate in the moot court competition, citing time conflicts with outside jobs and law school obligations. Therefore, the competition drew from the top 18 students in the class.

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

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

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

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

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

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

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

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

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

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

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

Support from the Profession

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

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

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

Beyond the Inaugural Year

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

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

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

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

Faculty profile of

ANDREA SCHNEIDER

A journey to here

BY CHRISTINE WILCZYNSKI-VOGEL

When Andrea Schneider (then Andrea Kupfer) left Pittsburgh to go to college, she had no idea that she would end up moving to the Midwest as a law professor (let alone that somehow in the Midwest she would be back in Big East territory). Schneider went to school at Princeton University, graduating with honors in 1988. After a year working in Germany, she returned to go to law school at Harvard. With work experience in both Germany and France, she planned to become an international corporate lawyer.

That plan, however, came to a screeching halt after Schneider took Negotiation her first year of law school with Roger Fisher, the author of the international bestseller, *Getting to Yes*. By the time she was a teaching assistant her second year of law school and working with the Program on Negotiation at Harvard, her plans had changed dramatically. As Schneider put it: "When I was teaching negotiation—and even working 12 hours a day at it since it was taught every day for three weeks during an intensive January session—it was still the most interesting thing I had ever done. I realized that I wanted to become a law professor."

One of the traditional routes to teaching, Schneider was advised, was a clerkship with a prestigious judge. So Schneider accepted an offer to work for Judge Irving Kaufman on the Second Circuit. "I thought that he would be interesting to work for, as he had written a very famous international law opinion (*Filartiga v. Peña-Irala*) and also had helped establish the Second Circuit's dispute resolution program." Unfortunately, Kaufman died in March of Schneider's third year of law school. It was too late to find another clerkship for that fall, and even the clerkships for the next year had already been filled. "I thought that all of my plans were going to be ruined."

Instead, upon hearing that Schneider was now available, Professor Robert Mnookin offered her a teaching post as a lecturer at Stanford Law School. That year cemented Schneider's interest in teaching and, even though she returned to the east coast to work at a Washington, D.C. law firm for two years, she knew she would be on the

teaching market soon. After a year visiting at the Elliot School of International Affairs at George Washington University, Schneider joined the Marquette faculty in 1996.

Schneider's specialty is negotiation and dispute resolution, a subfield that 20 years ago was struggling for acceptance in law and legal education but today is increasingly recognized as central. In an era when nearly 900 courses in her field are offered in American law schools and when the trial rate in federal courts has fallen to 1.8 percent of cases filed, it could hardly be different. Schneider, along with Professors Janine Geske and Jay Grenig, has created a nationally ranked dispute resolution program at Marquette.

In addition to an array of courses and other opportunities, Marquette's program includes participation in ABA competitions, and in recent years the school has seen its mediation teams place first, second, third, fourth, and tenth in various national competitions. This past January a Marquette Law School team placed third in the first international mediation competition sponsored by the International Chamber of Commerce in Paris.

As the dispute resolution field has exploded, Schneider has been there to write about it at a furious pace. She is coauthor of two books with Harvard's Roger Fisher and three more with Georgetown's Carrie Menkel-Meadow.

Schneider maintains a broad view of what is important to law. In addition to negotiation and dispute resolution, Schneider teaches and writes on international relations, and her first book, which started as her senior thesis at Princeton, was an analysis of how the political/artistic process that established the Musée d'Orsay revealed the tensions at the heart of culture in France.

More recently, Schneider's curiosity about how different fields link together has been reflected in her primary field, in which she is about to publish (with her co-editor Christopher Honeyman, a private conflict-management consultant) a comprehensive book for the American Bar Association in the fields of conflict management and negotiation.

The *Negotiator's Fieldbook* includes, for example, Schneider's own second look at the negotiation behavior of lawyers, a subject on which she previously published a major study of Chicago and Milwaukee attorneys. The first study showed that even in Chicago, a setting notorious for its rough-and-tumble practice (think of the lawyers in the musical *Chicago!*), most lawyers were better off—and their clients did better—if the lawyers could establish a reputation as being exacting on the facts but cooperative in seeking ways of benefiting both sides in negotiations.

"I viewed my study on negotiation as a way of finding out whether the theory we are teaching in class actually works once our students start practicing," said Schneider. "The good news is that, in fact, taking a problem-solving approach tends to work. This is empirical evidence for what I have been teaching in class."

Schneider takes this research a step further in a new chapter for the *Fieldbook* by coauthoring with two people from contrasting professional experiences. Writing with Catherine Tinsley, a professor at Georgetown's business school, and Jack Cambria, commanding officer of the Hostage Negotiation Team of the New York Police Department, Schneider has written the "Reputation" chapter in the new *Fieldbook*. This joint effort examines tightly controlled laboratory research and the life-and-death cases faced by hostage negotiators, alongside Schneider's law-derived research. The authors suggest that it now appears that establishing a good reputation matters immediately even in the proverbial "one-shot" matters, such as insurance cases.

The *Fieldbook* also includes contributions from an array of other disciplines and fields not normally combined in a book published by the American Bar Association, including chapters by a former United States ambassador, an Australian Aboriginal mediator, and a team of social psychologists from Columbia University and the Warsaw School for Social Psychology, doing groundbreaking work on intractable conflict. The *Fieldbook* includes a unique lineup of 80 scholars and practitioners.

Schneider and Honeyman recently conducted the first daylong advanced training based on the book, for a distinguished group: the 45 circuit mediators who work for the federal courts of appeals across the United States.

These mediators have shown interest in working with Schneider on further research: Because they conduct much of their mediation by telephone, the circuit mediators are interested in how that changes the dynamics of mediation, or what adjustments in style and methods might be most helpful to the parties when the mediator is constrained from meeting with them in a room. Schneider also has worked with and trained many others about negotiation and mediation, including groups for Wells Fargo, Worldcom, and Oracle, as well as law firms and bar groups around the country.

Schneider is busy even independently of all this. She and her husband, Rodd, who is a lawyer for Northwestern Mutual, have three young sons, and they are active in the Milwaukee community. Although she declined to acknowledge that her professional work gives her an advantage, Schneider did allow, with a smile, that the family's busy schedules leave much room for negotiation at home. •

"I viewed my study on negotiation as a way of finding out whether the theory we are teaching in class actually works once our students start practicing. The good news is that, in fact, taking a problem-solving approach tends to work. This is empirical evidence for what I have been teaching in class."

An interview with

MICHAEL O'HEAR

A year after Booker—has anything changed?

In its January 2005 decision in *United States v. Booker*, the Supreme Court held that the existing federal sentencing guidelines system was unconstitutional. Greeted with a mixture of excitement, confusion, and consternation, *Booker* quickly spawned a host of conflicting lower court decisions, outspoken criticism from Congress and the Department of Justice, and a small mountain of law review articles. In this Q & A, Marquette Law School Professor Michael M. O'Hear, a nationally recognized expert on federal sentencing, talks about the aftermath of *Booker*.

What exactly did the Supreme Court decide in *Booker*?

In 1984, Congress created the United States Sentencing Commission and authorized the Commission to promulgate new guidelines that would bind federal judges at sentencing. Prior to the guidelines, federal judges had virtually unlimited discretion to sentence within broad statutory ranges, giving rise to concerns over unwarranted disparities in the treatment of similarly situated offenders. The new guidelines system, however, proved equally controversial. While many states have since adopted sentencing guidelines, no jurisdiction has guidelines that are as voluminous, complex, and rigid as those in the federal system. The guidelines specify precise weights to be given to thousands of different sentencing factors. If there are any disputes relating to those factors, the sentencing judge does whatever fact finding is necessary using the preponderance-of-the-evidence standard.

Before *Booker*, the Supreme Court had upheld the guidelines system against a variety of constitutional challenges. In 2000, however, the Court opened the way for a new line of attack. That year, in *Apprendi v. New Jersey*, the Court invalidated a sentence under a state hate crimes statute that—like hundreds of thousands of federal sentences since the 1980s—was also based on judicial fact finding using the preponderance standard. The Court held that the hate crimes sentencing scheme in New Jersey violated the defendant's constitutional rights to jury fact finding using the beyond-a-reasonable-doubt standard. In essence, *Booker* simply extended *Apprendi* to the federal system, holding that (subject to a few exceptions) only a jury may find the aggravating facts that increase a defendant's sentencing exposure pursuant to mandatory guidelines.

So juries now have a role in federal sentencing?

You would think that, but no. The Court was badly divided in *Booker* and its companion case and, oddly enough, produced two different 5–4 majority opinions. Only Justice Ginsburg joined both. The first, referred to as the "merits opinion," held the pre-*Booker* system unconstitutional. The second, referred to as the "remedial opinion," fixed the constitutional problems not by mandating jury fact finding, but by excising two provisions from the 1984 Sentencing Reform Act. As a result of these statutory changes, the federal guidelines have been transformed from mandatory to "advisory" (that is, non-binding). Under the new system, judges still perform all of the fact finding they used to do, but—under the Court's reasoning—the Constitution is not violated because the finding of an aggravating fact no longer results in an automatic increase in the sentence length to which a defendant is exposed.

If all of this sounds bizarrely incoherent to you, believe me, you are not alone. Think about it. The pre-*Booker* system was overturned because it gave judges too much power relative to juries. And the remedy was . . . to keep juries out of the process and give even more power to judges!

Does this mean that we have returned to the bad old days of unlimited judicial discretion at sentencing?

No. In fact, while *Booker*'s logic may be far short of compelling, the system produced by *Booker* embodies just the sort of balanced approach to judicial discretion that most sentencing scholars favor: more flexible than the old mandatory guidelines, but with clearer benchmarks and more rigorous procedures than the pre-guidelines system.

For instance, while the guidelines are no longer strictly binding, the Court left in place a provision of the Sentencing Reform Act that requires the sentencing judge to "consider" the guidelines. As the courts of appeals have indicated after *Booker*, this means that the sentencing judge must generally still calculate the guidelines sentence and explain any variance from it. Moreover, sentences may be appealed by either the defendant or the government, and overturned if "unreasonable."

What would make a sentence "unreasonable"?

Unfortunately, *Booker* had almost nothing to say about this, leaving a difficult question in the hands of the lower courts. More than a year later, the case law is still evolving, but some notable patterns are emerging. For one thing, it appears that a sentence within the guidelines range will rarely, if ever, be found unreasonable. Indeed, several circuits have explicitly recognized a "presumption of reasonableness" as to guidelines sentences. On the other hand, the appellate courts have already overturned numerous outside-the-guidelines sentences. Some of these decisions seem to suggest that a "variance" will always be found unreasonable unless the district court identifies something factually unusual about the case that would justify a non-guidelines sentence.

Some commentators are troubled by these trends in the courts of appeals, which seem to treat the guidelines as very nearly mandatory. Arguably, the courts of appeals have already gone a long way towards undoing *Booker*.

Have actual sentencing results been affected by *Booker*?

Yes, data collected by the Sentencing Commission suggest that *Booker* has already affected many thousands of federal sentences. At the same time, it is hard to say whether *Booker* has really produced the sort of revolution in federal sentencing that was feared by some and eagerly anticipated by others. For one thing, most of the data reflect sentences imposed before the emergence of the "reasonableness" jurisprudence discussed above. For another, the number of *Booker* variances is still dwarfed by the number of within-the-guidelines sentences. Indeed, the number of *Booker* variances is also exceeded by the number of variances on grounds that were recognized even before *Booker* as valid bases for a below-the-guidelines sentence, such as providing substantial assistance to the authorities in apprehending another offender. In all, about 62 percent of post-*Booker* sentences have been within the guidelines, as compared to about 69 percent in 2003, the last full year prior to *Booker* and *Blakely v. Washington* (a precursor to *Booker* that also affected federal sentencing practices in some districts).

In response to the data, some critics of judicial discretion in Congress and the Department of Justice have decried what they characterize as increased disparity and unwarranted lenience post-*Booker*. But the data are equivocal. On the one hand, the vast majority of *Booker* variances have indeed taken the form of reduced sentences below the guidelines range. On the other hand, the overall average sentence length has actually increased since *Booker*. It is not entirely clear why sentence lengths have been increasing, but, in light of the trend, it is hard to conclude that *Booker* has substantially impaired federal crime-fighting capabilities.

Does *Booker* have implications for criminal sentencing in state courts?

Not directly. *Booker's* most immediate precursor, the *Blakely* decision in 2004, had already suggested that many state sentencing schemes were in violation of the *Apprendi* principle. Because *Booker* itself focused on the unique history and structure of the federal system, the later decision added little to the analysis at the state level. *Blakely* issues are still being litigated in many state courts across the country, and the process of bringing all jurisdictions into compliance with *Apprendi* may yet continue for several years. Here in Wisconsin, though, we had an advisory guidelines system in place even before *Booker*. As a result, our own state courts will not likely be much affected by the *Apprendi/Blakely/Booker* trilogy.

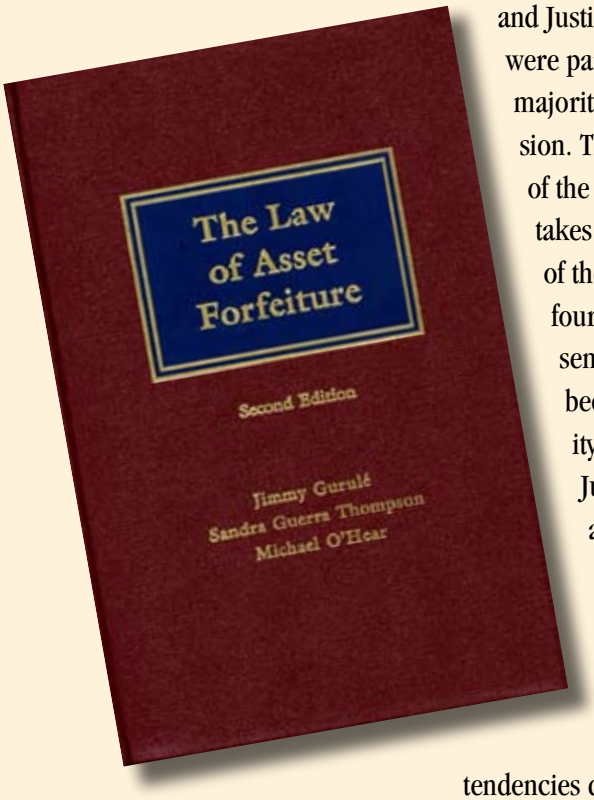
How will Congress respond to *Booker*?

The Attorney General and the Chairman of the House Judiciary Committee have both been outspoken critics of post-*Booker* sentencing trends. Given their views, as well as the typical dynamics of tough-on-crime politics in an election year, it is possible that Congress will take some action in the next few months to address the increased rate of below-guidelines sentences. For in-

stance, one proposal would convert the guidelines into a system of mandatory minimum sentences. This proposal would take advantage of a curious loophole in the *Apprendi* rule: under the Supreme Court's decision in *Harris v. United States* in 2002, the requirement of jury fact finding does not apply to mandatory minimums.

With its two new additions, will the Supreme Court now change course in sentencing law?

Although *Apprendi*, *Blakely*, and the *Booker* merits decision were produced by slim 5–4 majorities, all will likely withstand the recent changes in the Court's personnel. The two departed justices, Rehnquist and O'Connor, were dissenters in all three decisions, so their replacements—whose views on these matters remain uncertain—are unlikely to tip the Court's balance of power. On the other hand, *Harris*, which recognized the exception for mandatory minimums, is in danger. Both Chief Justice Rehnquist and Justice O'Connor were part of a 5–4 majority in that decision. Thus, if either of the new Justices takes a different view of the issue, the four *Harris* dissenters might then become a majority. While Chief Justice Roberts and Justice Alito are expected to be relatively conservative jurists, such ideological tendencies do not play out in predictable ways in this area of the law. For instance, in *Harris*, Justice Scalia voted with the majority, but Justice Thomas sided with the dissent. In any event, if *Harris* were overruled, then Congress's range of options in responding to *Booker* would be substantially constrained.

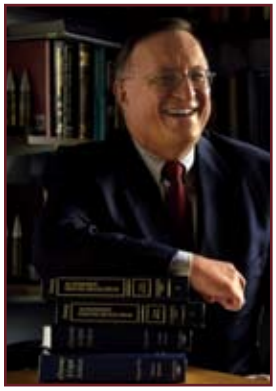


What have you been doing to participate in the national debate over *Booker*?

It's a great time to be a sentencing scholar. We are witnessing the most dynamic period in national sentencing law since at least the 1980's. I have been trying to do my part to help lawyers, policymakers, and the general public sort out where we are now and where we should be going. I have spoken to numerous bar organizations on both the national and local level. I have written op-eds for the *Milwaukee Journal Sentinel* and fielded many questions from reporters. I have presented papers on *Booker* at academic conferences sponsored by Cornell and McGeorge law schools. I also have two forthcoming law review articles on *Booker*-related topics. In my capacity as an editor of the *Federal Sentencing Reporter*, the leading journal in the field, I helped to produce two entire issues focusing on the aftermath of *Booker*. Finally, I authored a letter to the House Judiciary Committee on behalf of more than 60 criminal law professors from around the country in opposition to what we felt was an over-hasty and ill-advised "*Booker*-fix" bill last spring. Fortunately, hearings on the bill were canceled after the receipt of our letter and similar statements of opposition from several other organizations of lawyers and judges.

Like most sentencing scholars, I am of the view that the United States imprisons too many nonviolent offenders for too long, at too great a cost to society. The United States has by far the highest per capita incarceration rate in the Western world. The federal guidelines system—which, before *Booker*, was less flexible and more severe than any state guidelines system—had long been an important part of the problem. Thus, while I have criticized the Supreme Court's legal reasoning in *Booker*, I have also written favorably of the bottom-line result. The new advisory system gives federal judges at least a little bit more flexibility to do what we have long entrusted state court judges to do in Wisconsin and most other jurisdictions in this country: craft suitable alternatives to long prison terms in cases where imprisonment is not necessary to protect public safety. •

100—and counting



Professor Jay E. Grenig, with a handful of his 100 books.

During his first year on Marquette's faculty, back in 1980, Professor Jay E. Grenig published a book with West Publishing Co., directed at California education law. He had no doubt that there would be a second and a third—and even recalls that he "thought it might be nice to fill a bookshelf"—but even Grenig did not expect that, a quarter century later, he would find himself publishing his 100th book.

Grenig focuses on reference books for lawyers, and his topics range from alternative dispute resolution to worker's compensation to federal jury practice and instructions. According to Associate Dean Peter K. Rofes, Grenig has served—and has expanded upon—a Marquette Law School tradition. "The legal academy has at times been criticized for producing too many publications not likely to be of interest or use to the bench and bar," noted Rofes. "Whether or not that it is a fair criticism in general, no one would doubt that Jay's books are of considerable use to many practitioners in their daily professional undertakings."

Reaching out to other disciplines

Beth Conradson Cleary, L'05, and Professor Alison Barnes in Eisenberg Memorial Hall following the Law School's conference on the Medicare prescription drug benefit.

On April 20, the Law School hosted "The Medicare Prescription Drug Benefit: The Good, the Bad, and the Confusing," a daylong interdisciplinary conference held in Sensenbrenner Hall. In attendance were over 60 attorneys, pharmacists, physicians, and other health and social services professionals concerned about elders and people with disabilities eligible to enroll in the many new federally approved plans. The Medical College of Wisconsin and the University of Wisconsin–Madison School of Pharmacy collaborated with the Law School to provide a trifecta of continuing education credits. The Law School's Public Service Administrator for 2005–06, Beth Conradson Cleary, L'05, created the conference with the guidance of Professor Alison Barnes.

The conference gathered speakers and audience to assess the progress and problems with implementation of the first major new Medicare benefit in the program's 40-year history. Private drug plans administered by insurers and HMOs compete for selection by offering Medicare beneficiaries varying benefits at different monthly costs. Beyond the fundamental difficulty of identifying the best plan to meet an individual's needs, low-income elders and nursing home residents faced complex changes in their existing drug coverage. Most would experience financial penalties for failing to choose a plan by May 15, 2006.

Among numerous speakers, Washington-based Dr. Juliette Cubanski, Senior Policy Analyst at the Henry J. Kaiser Family Foundation, presented detailed information about experiences nationwide; a panel on the front lines of implementation, including a beneficiary whose long-term disabilities create critical pharmacy needs, assessed difficulties the panel members have faced; and Law School Adjunct Professor Jay A. Gold, M.D., J.D. (who also teaches at the Medical College), reviewed the feasibility of the underlying policy as a means to successfully help with drug costs. A health care analyst from Senator Herb Kohl's office took audience concerns back to the Senator.

Conference proceedings will be published in the Fall 2006 issue of the *Marquette Elder's Advisor*.

Excellence in University Service Award

Carol Dufek, the Law School's Facility and Event Coordinator, received this spring one of the two 2006 Excellence in University Service Awards for support staff. In announcing the award at a ceremony on April 18, the Provost of Marquette University, Dr. Madeline Wake, quoted one of the several letters in support of Dufek's nomination: "'Try to imagine being responsible for the welfare, comfort, and general happiness of nearly 700 law students, 100-plus full-time and adjunct faculty (remember we are talking about lawyers here), several dozen librarians, administrators, and support staff, in addition to the vendors, maintenance staff, delivery people, and guests who enter Sensenbrenner Hall at any time of the day or evening, seven days a week.'" The Provost continued: "I have just described Carol Dufek's job and, by all accounts, it's a job she does with unparalleled excellence."

As another nominator wrote, "The success of our great university depends on the accomplishment of thousands of small daily tasks. Carol Dufek performs many of these essential tasks in a quiet, professional manner." The Law School is fortunate in its association with Carol Dufek and congratulates her on receiving the 2006 Excellence in University Service Award.

Carol Dufek, Law School Facility and Event Coordinator, and Rev. Robert A. Wild, S.J., President, at the 2006 Excellence in University Service Awards Ceremony.

Marquette law student at the Grammys

Caz McChrystal, L'07, second from left, at ceremony in Los Angeles for a Grammy Awards-related writing contest.

Marquette law student Caz McChrystal found himself far from Milwaukee on February 8, 2006. He was a guest at the 48th Annual Grammy Awards in Los Angeles. This was part of McChrystal's prize as a finalist in the Eighth Annual Grammy Foundation Entertainment Law Initiative Writing Contest. His paper, "The Dissonant Tune of International Harmonization," written as part of his International Intellectual Property class at Marquette Law School, earned McChrystal a $1,500 scholarship, a trip to Los Angeles, and an invitation to the Grammy Awards ceremony and other Grammy and record industry events in California. McChrystal's paper has been published in the *Vanderbilt Journal of Entertainment and Technology Law* (available at http://law.vanderbilt.edu/jetl/articles/vol8no3/McChrystal.pdf).

"Caz demonstrated a very deep understanding of the law and the critical thinking skills of a future Marquette lawyer in his paper," said Professor Irene Calboli, who taught McChrystal International Intellectual Property during the fall semester of 2005.

Pay it forward

Integrity. Gratitude. Hard work. Faith.

These are attributes that **Mary Staudenmaier, L'71,** learned from her father, Louis W. Staudenmaier, a 1933 graduate of Marquette University Law School. She so greatly admired these guiding principles demonstrated by him that she established a scholarship in his name at the Law School, with hopes that others would turn out to be the kind of person that he was—albeit perhaps with fewer financial struggles than he had.

Louis entered Marquette University Law School in 1930, after completing three years of undergraduate studies at Marquette. Mary, his daughter, relates that he worked his way through law school, at one point selling his own blood to make ends meet. "Every six weeks or so, he could earn $25 for a pint of blood," she explained, "which was a lot of money back then. Well, he found a clerk willing to move his schedule up to every three weeks, so he was sometimes giving blood two times a month." It didn't take long before he got very ill and—in his own words shared in his memoirs—"almost cashed in all [his] chips."

Funds continued to be lean during Louis's law school years. "His parents were farmers and had plenty of food but not so much money," explained Mary.

A very disappointing turn of events—one that really impressed upon Mary the need for financial aid for law students—happened to her dad upon law school graduation. Louis was a very accomplished debate student with outstanding public speaking skills. He was chosen to give his commencement address for the Law School. But because he was unable to come up with the final $250 payment due on his tuition account in time for a pre-commencement deadline imposed by the president, a different speaker was selected. "It turned out that a pal of his cut a check for him, and he was able to graduate," said Mary.

> ***"I am proud of what my dad accomplished in his career and am very cognizant of the fact that he needed help to get through school, just like many other students do today."***

This prompted Mary to do something constructive to honor her father, instead of holding a grudge or exacting revenge on the president's office of long ago. "I wanted to acknowledge students who are struggling and help them out so they didn't meet with the same struggles as my dad did." This is how the Louis W. Staudenmaier Scholarship Fund was born. Both Mary and her mom, Hilde (who recently passed away at 102 years old), have been generous

Mary, above, with her parents, Hilde and Louis

contributors to the fund, which was established in 1998, many years after Louis's passing. "I am proud of what my dad accomplished in his career and am very cognizant of the fact that he needed help to get through school, just like many other students do today."

Upon graduating from Marquette Law School in 1933, Louis landed a job—with the help of a Democratic congressman—examining abstracts for the Federal Home Loan Bank in Marinette, Wisconsin. "He was subsequently appointed Receiver for national banks, which introduced him to the banking industry in which he would spend his remaining professional career," Mary explained. "As Receiver, he would go to the failing banks and evaluate whether or not the institution could be reopened," she said.

"As these national banks folded during the '30s, my father would often forward large wooden boxes of documents from these institutions to himself at home so he could sift through information there, thereby limiting the time required away from his family. He actually learned the banking business by examining the papers in this manner," said Mary. In the early 1950s, a local bank invited him to serve on its board of directors. Two years later, when the bank's executive officer died, Louis was asked to step in as executive vice president, while also maintaining his (mostly probate work) law practice.

Louis also dabbled in politics early in his career. He was elected and served a two-year term as assemblyman in 1934, defeating a longtime Republican assemblyman in a county that had always voted Republican. He also ran once for district attorney (losing by a mere 250 votes) and considered a run for state senate, but decided that the expectations others would have of him—and the sometimes mudslinging nature of politics—wouldn't allow him to live the life he intended.

Along the way, Louis married Hilde, in 1935, and together they had four children, three of whom were educated at Marquette for college or law school (all except for Mary's brother John, who is a Jesuit priest). "We think Marquette did a great job in educating all of us!" said Mary.

Like father, like daughter

Mary's career path followed those of both of her parents: "My mom was a math teacher and my dad a banker, and I have done both," she noted with a smile.

While her dad was getting more involved in the banking industry, Mary was attending college at Mount Mary in Milwaukee, all the time keeping the thought of law school in the back of her head. Her brother, Bill, graduated from the Law School in 1961. After teaching high school math in Milwaukee for six years, Mary changed careers and accepted a position with First Wisconsin Trust Company. She soon realized that she would need a law degree to progress to a meaningful level in that arena.

"So I went to law school, part time the first year, and I was one of only three women in my class at that time." In 1970, while still in law school, Mary began work with American City Bank. She was now working full time and attending law school full time. Mary went to school from

8 a.m. to 3 p.m. and then worked from 3:30 p.m. to 9:30 p.m. "I went home to study, sleep, and then get up and do it all over again."

Her diligence was worth it. Mary graduated in December 1971 and after working several years left American City Bank in 1975 as head of the Trust Department when it was taken over by Marine Bank. She then accepted a position with Heritage Trust Company and was named its vice president. In the early 1970s, her dad decided that the bank he was running in Marinette, the Stephenson National Bank, should have a trust department—and that he knew just the person to run it.

Mary served as trust officer for several years, commuting to Marinette for a monthly meeting until 1977, at which point the directors of the bank decided that she would succeed her father as president. In 1979, she was named president, and Louis moved to Chairman of the Board. Louis passed away in 1980 at the age of 74, and Mary stayed on at the bank, serving as its president until 2000, when she became Chairman of the Board.

While under Mary's leadership, the bank grew from $27 million in assets to $150 million, and now $200 million. She is enjoying semiretirement but remains very devoted to and involved in her community and serving its needs. Mary's philanthropy continues to extend to the Marquette community—perpetuating the legacy of her father, Louis. The Law School is grateful for Mary's support of its educational undertakings.

Louis W. Staudenmaier Scholarship Fund

As an endowed scholarship, the Louis W. Staudenmaier Scholarship Fund is intended to generate for the Law School in perpetuity scholarship awards of 5 percent of its annual value. The University's Office of Treasury Services oversees the management of such endowed funds.

The purpose of the Staudenmaier Scholarship Fund is to provide financial assistance to students at Marquette University. First preference is given to students enrolled in the Law School who demonstrate academic excellence. In addition, special consideration will be given to those students who demonstrate commitment to public service and pro bono opportunities. In the unlikely event these qualifications cannot be met, the second preference is to benefit exceptional undergraduate students in the J. William and Mary Diederich College of Communication (specifically in Journalism or the Performing Arts). Since its inception in 1994, thirteen Marquette University Law School students (several are now alumni) have received a total of more than $26,000 thanks to the Louis W. Staudenmaier Scholarship Fund.

John Novotny, Director of Advancement for the Law School, noted that Mary Staudenmaier and her late mother (by way of her will) each made additional contributions to the fund in the fiscal year just concluded. "As a result," he said, "there will be more resources made available to students in academic year 2007 and beyond.

"We want to underscore our gratitude to Mary and her late mother on behalf of our students. This scholarship is a wonderful tribute to her father—one that has a positive impact on the recipients. Without question, this scholarship is an important lasting resource. It assists us in our mission to better prepare future Marquette lawyers and thus contributes to building the profession," he added.

For more information about how to establish an endowed scholarship in honor or memory of someone, please contact John Novotny at (414) 288-5285 or john.novotny@marquette.edu.

Not (altogether) your

It may seem for Jessica M. Swietlik, L'06, Emily F. McNally, L'06, and Katie (Germanotta) Boycks, L'00—as well as many of their contemporaries—that being a Marquette lawyer has been hard-wired into their genetic codes. They represent a growing number of second-, third-, and even fourth-generation Marquette lawyers, who are now as likely to be the daughters of Marquette lawyers as sons.

The diplomas and the quality of education of recent grads may resemble those of their parents and grandparents before them, but they often find, upon comparing notes with their parents, that their experiences were different.

father's law school

Some Swietliks pictured in the early 1980s: Francis, L'14; John, L'56; John, Jr., L'84; Jessica, L'06

It's in Their Blood

Consider Jessica Swietlik, who comes from a long tradition of Marquette lawyers. Jessica's great-grandfather, Francis X. Swietlik, was a 1914 graduate of the Law School and served as Dean of the Law School from 1934 to 1952. His son, John M. Swietlik, was a 1956 graduate of Marquette Law School. The third generation is represented by Jessica's dad, John M. Swietlik, Jr., a 1984 graduate.

Dean Francis X. Swietlik in 1934

"I guess it's just in my blood," said the younger John. "My dad and uncles went to Marquette Law School, and it was never an issue of where I was going." John said his dad's influence made a big impression on him. "He was, in my opinion, one of the best trial lawyers in the state of Wisconsin." He recounted his father's experience at law school and acknowledged an even greater transformation in the time that transpired between his own education and his daughter's. "There isn't mandatory attrition any longer," he explained. "The old 'look to your left, look to your right, one of you isn't going to be here in a year' lecture is no longer given." He credits a well-executed selection and admission process that yields students most likely to succeed.

John recounted moments of pressure and near-fear during his days of law school in the early 1980s. He noticed that his daughter Jessica, who graduated this past May, had a much different experience. "She loves the school and enjoyed it," said John. Jessica agreed and added, "There is a wonderful support system here at Marquette."

One thing that hasn't changed is the quality of the education. "The education at Marquette is very practical," said John. "The curriculum is geared toward going out and practicing law." And that is exactly what he did. Immediately after graduation in 1984, John went to work for a short time in Janesville at a general practice firm. He came back to Milwaukee in November of 1984 and joined Cook & Franke, where he practiced defense litigation for 16 years. In January 2000, he joined Kasdorf, Lewis & Swietlik in Milwaukee—the firm from which his father recently retired as the senior partner.

As for Jessica, she has her whole professional career in front of her. Born during her dad's law school orientation,

John Swietlik and daughter Jessica Swietlik

it is only fitting that she now has added her name to the long list of Swietliks who have passed through the halls of Marquette.

Jessica is the oldest of four children of John and Sandy Swietlik, who is a teacher. Jessica acknowledges that the single most important thing she learned during law school is this: "My parents were right: Education will open many doors for you." While in law school, she had the opportunity to be involved in two national moot court competitions and also worked as a research assistant for Professor Jack Kircher, L'63, in addition to volunteering at the Marquette Volunteer Legal Clinic. She now works at Simpson & Deardorff in Milwaukee and looks forward to the opportunity to help others. "That's what good lawyers do," she said.

Coming Home

When Emily McNally was considering going to law school out of state, her dad, John F. McNally, L'71, helped persuade her to change her mind. "Conversations with my dad and other alumni made me realize that connections with members of the Milwaukee and Wisconsin legal communities are vital," explained Emily.

John McNally's dialogue with his daughter came from the heart because of the significant changes that had been made in the curriculum and methods over the years. "Today, I think that the students have much better and closer relationships with the faculty," John explained.

Emily agrees that times have changed since her dad was in law school in the 1970s. "There are several opportunities available to students today that were not available when my dad was in law school. Back then, I think the curriculum was very straightforward and that it was difficult, if not impossible, for a student to stray from the core classes or to specialize in any particular area of law," she said. "Today, the Marquette law student can sample a wide variety of courses and can specialize in certain programs, such as sports law or intellectual property." Workshops offered by the Law School, such as trial advocacy and pretrial practice, help specifically to prepare the law student for the practical aspects of a legal career. "In addition," she said, "I believe that the clinics, judicial internships, and supervised fieldwork programs provide students with the opportunity to gain a wealth of practical knowledge and

John McNally and daughter Emily McNally

legal experience, while simultaneously building their resumes and lists of references."

The course charted by her father—as well as her maternal grandfather and several aunts, uncles, and cousins—has been rewarding to Emily. She is glad she followed in their footsteps, but is ready to blaze her own trail. Having graduated from the school in May, Emily plans on pursing a career in litigation. She began work as an associate at Peterson, Johnson and Murray, SC, in July.

John McNally has been practicing law at McNally Law Offices, SC, in Milwaukee for 33 years (after working for two years as an assistant district attorney in Milwaukee). The family tradition may continue further. John and his wife, Susan Jones McNally, have been married for 32 years, and Emily is the oldest of their six children.

John Germanotta and daughter Katie Boycks

Opportunities Abound

John J. Germanotta has been practicing law for 35 years, most of that time on Milwaukee's East Side at the corner of Farwell and Brady. John and his wife, Mary Ellen, have three grown children.

A 1971 graduate of Marquette Law School, he says that he has some perspective on his legal education. Although he recalls the sometimes-intimidating style of teaching, Germanotta is grateful for the education and experience he received. "Attending Marquette Law School allowed me to see firsthand the operation of the legal system because of its close proximity to both the state and federal courts."

Throughout his years of practice, John has hired two Marquette graduates and has had numerous interns work at the office. "They have all done well, and I have been impressed," he said—impressed enough that he highly recommended Marquette to his daughter, Katie, when she was contemplating her legal education options.

"My dad played a significant role in my decision to attend Marquette," said Katie (Germanotta) Boycks, who graduated from Marquette Law School in 2000. "He has always loved what he does, and I viewed his career as stable and respected—something I wanted for myself as well."

Katie, who is married and has a one-year-old daughter, works in Madison as the Director of the Wisconsin Association of Life and Health Insurers. "My legal training is useful to me every day," she said. "I like being an advocate for the association's members when I am working with the Wisconsin legislature, and I enjoy playing a role in the making of policy."

Katie remembers fondly her law school days, which she thinks differed quite a bit from her father's experience. Katie said that the biggest difference she perceived was that the professors and administration seemed aware of other matters in the students' lives. "They understand that some students have families, hold full-time jobs while attending law school, or are working toward another degree simultaneously. They didn't expect us to put all other aspects of our lives on hold for three years," she said. John understatedly said, "I think today's students have more fun in law school!"

Everyone who becomes a Marquette lawyer joins a proud tradition, but it is an evolving one. The school has a different curriculum and emphases from even as recently as two decades ago, as undoubtedly will be true again in another 20 years. What has not changed are the efforts of its administration and faculty, by the best lights available to them, to strive to improve and make a positive difference in the lives of students so that the next generation of Marquette lawyers will continue the tradition to serve others. •

The Woolsack Society is the premier donor-recognition society for Marquette Law School. Membership in the Woolsack Society is available to those who donate $2,000 or more to the Law School on an annual basis or, in the case of recent alumni, an amount that is correlated to their year of graduation. The much-appreciated generosity of these and all other donors helps to ensure that Marquette Law School has sufficient funds to continue to build upon both its historic strongholds and its recent gains.

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Lisa Martinez
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David Matthew Naples
Onnie Leach Smith
Steven Lee Strye
Heidi L. Vogt
Thomas Edward Wallace

1991

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Tracey Stahl Johnson
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Luke Allan Palese
Jeffry J. Patzke
Karla Pankratz Ray
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1992

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Robert Michael Piette
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David A. Wolfe
Kristin Kaplan Wolfe

1993

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Meg Mulcahy Ekmark
Sheila Marie Gavin
Terry James Gerbers
Mary Miller Hamlin
Dawn Marie Piselli Harris
Maria Gonzalez Knavel
Mary Jane Koshollek
Colin M. Lancaster
Tia Tartaglione Lancaster
John M. Manion
Timothy Brett Melms
Cheryl Lee Mendelson
Todd Marshall Podell
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1994

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Richard M. McDermott
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Michael James Roman
Suzanne D. Strater

1995

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Scott Bradley Franklin
Karen Hohberger Gallagher
Jason Robert Handal
Elizabeth Chan Kastenberg
Steven William Keane
Erik George Milito
Elise Marie Neils
John Harold Pellmann
Erik Chad Peterson
Edward Pichardo
Brian Paul Rohde
Timothy Jon Schumann
Pamela Craigo Vining

1996

Richard William Abraham
Brendan James Dillmann
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Paul William Griepentrog
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Gregory John Heller
Joshua E. Kastenberg
Maureen Morris Martinez
Maureen W. Shealy
Eric Jenal Skonnord
Guy Anthony Talia
Joel Bern Teitelbaum
Andrew Aaron Van Sickle

1997

Nancy Kathleen Cuozzo
Robert Francis Jacobs
Scott C. Lascari
Martin Todd Lundquist
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1998

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Joanne Lipo Zovic

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Julie Johnson Duquaine
Sarvenaz L. Fahimi
Cory Ellen Flowers
Michael John Francis
Geoffrey James Gnadt
David William Judeika
Katherine Lucas Kuchan
Susan Ursula Ladwig
Kristin Kabat Langhoff
Rebecca Susan Lindner
John S. Parzych
Robert John Pluta
Matthew T. Scodellaro
Adam Omar Shanti
Rebecca Pilgrim Tylinski

2002

James D. Beck
Mary JoAnn Beer
Aaron Jacob Bernstein
Shannon Marie Elliott
Debra Noriene Fohr
Rosalie Schlitz Gellman
Maria Cecilia Guiao
Thomas M. Hruz
Robert W. Kiefaber
Jamie L. Kratz-Gullickson
Peter J. Kujawa
M. Scott McBride
Jeffrey Brian Norman
Elaine Marcela Olson
Mark Andrew Peterson
Karin Anderson Riccio
Chad J. Richter
Samuel Richard Taylor, Jr.
Gilbert Fielding Urfer

2003

Daniel Lavi Abelson
Stacy Elizabeth Buening
Robert Fredrick Dehring, Jr
Brett Alexander Eckstein
Nicholas Alexander Furia
Erin Katherine Grall
Rebecca Ann Holzhauer
William Bixby Hopkins
Nathan Keith Johnson
Lisa Marie Krueger
Carrie Strigenz Miljevich
Kathleen Healy Osland
Gretchen Grace Rosenke
Bryan Ronald Rosiejka
John Charles Schaak
Regan Ann St. Pierre
Brian P. Thill
Shelly Moore Trepanier
Monica L. Walrath

2004

Henry Martin Abromson
Jane E. Appleby
Brian Anthony Boerner
Timothy Joseph Casey
Jacqueline Renee Chada
Jason Donald Hermersmann
Kara A. Higdon
Marguerite Kopke
Hillary Marie Kowalski
Thomas Joseph Krumenacher
Tracy A. Paider
Cheryl Ann Perry
Deborah Jean Phillips
Bret Thomas Reese
Jacqueline Rogers
David Andrew Strifling
Thomas David Stuck
Matthew James Torbenson
Jeffrey Knight Welcenbach
Amireh Zeyghami Oettinger

2005

Abraham Agbozo
Donald James Alexander
Linda M. Annoye
Jason Barlow
Danielle M. Bergner
Beth Conradson Cleary
Lillie DeWitt Conrad
Anthony David Cotton
Bridgette DeToro
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Rudolph Joseph Kuss
Abraham Liebsch
Justin Charles Longley
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1958

Michael Patrick Murray recently published *Passion, Prose and Poetry,* a book of short stories and poems.

1965

Wylie Aitken, Aitken Aitken Cohn (Santa Ana California), was named a 2006 California Super Lawyer and made the 2006 *Lawdragon 500* list for leading litigators in America. Wylie made his name with landmark cases against Disney and State Farm.

1968

William A. Jennaro of Cook & Franke S.C., Milwaukee, was selected by his peers for inclusion in the most recent edition of *The Best Lawyers in America*.

1972

Timothy P. Crawford has joined by invitation the Council of Advanced Practitioners (CAP) of the National Academy of Elder Law Attorneys (NAELA). Tim is a past chair of the Elder Law Section of the State Bar of Wisconsin.

1974

William C. Gleisner, III, was named the *Robert L. Habush Trial Lawyer of the Year* at the 2005 annual dinner of the Wisconsin Academy of Trial Lawyers. He has coauthored a treatise with Professor Jay E. Grenig of the Law School, *eDiscovery and Digital Evidence*, which is published by Thomson-West.

1976

Greg Cook has opened a law practice in downtown Milwaukee which will concentrate in civil litigation. He will also offer his services as a mediator and arbitrator throughout the state.

Thomas Frenn, of Petrie & Stocking S.C., is Chair of the Editorial Board for the *Business Advisor Series* authored by various members of the Business Law Section of the State Bar of Wisconsin. This nine-volume book is being published by the State Bar of Wisconsin and contains an overview of business law for lawyers and businesses in the State. Tom coauthored the chapter on "Buying and Selling a Small Business" with Shawn Govern, L'91.

Part of the secret to professional success is being prepared, and according to **Tom Schendt, L'85,** that means having a strong foundation. And that, in turn, starts with meticulously placed elements that allow one to build and expand and grow.

Schendt began his "building project" back in the 1980s when he earned first a bachelor's degree in business administration with a double major and then an M.B.A., both from Marquette University. After earning these degrees, he moved to Washington, D.C., to work in a lobbying firm. "I quickly realized that a law degree was needed for the kind of work I wanted to do," he explained, so back he came to Marquette, this time to the Law School to add another vital building block.

While a student, Schendt worked at Reinhart Boerner Van Deuren in the employee benefits unit and then stayed on for two years as an associate, after earning his law degree in 1985. "That professional experience provided me valuable human resources experience as well as

TOM SCHENDT

opportunities to become more involved in the Milwaukee community."

But he was ready to make the jump back to D.C., to immerse himself again in the environment that had led him to law school. "It was more like a large leap," Schendt said. He joined the Internal Revenue Service in 1988 and spent ten years working in a variety of positions. This included work as technical assistant to the Associate Chief Counsel, Employee Benefits and Exempt Organizations. Schendt assisted in the coordination of national employee benefits litigation for the IRS. "I spent a good deal of time focusing on technical tax advice and preparing cases in litigation concerning employee benefits." He also acted as liaison between the IRS headquarters and various field offices. It was during this second move to D.C. that Schendt met and married his wife, Kristina. The two have been married 11 years.

Schendt then joined Alston & Bird's Employee Benefits and Executive Compensation Group. His practice focuses on employee plan litigation, agency civil and criminal audits, investigations and disputes, and voluntary compliance initiatives involving some familiar colleagues—the IRS, Department of the Treasury, Department of Labor, Pension Benefit Guaranty Corp., the Securities and Exchange Commission, and the Department of Justice.

Schendt says that one of the most challenging things he does is manage clients' expectations. "Solving the legal problem is only one aspect. The bigger issue is solving it in a way a client feels satisfied." He believes that his own human resources background has helped him immensely with his ability to take into account not only the legal issues but the personality of the client as well. "My word is my most important asset," he said, when asked the single most important thing he has learned in his professional career. "Following through on what I promise makes people feel comfortable that they can take me at my word without compromise. This is the best, most ethical service I can provide."

Schendt is deeply involved in outreach activities with the Law School and has been a steadfast supporter and friend. He is pleased with the Law School's efforts to reach out to alumni, especially, he added, "those like me who are geographically challenged." He finds the Law School deeply interested in improving.

"The most significant transformation I have seen at the Law School in recent years is its transition from an institution that always seemed very secure and self-fulfilling to another kind of institution—one that is willing to try to take several steps forward, one that is more self-critical, one that is reaching out to try to make advances even in areas in which it has less of a comfort zone." He is pleased that with these solid steps forward the school is clearly quite different but, at the same time, has retained its core values. "That is an art," he said.

The next natural step, it seems to Schendt, returning to his own metaphor, is for the Law School to expand its building blocks—its facilities. "This is a natural step in the maintenance and enhancement of the Law School," he said. "But I don't think that it will have to move back and forth between cities as I did."

Eric J. Van Vugt of Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in the most recent edition of *The Best Lawyers in America* for distinction in the practice of business litigation.

1978

Thomas D. Jacobs has established his own practice in Old Wethersfield, Conn.

1979

John Rothstein of Quarles & Brady LLP, Milwaukee, has been selected by his peers for inclusion in the most recent edition of *The Best Lawyers in America* for distinction in the practice of business litigation.

PAT PELLERVO

Patricia Wendlandt Pellervo, L'84, is a long way from where she used to call "home" and took a rather circuitous route to get there. By her own admission, her career so far has been rewarding, but "not because I had any sort of mapped-out vision as to where I would go." In fact, she said, never in her wildest dreams as a girl growing up in Milwaukee did she think she would end up in San Francisco as a partner at an accounting firm.

During her final year of law school, Patricia Wendlandt accepted a position writing corporate income tax regulations with the Internal Revenue Service Chief Counsel at IRS headquarters in Washington, D.C. "The assignment to D.C. was quite an adventure for me, as I had never even been there," she explained. It turned out to be life-altering, in a very good way: On her first day at the IRS in 1984, she met Duane Pellervo. They were married in 1986 and have one son, Evan, who is 14.

Pellervo said that the government provided a great learning environment for new attorneys and that she was able to settle into the tax area quickly. After completing her four-year commitment, she left the IRS to join PricewaterhouseCoopers (or Price Waterhouse, as it was then) in the mergers and acquisitions tax group, also in Washington, D.C. She was admitted to the partnership of this global accounting firm in 1998, with a practice devoted to consulting on tax aspects of corporate transactions for major companies throughout the United States.

In 2000, at PwC's request, Pellervo went from one coast to the other, relocating to the firm's San Francisco office. At that time, her husband also joined the firm, and they now have offices adjacent to each other. Her enthusiasm for her work is evident. "My clients and colleagues are generally very smart, and the transactions are very complex, so I have a lot of intellectual stimulation in my job," explained Pellervo. As with most professional careers, there are challenges as well as rewards. "The intricate rules in my specialty area within tax are like a puzzle—it is quite challenging at times to figure out how interrelated provisions

work together," she said. The depth and breadth of her experience have their benefits. "One of the most rewarding things to me is coaching/mentoring less-experienced professionals and helping them advance their careers."

Pellervo's professional life is rich and diverse. In addition to her job at PwC, she also has taught a master's tax class at the San Francisco campus of San Jose State University and is coauthor of the treatise *The Consolidated Tax Return: Principles, Practice, Planning*, currently in its sixth edition from Warren, Gorham and Lamont. Any free time she has is spent keeping up with her son's activities, enjoying family vacations, reading, and cooking, or with public service work. Pellervo is the treasurer of her church in San Francisco, and she and her family volunteer at a center for abused children.

Pellervo said that, when she came back to Milwaukee for her law school class twentieth reunion in 2004, she was surprised by the new look along Wisconsin Avenue. She hopes that the education has not changed too much. "I have very fond memories of working long hours on the *Law Review*," she said. "I think those hours really paid off in terms of enhancing my writing skills and attention to detail."

1987

Kimberly A. Hurtado, of Hurtado, S.C., in Wauwatosa, has been elected a Fellow in the American College of Construction Lawyers.

1989

James J. Andreucci, Jr. has joined Clifton Gunderson LLP as a tax partner in the Milwaukee office. Jim specializes in the domestic tax area and has significant experience in tax planning regarding acquisitions, dispositions, and reorganizations. Jim serves on the Board of Directors for First Stage Children's Theater in Milwaukee.

1990

Heidi L. Vogt is a shareholder at von Briesen & Roper, S.C. in Milwaukee. She practices in the litigation and risk management practice group.

1991

Shawn M. Govern is a shareholder in the Milwaukee law firm of Petrie & Stocking S.C. He concentrates his practice in the areas of civil litigation, business law for small and medium-sized companies, real estate, probate, and estate planning. He has coauthored, with Thomas Frenn, L'76, the chapter on "Buying and Selling a Small Business" in a nine-volume overview of business law being published by the State Bar of Wisconsin.

1992

Timothy S. Jacobson is executive director of the Mississippi Valley Conservancy in La Crosse, Wis. While a student at the Law School, he founded the Environmental Law Society and served as its president. Tim looks at this new position as a chance to continue working for the environment.

1993

Steven M. Szymanski has been elected a partner with the law firm of Weiss Berzowski Brady LLP. He advises clients on a wide range of business matters, including business formation, capitalization and governance, mergers and acquisitions, finance, taxation, succession and ownership planning, real estate, contract negotiations, and other corporate matters.

1995

Shawn M. Eichorst has been appointed by the University of Wisconsin-Madison as Senior Associate Athletic Director. Shawn's direct responsibilities will include sport oversight, governmental relations, trademark and licensing, contractual matters, strategic planning, liaison with campus administration and the Athletic Board, and athletic conference representation and special projects.

Susan Minahan Ruppelt is an associate in the Milwaukee office of von Briesen & Roper, S.C. in the sections for tax and for estate and trust planning and administration.

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RYAN KROMHOLZ & MANION

RKM. The sign proudly welcomes visitors, clients, and employees to a modern new law office located in Waukesha County on the west end of Capitol Drive in what used to be a farm field.

The initials represent Ryan Kromholz & Manion, S.C., a firm established by three Marquette lawyers—**Daniel D. Ryan, L'78, Joseph A. Kromholz, L'89**, and **John M. Manion L'93**—whose practice encompasses all areas of intellectual property, including United States and foreign patent, trademark, copyright, trade secret, and unfair competition law and related litigation.

What drew them to the partnership may have been, in part, a common alma mater, but what keeps them together is an obvious mutual respect. "I think the fact that Joe, John, and I have all been nurtured to some extent by the spirit and philosophy of Marquette Law School provides an unspoken unity of purpose and outlook on life that also unite us as friends and business partners," said Ryan.

Daniel Ryan

Daniel Ryan earned his bachelor's degree in engineering in 1969 from the United States Coast Guard Academy and served in the Coast Guard until he entered Marquette Law School in 1975. While in law school, he realized that he could merge his prior life experiences as an engineer with law by practicing patent law.

"I practiced patent law with Michael Best & Friedrich LLP for three years after graduation," explained Ryan, "then took an in-house corporate position with Baxter Healthcare Corporation in Deerfield, Illinois. I was a patent counsel for the company's blood-products/transfusion-therapies group and its dialysis products group." He spent seven years with Baxter and returned to Milwaukee and private practice in 1987. Ryan joined and later became the owner of a patent law practice, which was one-half of the breakup of the Wheeler Law Firm in Milwaukee.

This is when a remarkable aligning of circumstances wrote the script for what was to become RKM. "Unbeknownst to me, Joe Kromholz and John Manion had, in a parallel universe, become the owners of the other half of the Wheeler Law Firm," Ryan recalled. Kromholz and Manion competed with Ryan for several years. "Then, one momentous day, we started down a mutual courtship, which—a couple years later—resulted in the formation of Ryan Kromholz & Manion. Basically, we put the firm back together."

Ryan's expertise is in the technologies relating to medical products. "One of the rewarding professional aspects of my job is to talk with people whose lives have been transformed by the medical products developed by companies I've served. To see how medical products can change the quality of a person's life for the better is a humbling experience. It's also 'Jesuit' in spirit in a real-world way."

Ryan has been married to his wife, Mary, for 36 years, and they have two grown sons—Daniel and Sean. "The most rewarding experience in my life has been the unqualified support and love of my wife and children," said Ryan. "Nothing is possible without that."

Joseph Kromholz

After graduating from Carroll College in 1984 with degrees in chemistry and history, Joseph Kromholz decided to enter law school in pursuit of a legal career that would allow him to practice in the field of intellectual property.

In addition to being a registered patent attorney, Kromholz is in charge of the firm's litigation department. His more than 15 years of litigation experience has afforded him the opportunity to help clients enforce their patent rights as well as defend against charges of infringement. "We work not only to protect our clients' interests in litigation, but also to position our clients to avoid litigation in the first place."

Kromholz believes that those holding a law degree from Marquette have several advantages. "Marquette graduates are well respected in the community for their knowledge and understanding of the law, as well as their practical experience. This kind of respect and anticipation is very positive to those practicing law and has benefited our firm. I have benefited from this as well," he said.

"Marquette University Law School has a stellar program

Daniel Ryan, Joseph Kromholz, and John Manion

that encourages students to learn both from books as well as real-life experiences," he said. His own time as a law student was marked with several interesting experiences. "I recall that as a participant in the Legal Clinic for the Elderly, I was asked to defend an elderly man of limited means. A company was threatening to sue him and hold him responsible because he had signed for the delivery of an artificial limb to be temporarily used by his roommate, who died before it could be returned. I asked the company whether it would release my client if I told the company where it could find the limb. And, although they were not very happy to learn that the limb was buried with my client's roommate, they did release my client!"

Kromholz and his wife, Marjorie, have a four-year-old son who brings "great energy, curiosity, laughter, and joy" into their lives. "He challenges us each day with questions that require skill—and in some cases, research—to answer!"

John M. Manion

While John Manion was an undergraduate student in the Marquette University College of Engineering, he participated in the college's co-op program and worked with Briggs & Stratton Corporation. After graduating in 1989, he accepted a position with Briggs as a product design engineer. "Shortly thereafter," Manion explained, "I became acquainted with patents and the patent process. The idea of witnessing emerging technologies and working with others to help protect their discoveries and inventions was very appealing to me." It was then that he decided to attend law school.

During law school Manion worked as a law clerk at the Wheeler Law Firm. "Allan Wheeler became my mentor and taught me the practical aspects of patent and trademark prosecution. For this I will always be grateful." Upon graduation from Marquette Law School in 1993, Manion accepted a position as an associate with the firm, thereupon finding himself practicing with Wheeler & Kromholz in 1994, Wheeler Kromholz & Manion in 1995, and, finally, Ryan Kromholz & Manion, S.C. since 1998.

"Since that time, Dan Ryan, Joe Kromholz, and I have built our firm with a philosophy of bringing younger attorneys into the firm and making a significant commitment to each of them in terms of training. Marquette Law School has an outstanding intellectual property law curriculum, and the program and the quality of its graduates, who have immersed themselves in these courses, have certainly shortened the time it typically takes for a new attorney to become proficient."

Manion and his wife, Lorelle, have three young sons and they enjoy traveling and spending time with family.

RKM actively recruits law clerks and associates from Marquette University Law School, but that is not the extent of the firm's involvement in the school. Ryan, Kromholz, and Manion are all members of the Woolsack Society, and members of the firm have also found time to help prepare intellectual property moot court teams at the school. They may have graduated in three different decades, but each is committed to Marquette Law School today.

1996

Neil B. Posner has joined the Chicago-based law firm Much Shelist as a principal and head of the firm's growing Policyholders' Insurance Coverage Department. Neil was recently named a 2006 Illinois Super Lawyer in the insurance coverage category.

1997

Paul D. Bauer, specializing in commercial and securities litigation, **Patrick S. Nolan**, in products liability and toxic tort litigation, **Donald G. Radler**, in intellectual property law, and **Kelly H. Twigger**, in complex litigation, have been made partners at Quarles & Brady in Milwaukee.

Sean O'Donnell Bosack is a new shareholder at Godfrey & Kahn, S.C. in Milwaukee as a member of the Litigation Practice Group. He focuses his practice on complex business and corporate litigation.

Kurt D. Dykstra was named in January 2006 as a partner in the firm of Warner Norcross & Judd LLP in Holland, Mich. Kurt also is a lecturer in the Department of Economics, Management, and Accounting at Hope College and is active in Western Theological Seminary.

1999

Jeffrey E. Mark is an associate at von Briesen & Roper, S.C. in Milwaukee, practicing health and business law.

Jeff and Melissa Greipp celebrated the birth of their first child, Olivia, on November 20, 2005. Melissa is an assistant professor of legal writing at the Law School. Jeff is an assistant district attorney in Milwaukee and an adjunct faculty member at the school.

2000

Timothy B. Anderson became a partner at Remley & Sensenbrenner, S.C., in Neenah, Wis. in January 2006. Tim emphasizes a business-related legal practice involving business transactions, business formation, business litigation, construction litigation, collection, commercial and residential real estate, elder law, and estate planning.

2001

Adam Omar Shanti has joined Mayer, Brown, Rowe & Maw LLP in its Charlotte, North Carolina office, in the Finance Group.

2002

Jessica A. Abbott joined the firm of Schott, Bublitz & Engel, s.c., in Brookfield, Wis. She will continue to practice in all aspects of family and children's law, including Guardian ad Litem appointments.

Jeffrey B. Norman and his wife, Sharniecia Norman, M.D. (AS '97), announce the birth of their son, Kyle Amani Norman, on December 31, 2005.

Kelly A. Williams joined Flaster/Greenberg P.C., in Cherry Hill, N.J., as an associate in the firm's Environmental Law Practice Group. She concentrates her practice in environmental litigation and regulation, including complex environmental litigation in the state and federal courts of New Jersey and Pennsylvania.

2003

D. Alexander Martin has joined the Madison office of DeWitt Ross & Stevens as an associate. He has had an extensive practice in bankruptcy court hearings and creditor meetings and is active in the State Bar's Bankruptcy, Insolvency & Creditors' Rights section.

Kristin R. Muenzen lives in Arlington, Va., and is a trial attorney at the Department of Justice in the Land Acquisition Section. She previously clerked for the Hon. Christine O.C. Miller at the United States Court of Federal Claims in Washington, D.C.

Lisa A. Nester is an associate in the litigation department of the Milwaukee office of Reinhart Boerner Van Deuren s.c.

2004

Gwendolyn J. Cooley, Madison, Wis., joined the Wisconsin Department of Justice as an Assistant Attorney General specializing in antitrust and environmental law.

2005

Brandon A. Graef is an associate at Reinhart Boerner Van Deuren s.c., Milwaukee, in the Health Care Department.

Joseph A. Mohr won the First Prize in the Nathan Burkan Memorial Competition of the American Society of Composers, Authors and Publishers (ASCAP). His winning essay concerned the secondary copyright infringement doctrine. Joseph is currently practicing in Portland, Ore., with Kolisch Hartwell, P.C., specializing in patent prosecution and litigation.

This article appeared last year in the Chicago Daily Law Bulletin *and is reprinted with permission.*

by Patricia Manson

Thomas G. Aridas keeps his eye on the target.

Those who have worked with him say Aridas immerses himself in the job at hand with a single-minded dedication.

"He's a hard, hard worker," Commissioner Lula M. Ford of the Illinois Commerce Commission said of her former legal and policy adviser. "Once he gets on a task, he's relentless."

Attorney Kevin J. Conlon of Wilhelm & Conlon Public Strategies in Chicago had the same take on Aridas, who worked for Conlon when he had an employment law boutique.

"He has that focus that's like a laser beam," Conlon said.

Chicago attorney Scott C. Lascari of Gardner, Carton & Douglas LLP, says Aridas displayed that focus when the two men teamed up in law school in a national moot court competition in intellectual property law.

The two won the award for best appellee brief and went on to compete in the finals even though neither had taken a class in intellectual property, Lascari said.

He said he was not surprised that Aridas, the Commerce Commission's chief administrative law judge, has gone so far in his career.

"He will go the extra mile to put in the time and do what is needed to get the job done and do the job well," Lascari said.

Aridas, 33, grew up on the Northwest Side.

His parents, George and Toula, emigrated to the United States from Greece.

Toula Aridas still works as a seamstress out of the family's home, while George Aridas is retired after working in the restaurant business for 30 years.

"The Greek immigrant—the stereotype holds true there," Aridas said of his father. "He owned restaurants, sold them, worked in them."

Aridas's first job was as a busboy in one of his father's restaurants. He would rise at 4 a.m. to go to work in a kitchen where the temperature sometimes rose to 120 degrees.

Aridas said his father encouraged him to work hard—but to do so while following a different career path.

"I remember him telling me, 'You see this? You don't want to do this the rest of your life. Go to school. Go to school. Make something of yourself,'" Aridas recalled.

Aridas said his father's advice stuck.

"It's a lesson I never forgot," he said. "The thing about immigrants is, there are only two things that matter to them: the work ethic and education."

Aridas earned an undergraduate degree in political science in 1993 at DePaul University and then began his studies at Marquette University Law School.

Aridas said he choose a career in the law because "I'm a very competitive person."

"I really like the law because of the finality. It's a zero-sum game," he said. "You work hard and there will be a result at the end. Whether it's in front of a judge or a jury, there will be a clear win or loss."

And Aridas said an education comes with that win or loss.

"Every case is a new learning experience," he said. "You're always challenged."

While in law school, Aridas spent a year working as an intern for Justice Ann Walsh Bradley of the Wisconsin Supreme Court. His duties included reviewing cases and briefing Bradley before oral arguments.

"She was just great to work for," Aridas said. "I got to see early on the decision-making process, being inside the inner

sanctum, if you will."

Also while in law school, Aridas clerked for Conlon.

Conlon described Aridas as a "tremendously hard-working guy" who would drive to Chicago on Friday, spend the weekend in the office, and then return to Marquette on Monday.

"He has a work ethic you can't put a price tag on," Conlon said.

Aridas remained with the firm for a year after earning his degree in 1997. He handled labor arbitrations as well as matters before the Equal Employment Opportunity Commission and the National Labor Relations Board.

In 1998, Aridas joined the Commerce Commission.

The commission sets rates, considers merger applications, and handles other regulatory matters involving investor-owned companies that provide electric, gas, water, sewer, or telecommunications services to the public.

Aridas said he has had "the quintessential legal experience from top to bottom at the commission."

Aridas first served as a staff attorney in the Office of General Counsel.

That role allowed Aridas to put his litigation skills to work in many cases, beginning with the merger of SBC Communications Inc. and Ameritech Corp.

After two years, Aridas was appointed to head the federal energy program. He handled matters before the Federal Communications Commission and the Federal Energy Regulatory Commission.

Aridas next became legal and policy advisor to Commissioner Ruth K. Kretschmer and later to Ford.

In 2003, Commerce Commission Chair Edward C. Hurley III tapped Aridas for his current position.

Hurley said he made the right move with that appointment.

"Tom has done an excellent job for the Illinois Commerce Commission in his role as chief administrative law judge," Hurley said. "I made a conscious decision to place a young lawyer from the commission in that responsible role after his successes in two other positions."

Aridas's primary responsibility is to oversee the work of the commission's administrative law judges.

His duties include assigning cases, setting hearing dates, ensuring that official commission calendars are kept current, and reviewing the recommended decisions issued by the judges.

Aridas also is responsible for training new judges and overseeing the office's budget.

In addition to his administrative duties, Aridas handles his own docket of cases.

After hearing evidence in a case, Aridas drafts a proposed order. He prepares a second order after considering any exceptions that the parties raise.

The Commerce Commission then votes on the post-exception order. A majority vote is needed to adopt an order, which may be modified before it is approved.

Any application for a rehearing goes to Aridas, who recommends whether the request should be granted.

Appeals in most cases go to the Illinois Appellate Court. Some appeals go to federal court.

Last week, Aridas and Administrative Law Judge Ian D. Brodsky recommended that Nicor Gas be awarded a $54.7 million rate increase. The utility had sought a $77 million increase.

While most cases are assigned to a single judge, very large and complicated matters sometimes are handled by two judges.

Aridas said the cases that come before the Commerce Commission have an impact beyond the parties who appear in the hearing room.

"Every citizen in the State of Illinois is a customer of a phone company or an electric company, and some of the decisions we make literally affect every person in the state—an awesome responsibility, one we take seriously," he said.

And Aridas said the responsibility brings work that is "very interesting, challenging, dynamic."

The advent of competition in the utility industry about a decade ago as well as advances in technology mean that he and the other judges at the commission are grappling with cutting-edge issues, according to Aridas.

"I couldn't be here at a more perfect time," he said.

Dear Law Alumni,

On three occasions over the past 37 years of practice, I have served on the Marquette University Law Alumni Association Board of Directors. Although the Association's archives are not clearly definitive, it appears that I can proudly proclaim to have been one of the youngest members of the Board in its history. More profoundly (or at least more recently), I now have to admit to having been one of the oldest Presidents of the Board in its history. A cynic could argue that it took me more than 30 years to ascend to the presidency.

Serving as President of the Board of Directors for the past year has been a revelation, a delight, and a nostalgic experience for me. It has been a revelation in that I have been amazed at the amount of volunteer work the Board of Directors has invested on your behalf and on behalf of the Law School, and at the amount of interest the alumni have in the Law School and the rate at which it is evolving. It has been a delight because of the unique opportunity it has provided for me to associate with the administration of the Law School and to be a small part of the large plan the school has for its enhancement on a national basis. It has been a nostalgic experience because of all the opportunities I have had to participate in Law School functions and to talk with many of you about the tremendous achievements your Law School has accomplished and the exciting future plans your Law School is developing.

I have had the privilege of watching Dean Joseph D. Kearney's leadership team continue the work started by his predecessors to transform Marquette. He has attended all of the meetings of your Board of Directors and has been instrumental in assisting your Association in achieving its objectives. His dedication to legal education and the future of your Law School is very impressive.

I have also had the privilege of working with Christine Wilczynski-Vogel, Assistant Dean for External Affairs, who is consistently devoting far more than a normal workday to your Association. I encourage you to become involved in your Association by telephoning Christine Wilczynski-Vogel at 414-288-3167 or e-mailing her at christine.wv@marquette.edu to indicate your interest.

During the course of the year, your Association has had the following standing committees, all of which have been very active:

- Strategic Planning Committee chaired by Ray J. Manista
- Diversity Recruitment Committee chaired by the Honorable Derek C. Mosley
- Diversity Student Reception chaired by Patricia A. McGowan
- ACAN Mentor Program/Hiring Marquette Graduates chaired by the Honorable M. Joseph Donald
- Awards Committee chaired by the Honorable Claire L. Fiorenza
- Alumni Event Committee chaired by John L. DeStefanis
- Nominations Committee chaired by Catherine A. LaFleur
- Out-of-state CLE Planning Committee chaired by Thomas G. Schendt and Gregory M. Weyandt

In addition to committee reports and reports from Dean Kearney, we received reports at each board meeting from Terressa Batiste, the Student Bar Association representative from the Law School.

The following individuals agreed to join the Board of Directors in May:

Jane E. Appleby, L'04
Nicole M. Bostrom, L'04
Laurence J. Fehring, L'83
Peter Kujawa, L'02
John M. Manion, L'93
Luke A. Palese, L'91
Michael A. I. Whitcomb, L'78

On behalf of the Board of Directors, I thank the following retiring Board members for their dedicated service to your Association and to the Law School:

John L. DeStefanis, L'75
Hon. Clare L. Fiorenza, L'83
Catherine A. LaFleur, L'88
Ray J. Manista, L'90
Kathryn McGrane-Sargent, L'85
R. L. McNeely, L'94
Lee A. Riordan, L'79
Roberta Steiner, L'87

Today, more than ever, we can take pride in the Law School's accomplishments, the record demand seen in admissions, the highly respected scholarship authored by an international faculty, and, of great importance, its student-focused direction. Become a part of this wonderful trend and become active in your Law Alumni Association in the best way you see fit.

It is with great confidence that I have handed the baton to Genyne Edwards, L'00, who has succeeded me as President of the Law Alumni Association Board of Directors. Again, thank you for the opportunity to serve.

Sincerely,
Larry B. Brueggeman, L'69

Dean Joseph D. Kearney invites you to attend a day of CLE in New York City

September 15, 2006

Please join New York Marquette lawyers and CLE attendees for the opening reception from 6:00 to 7:30 p.m. the night before the CLE on Thursday, September 14, at Alston & Bird, 90 Park Avenue, between 39th and 40th Streets, 212.210.9400.

Special thanks to Thomas G. Schendt, L '85, and Alston & Bird for their assistance in making this event possible.

Conference runs from 9:00 a.m to 3:35 p.m. on Friday, September 15 and will cover the following topics:

- Retirement Benefits 101
- The Hardest Questions in Legal Ethics
- Torts Update
- Keeping the Lid on Pandora's (In)Box: Managing Documents (and Discovery) in an Electronic Age
- Commonly Overlooked but Critical IP Issues in Doing Business with Outside Vendors, Consultants, Designers, and Others

To receive the Alston & Bird corporate price for a hotel, call 877.257.8662.

Questions or to register: Contact Christine Wilczynski-Vogel at 414.288.3167 or christine.wv@marquette.edu.

The CLE program is free for Marquette University Law School alumni. The charge for non-alumni is $300.00.

For biographical information on the speakers, please see the Law School website at http://law.marquette.edu.

Reflections on the Wisconsin

On March 7, 2006, the Honorable Diane S. Sykes delivered the Law School's annual Hallows Lecture at the University's Helfaer Theatre. The lecture, printed below, also will appear in the Marquette Law Review.

Remarks of Dean Joseph D. Kearney in Introducing the Honorable Diane S. Sykes

Welcome to this year's Hallows Lecture at Marquette University Law School—or at Marquette University, and close to the Law School. It is my privilege as Dean of the Law School to introduce both the lecture and the speaker.

I wish to begin with the individual in whose memory this lecture stands. The Honorable E. Harold Hallows served as a member of the Wisconsin Supreme Court from 1958 to 1974, concluding his tenure as Chief Justice of the Court. These were years in which the legal system faced profound challenges and changes. I am referring not only to the larger societal changes, which are well known and chronicled, but also to developments in legal doctrine. Important areas of the law, including aspects of constitutional law, criminal procedure, and tort law, bore only a dim resemblance at the end of this period to what had existed in 1958. Justice Hallows played a significant role in these developments on the Wisconsin front.

But it would be incorrect to suggest that this judicial work was the extent of Justice Hallows's contribution to the Wisconsin legal system. For several decades prior to his appointment to the Wisconsin Supreme Court, Justice Hallows was Professor Hallows at Marquette University Law School. A whole generation of students took courses such as Equity from Professor Hallows. This was accompanied throughout by both a successful private practice in Milwaukee and a leadership role in the state bar and efforts to reorganize the judiciary. The career of Justice Hallows, who attended Marquette University as an undergraduate and the University of Chicago for law school, was distinguished by substantial contributions to the bar, the academy, and the judiciary.

Over the past decade the Law School has held an annual Hallows Lecture in the late Chief Justice's memory. We have brought to campus (and to Milwaukee) such individuals as Judge Guido Calabresi, Justice Antonin Scalia, and Chief Justice Shirley Abrahamson. This year's speaker is the Honorable Diane Sykes, of the United States Court of Appeals for the Seventh Circuit. Judge Sykes is well known to this community and scarcely needs elaborate introduction, but permit me to say a few words nonetheless. If they are brief, it is both because I am not the feature here and because I used up all my best lines at Judge Sykes's most recent investiture.

Diane Sykes is a native of Milwaukee, a graduate of Northwestern University with a journalism degree, and a Marquette lawyer, class of 1984. After clerking on the federal district court for one year and working

Supreme Court

in private practice for seven years, she became Judge Sykes in 1992, by winning a contested election for a seat on the Milwaukee County Circuit Court. Judge Sykes served in this position until 1999, when the Governor of Wisconsin appointed her to the Wisconsin Supreme Court, a position to which the voters of the State then elected her in 2000 to a full term. Now-Justice Sykes was forceful and influential during this tenure. The Court was closely divided on a number of matters—many of them in the same areas as I mentioned with respect to Justice Hallows's tenure: constitutional law, criminal procedure, and tort law. These areas of the law will always be with us (and a good thing for the legal profession, I should hasten to add). I would not wish to suggest that Justice Sykes's position always prevailed, still less that she and Justice Hallows would have made much common cause had they served on the Court together. But none would doubt the significance of Justice Sykes's work on the Wisconsin Supreme Court.

Dean Kearney and Judge Sykes on the occasion of the Hallows Lecture.

In 2004, Justice Sykes became Judge Sykes again, after the United States Senate confirmed the President's nomination of her to the United States Court of Appeals for the Seventh Circuit. Judge Sykes is an increasingly national figure, frequently called upon to speak across the country, but she remembers her alma mater as well, including through the important work of permitting law school interns each semester in her chambers. We are very grateful that today, once again, she is with us at Marquette, as this year's Hallows Lecturer. Please welcome the Honorable Diane S. Sykes.

Hallows Lecture by Judge Diane S. Sykes

Thank you. I am honored to present this year's Hallows Lecture. It is always a pleasure to visit my law school, and the invitation to deliver this particular lecture is indeed a privilege. The late Chief Justice Hallows taught a generation of Marquette law students and served the people of Wisconsin with great distinction as a Justice and Chief Justice of the Wisconsin Supreme Court. We share a connection to both Marquette Law School and the Wisconsin Supreme Court, and, by coincidence of history, were both appointed to the court by governors named Thom(p)son.

It seems fitting, then, that my topic this afternoon should be the Wisconsin Supreme Court, given that Chief Justice Hallows and I have service on that court in common, although of course my tenure was much shorter. I had the honor of serving as a Wisconsin Supreme Court justice for five years. The cases the court decides are diverse, compelling, and

very important to the people of this state. The Justices and Chief Justice are highly accomplished jurists and dedicated public servants, committed to the work of the court and the quality of justice delivered in Wisconsin's courtrooms. Although consensus was sometimes difficult and our disagreements could be sharp, I thoroughly enjoyed my time on the court and respect and value the friendship of each of my colleagues.

My focus today, however, will not be on the court during my tenure but the court's 2004–2005 term, which was, by any measure, a watershed. In a series of landmark decisions, the court:

- rewrote the rational basis test for evaluating challenges to state statutes under the Wisconsin Constitution, striking down the statutory limit on noneconomic damages in medical malpractice cases;[1]
- eliminated the individual causation requirement for tort liability in lawsuits against manufacturers of lead-paint pigment, expanding "risk contribution" theory, a form of collective industry liability;[2]
- expanded the scope of the exclusionary rule under the state constitution to require suppression of physical evidence obtained as a result of law enforcement's failure to administer *Miranda* warnings;[3]
- declared a common police identification procedure inherently suggestive and the resulting identification evidence generally inadmissible in criminal prosecutions under the state constitution's due process clause;[4] and
- invoked the court's supervisory authority over the state court system to impose a new rule on law enforcement that all juvenile custodial interrogations be electronically recorded.[5]

The importance of these decisions can scarcely be overstated. Considered individually, each represents a significant change in the law, worthy of close analytical attention from the bench, bar, and legal scholars. Together, these five cases mark a dramatic shift in the court's jurisprudence, departing from some familiar and long-accepted principles that normally operate as constraints on the court's use of its power: the presumption that statutes are constitutional, judicial deference to legislative policy choices, respect for precedent and authoritative sources of legal interpretation, and the prudential institutional caution that counsels against imposing broad-brush judicial solutions to difficult social problems. I will concede (as I must) that a court of last resort has the power to throw off these constraints, revise the rules of decision, and set the law on a new course. But when it does so, we ought to sit up and take notice, and question whether that power has been exercised judiciously.

And yet there has been surprisingly little published commentary from the Wisconsin legal community about the groundbreaking developments of the court's last term.[6] This lack of critical analysis—pro or con—does a disservice to the orderly development of the law, which depends in no small part upon the active engagement of the bar and the legal academy in evaluating the work of precedent-writing courts. So, in the spirit of sparking a debate, my purpose this afternoon is to identify the prominent themes in the most important cases of the court's last term and consider what those cases might tell us about the court's current view of the proper uses of its power. This is not intended to be a comprehensive analysis of the reasoning, rhetoric, or results of these cases, but a broader look at the interpretive philosophy and judicial behavior that characterize the court's most recent work.

In *Ferdon v. Patients Compensation Fund*,[7] the Wisconsin Supreme Court invalidated the statutory limitation on noneconomic damages in medical malpractice cases. The damages cap was enacted as part of a broad legislative initiative to address a developing medical malpractice crisis in Wisconsin. The original 1975 law established a comprehensive patients' compensation system, including mandatory health care provider insurance and a patients' compensation fund that guarantees full coverage of all economic damages for medical malpractice while limiting recovery of noneconomic damages for less quantifiable harms, such as pain and suffering. The legislature made explicit and detailed findings when it adopted the system, citing the effects of rising malpractice judgments and settlements on the cost and availability of medical liability insurance, health care costs, and the practice of medicine in Wisconsin. Recovery of economic damages was unlimited under the statutory system and guaranteed by the patients' compensation fund; only noneconomic damages were subject to the statutory cap. The noneconomic damages cap at issue in *Ferdon* was set in 1995 at $350,000 and adjusted annually for inflation; by 2005, when *Ferdon* was decided, the inflation-adjusted cap was just under $450,000.

The plaintiff in *Ferdon* asserted a broad-spectrum challenge to the damages cap under the Wisconsin Constitution, arguing that it denied equal protection, trial by jury, right to a remedy, and due process, and also that it violated separation of powers principles. The court took up only the equal protection challenge. In a decision spanning more than 100 pages of the official reports—188 paragraphs, 248 footnotes, six separate Roman-numbered sections (one further subdivided into four lettered subsections), plus a "roadmap" for navigating the opinion (helpfully provided in the introduction)—the court struck down the statutory damages cap.

Just a year earlier the court had rejected a similar equal protection challenge to the statutory cap applicable to noneconomic damages in medical malpractice wrongful death cases in *Maurin v. Hall*.[8] The majority in *Ferdon* began its analysis by dismissing the *Maurin* precedent as irrelevant, reasoning that medical malpractice injury cases are less likely to arouse jury passion than medical malpractice death cases. Why this difference should justify completely disregarding a recent and closely analogous precedent is not explained.

Moving on, the *Ferdon* majority recites the standard presumption that statutes are constitutional, but does not apply it; pronounces the usual rule of judicial deference to legislative acts, but does not defer; and settles on rational basis scrutiny as the appropriate standard of review, but redefines the standard upward so that it effectively functions as a heightened or intermediate level of scrutiny. Before *Ferdon,* legislative acts not implicating a fundamental right or creating a racial or other suspect classification received ordinary rational basis review; in other words, a statute would survive an equal protection challenge unless shown to be "patently arbitrary" with "no rational relationship to a legitimate government interest."[9] This test is deliberately hard to flunk, to guard against the judiciary's substitution of its own policy preferences for those of the legislature. Equal protection

does not require that all statutes treat all persons identically, only that differences in treatment be rationally related to the legislative goals underlying the statute.

Not any longer. With *Ferdon*, Wisconsin has a new rational basis test, referred to variously by the court as rational basis "with teeth," rational basis "with bite," and "meaningful rational basis."[10] What this terminology means as a legal matter is not entirely clear, but the new standard plainly calls for more probing judicial inquiry into the relationship between legislative means and ends than ordinary rational basis review. Apparently, the point of the redefined standard is to authorize the court to make a policy-laden value judgment about the tendency of a statute to effectively achieve its objectives, and invalidate the statute if the court believes that tendency to be insufficient to justify the statutory classification.

That the court felt it necessary to rewrite the longstanding law of rational basis review is telling; the implication is that ordinary rational basis scrutiny would not produce the result the majority wanted to reach. The reconstituted rational basis test—what Justice Prosser in dissent calls the rational basis "makeover"[11]—permits the *Ferdon* majority to declare the damages cap unconstitutional. It takes the court seventy-nine paragraphs to get there (you would think if a law were truly irrational, it would be simpler to explain why); those seventy-nine paragraphs are chock-full of citations of state and national studies on the relative effectiveness of damages caps in reducing malpractice insurance rates and health care costs, protecting the financial viability of the patients' compensation fund, and ensuring quality health care. Justice Prosser (joined in dissent by Justices Wilcox and Roggensack) criticizes the majority's use of these studies as selective and misleading and provides a lengthy analysis of existing empirical support for the damages cap.

What is readily apparent from all the back-and-forth about what the studies do or do not show is that the court's majority is making a political policy judgment, not a legal one. Fundamental to separation of powers is the principle that it is the prerogative of the legislative branch to evaluate the effectiveness of statutory solutions to social problems, and to decide whether the inevitable trade-offs are acceptable and the allocation of economic burdens and benefits appropriate to the circumstances. The court's responsibility of judicial review is not a warrant to displace legislative judgments. It remains to be seen whether the court will apply its new, souped-up iteration of rational basis review to all future equal protection challenges or only some and, if the latter, how it will go about deciding which statutes qualify for heightened *Ferdon* scrutiny. Either way, *Ferdon* represents a major departure from long-accepted constitutional principles that operate to maintain the balance of power between the legislative and judicial branches.

Now let us move to *Thomas v. Mallett,*[12] the court's most consequential common law decision of the last term. In *Thomas*, the court extended "risk contribution" theory to the lead-paint industry, allowing a childhood lead-paint claim to go forward to trial against lead-pigment manufacturers despite the plaintiff's inability to identify which manufacturers caused his injury. Steven Thomas lived in different Milwaukee homes during the early 1990s and sustained lead poisoning by ingesting paint from paint chips, flakes, and dust in the homes. He received settlements from two landlords and pursued claims against seven lead-paint pigment manufacturers—conceding, however, that he could not causally link any specific manufacturer to his injury.

A basic premise of our tort liability system has been the requirement that a plaintiff prove that the defendant was at fault and caused his injury before liability attaches. Over time the fault requirement has been relaxed, perhaps most notably in the development of strict products liability theory. The causation requirement, however, has generally been maintained as a fundamental feature of our liability law; new doctrines adjusting or eliminating proof of cause in fact have not been widely accepted. Against this backdrop, the trial court dismissed

Thomas's negligence and strict liability claims against the pigment manufacturers based on the absence of proof of causation, and the court of appeals affirmed.

The Wisconsin Supreme Court reversed, becoming the first court in the nation to allow such a case to go forward. The court's decision in *Thomas* eliminates the causation requirement in lead-paint cases in favor of a form of collective liability based on mere participation in the lead-pigment industry. More than twenty years earlier, in *Collins v. Eli Lilly Co.*,[13] the court adopted a form of collective industry liability for use in cases alleging injuries from *in utero* exposure to the antimiscarriage drug diethylstilbestrol ("DES"). The "risk contribution" theory recognized in *Collins* allowed liability on proof that the defendant drug company produced or marketed DES, regardless of whether the plaintiff could identify the drug company that caused her injury. The burden was placed on each drug company to prove that it did not produce or market DES during the time period the plaintiff was exposed or in the relevant geographic marketplace. Liability would be apportioned among the drug companies that could not exculpate themselves under this burden-shifting formula on the basis of a nonexclusive list of factors, including market share and the degree to which the company tested for and warned of hazardous side effects.

The court in *Collins* reasoned that each drug company contributed to the risk of harm to the general public and, therefore, the risk of injury to individual plaintiffs; unless the court relieved the DES plaintiff of the burden of proving causation, she would have no remedy for her injury. The court concluded that each drug company "shares, in some measure, a degree of culpability in producing or marketing" a drug with potentially harmful side effects and that "as between the injured plaintiff and the possibly responsible drug company, the drug company is in a better position to absorb the cost of the injury."[14]

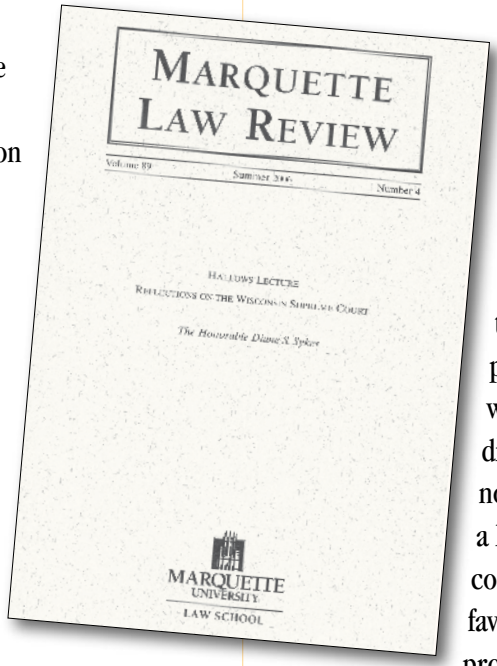
The importance of these decisions can scarcely be overstated. Considered individually, each represents a significant change in the law, worthy of close analytical attention from the bench, bar, and legal scholars. Together, these five cases mark a dramatic shift in the court's jurisprudence, departing from some familiar and long-accepted principles that normally operate as constraints on the court's use of its power . . . .

The form of risk contribution liability recognized in *Collins* was not pure "market share" liability of the type that had been adopted a few years earlier by the California Supreme Court in *Sindell v. Abbott Laboratories*.[15] It was, nonetheless, a substantial departure from traditional liability norms and, until *Thomas*, had not been expanded in this state. In *Thomas*, the court was not confronted with a plaintiff who would otherwise lack a remedy without the ability to sue under risk contribution theory—remember that Thomas had already received settlements from his landlords. But the court expanded risk contribution liability anyway, authorizing the negligence and strict liability claims to go forward without proof of causation.

As applied to the lead-paint industry, risk contribution theory is substantially more difficult to administer than in DES cases and very likely will function as a form of absolute liability, as Justices Wilcox and Prosser noted in strongly worded dissents. In DES cases each drug company has at least in theory a meaningful opportunity

to defend against liability by proving it did not produce or market the drug either where the plaintiff lived or during the specific nine-month period she was exposed.

In lead-paint cases, in contrast, the opportunity for the defendant manufacturers to exculpate themselves is almost nonexistent. The majority in *Thomas* made it clear that the relevant time period for lead-paint risk contribution liability is not the time period of the plaintiff's exposure but the entire time period each house with lead paint existed. In *Thomas*, the lead paint present in the three houses where the plaintiff lived could have been applied at any time between 1900 and 1978 (the later date being when most lead-based paint was banned). Apportioning risk contribution liability among manufacturers of lead pigment based on market share and relative culpability over an almost eight-decade period of time is nearly impossible as a purely factual matter.



Apportionment of tort liability in a comparative fault regime is by nature somewhat imprecise, but some imprecision is acceptable when the defendants whose conduct is being compared have been proven to be causally at fault for the plaintiff's injury. Apportionment of liability in a system that dispenses with the requirement of individualized causation asks the jury to assess and fix relative blame across an entire industry, not for the harm sustained by the plaintiff who will recover but for generalized harm to the public at large.

This is, then, a form of collective tort liability untethered to any actual responsibility for the specific harm asserted, imposed by the judiciary as a matter of loss-distribution policy in response to an admittedly serious public health problem. As Justice Wilcox observed in his dissent, "[t]he end result of the majority opinion is that the defendants, lead pigment manufacturers, can be held liable for a product they may or may not have produced, which may or may not have caused the plaintiff's injuries, based on conduct that may have occurred over 100 years ago when some of the defendants were not even part of the relevant market."[16] The majority's response: "[T]he problem of lead poisoning from white lead carbonate is real; it is widespread; and it is a public health catastrophe that is poised to linger for quite some time."[17]

The extension of risk contribution theory in *Thomas* may signal the court's willingness to modify the causation requirement in other contexts. If so, it will represent a major reordering of the purposes of our tort system from adjudicating individual remedies for private civil wrongs to finding funding sources to address broad public policy problems. True, the common law is all about judicial policy judgments, but it develops best when developed incrementally. The discretion of a common law court does not precisely parallel the discretion of a legislature; differences in institutional constraints and competence generally favor leaving the more sweeping proposals to alter liability rules to the legislative branch of government. A court is limited to the facts and arguments in the case before it; the public and nonparty stakeholders have little say—little opportunity to participate and attempt to influence the court's decision, as they would the legislature's. The court's decision in *Thomas* may well turn out to be an isolated response to the problem of lead-paint poisoning. If the opposite is true, and the court extends risk contribution theory to other industries, the case will have substantial implications for the stability and predictability of our liability system, and the stability of the state's economy as well.

Now let us consider the court's 2004–2005 criminal docket. In *State v. Knapp,*[18] the Wisconsin Supreme Court adopted a new rule of state constitutional law requiring suppression of physical evidence derived from the failure of police to deliver *Miranda* warnings to a suspect in custody. Matthew Knapp had been seen drinking with Resa Brunner a few hours before she was found beaten to death with a baseball bat. Police investigating the murder learned that Knapp was on parole, and because his consumption of alcohol was a violation of his terms of supervision, his parole officer ordered an apprehension request. When police arrived at Knapp's apartment to arrest him, they could see Knapp through the door and announced that they had a warrant for his arrest. Knapp picked up a phone to call his attorney but then hung up the phone and let the police in. An officer told Knapp he had to go to the police station but deliberately did not deliver *Miranda* warnings at the scene of the arrest. The officer followed Knapp as he went into his bedroom to put on some shoes. In the bedroom the officer asked Knapp what he had been wearing the prior evening, and Knapp pointed to some clothing on the floor. The officer seized the clothing, which included a bloody sweatshirt; DNA tests established that the blood on the sweatshirt was Resa Brunner's.

Knapp was charged with Brunner's murder, and his case was first before the Wisconsin Supreme Court in 2003 on an interlocutory appeal of the denial of Knapp's motion to suppress the sweatshirt. The court ordered the sweatshirt suppressed as the fruit of the officer's intentional withholding of *Miranda* warnings.[19] Because the decision was premised on federal constitutional law, the state petitioned for certiorari in the United States Supreme Court.

In the meantime, the United States Supreme Court issued its decision in *United States v. Patane*,[20] rejecting the very suppression argument the Wisconsin Supreme Court had accepted in *Knapp.* The Supreme Court held in *Patane* that a police officer's failure to provide the warnings required by *Miranda* did not require suppression of nontestimonial physical evidence derived from a defendant's unwarned but voluntary statements. It explained that "[b]ecause the *Miranda* rule protects against violations of the [Fifth Amendment's] Self-Incrimination Clause, which, in turn, is not implicated by the introduction at trial of physical evidence resulting from voluntary statements," the "fruit of the poisonous tree" doctrine did not apply.[21] In other words, the core constitutional right that *Miranda* was designed to protect—the right against compulsory self-incrimination—simply was not affected by the introduction of the nontestimonial physical fruits of the failure to give *Miranda* warnings. As long as the defendant's unwarned statements are excluded, as *Miranda* requires, application of the exclusionary rule to derivative physical evidence—usually highly probative and reliable—could not be justified by reference to any deterrence effect on law enforcement related to the underlying constitutional right against compulsory self-incrimination.

Following *Patane*, the United States Supreme Court summarily granted certiorari in *Knapp,* vacated the Wisconsin court's decision, and remanded for reconsideration in light of the decision in *Patane.*[22] Although Matthew Knapp had not based his earlier suppression arguments on the Wisconsin Constitution, the Wisconsin Supreme Court directed further briefing in light of the remand and took up the question of whether the state constitution's self-incrimination clause required suppression even though the Fifth Amendment to the federal constitution did not.

Before *Knapp*, the Wisconsin Supreme Court had repeatedly held that in the absence of a meaningful difference in language, intent, or history, the state constitution's Declaration of Rights should be interpreted in conformity with the United States Supreme Court's interpretation of parallel provisions in the Bill of Rights. The language of the state constitutional right

against compulsory self-incrimination is virtually identical to the Self-Incrimination Clause of the Fifth Amendment; the court had declined many previous invitations to interpret the state right more expansively than its federal counterpart.

Not this time. In round two of *Knapp*, the court accepted the defendant's invitation to—as the court put it—"utilize . . . the Wisconsin Constitution to arrive at the same conclusion as in *Knapp I*."[23] This language is revealing for its pure, unvarnished result-orientation. The court's decision rests not on the language or history of the state constitution's self-incrimination clause but on the court's own policy judgment flowing from an expansive view of the deterrence rationale of the exclusionary rule. The court reasoned that a police officer's intentional withholding of *Miranda* warnings is "particularly repugnant and requires deterrence" in order to prevent the judicial process from being "systemically corrupted."[24]

But the court made no effort to explain how the failure to comply with a requirement imposed as a matter of federal constitutional law should give rise to a more expansive exclusionary remedy under the state constitution than the federal constitution. An answer, of sorts, is found in a concurrence by Justice Crooks, joined by the other three members of the *Knapp* majority, making it the majority's view. Justice Crooks explains that the court's decision "serves to reaffirm Wisconsin's position in the 'new federalism' movement."[25] The concurrence invokes United States Supreme Court Justice William Brennan's famous 1977 *Harvard Law Review* article encouraging state supreme courts to continue the Warren Court's rights revolution under the auspices of state constitutional interpretation.[26] Justice Brennan called on state supreme courts to "step into the breach" created by the emergence of a more conservative United States Supreme Court.[27] After almost thirty years of resisting the temptation to answer Justice Brennan's call, the Wisconsin Supreme Court has finally succumbed.

The "new federalism" battle cry was sounded by the Wisconsin high court more than once last term. In *State v. Dubose,*[28] the court departed from the longstanding reliability standard for due process challenges to eyewitness identification evidence and fashioned a stricter rule of admissibility under the Wisconsin Constitution. For many years the court followed the general framework established by the United States Supreme Court in *Manson v. Brathwaite*[29] and *Neil v. Biggers*[30] for determining the admissibility of eyewitness identification evidence. *Brathwaite* and *Biggers* require an evaluation of the suggestiveness of the identification procedure used by the police as well as the reliability of the resulting identification. In *Dubose* the court changed course and declared the police identification procedure known as the "showup" to be inherently suggestive and generally inadmissible under the state constitution's due process clause.

A "showup" is police nomenclature for a common out-of-court identification procedure in which a suspect is presented one-on-one to a crime victim or eyewitness, usually soon after and at or near the scene of the crime. The United States Supreme Court subjects showup identifications to the same test for suggestiveness and reliability as any other police identification procedure; until *Dubose,* the Wisconsin Supreme Court followed suit. The showup procedures at issue in *Dubose* included a one-on-one presentation of an armed robbery suspect to the victim at the scene within minutes of the crime, and a one-on-one presentation of the suspect to the victim through a two-way mirror at the police station shortly thereafter.

To justify abandoning reliability as the touchstone for admissibility, the *Dubose* court cited what it referred to as "extensive studies on the issue of identification evidence" and broadly asserted that "[t]hese studies confirm that eyewitness testimony is often 'hopelessly unreliable.'"[31] Invoking this "new information," the court declared itself convinced that showups

"presen[t] serious problems in Wisconsin criminal law cases."[32] On the basis of these undifferentiated "serious problems"—not problems specific to the facts of the case but "problems" generally—the court concluded that showup identifications are "inherently suggestive and will not be admissible unless, based on the totality of the circumstances, the procedure was necessary."[33] The court cautioned, however, that a showup will not be deemed "necessary" unless the police lack probable cause for an arrest or, "as a result of other exigent circumstances, could not have conducted a lineup or photo array."[34]

The majority opinion in *Dubose* holds that the due process clause of the Wisconsin Constitution "necessitates" this new approach to eyewitness identification evidence but makes no effort to explain why.[35] Instead, the opinion simply invokes "new federalism" and the court's power to interpret the state constitution to "provide greater protections than its federal counterpart."[36] In other words, the existence of the power justifies its exercise. Again, Justices Wilcox, Prosser, and Roggensack dissented (as they had in *Knapp*), not disputing the court's premise—that it has the power and the duty to interpret the state constitution—but questioning its method for doing so. Justice Wilcox was especially troubled by the court's departure from well-established precedent on the basis of data from social science studies presented by advocacy groups. "Not only is such data disputed," he said, "but, more importantly, it is not a valid basis to determine the meaning of our constitution. The majority fails to adequately explain how the meaning of the text of the constitution can change every time a new series of social science 'studies' is presented to the court. If the text is so fluid, then our constitution is no constitution at all, merely a device to be invoked whenever four members of this court wish to change the law."[37] To this the majority had no response.

Time will tell whether the court will continue the extraordinary activism of its 2004–2005 term, will adjust its pace, or take a breather. In the meantime—and this is true regardless of whether the trends of the last term continue or abate—the court's work deserves closer attention from the legal community and the public.

And, finally, in *In re Jerrell C.J.*,[38] the Wisconsin Supreme Court invoked its supervisory authority over the state court system to adopt a rule requiring law enforcement to electronically record all custodial interrogations of juveniles "without exception when questioning occurs at a place of detention" and "where feasible" when questioning occurs elsewhere.[39] *Jerrell* involved a custodial interrogation of a fourteen-year-old armed robbery suspect. The court held the juvenile's confession involuntary based on his age, intelligence, and experience; the five-hour duration of the interrogation; and the officers' use of a "strong voice" to accuse the juvenile suspect of lying, which "frightened" him.[40] Normally, throwing out the confession would have ended the court's review. But the majority went on to announce an electronic-recording requirement for custodial juvenile interrogations. The majority articulated several policy justifications for the new rule: to enhance the accuracy and reliability of juvenile interrogations, to reduce the number of disputes over *Miranda* and voluntariness, to protect law enforcement officers wrongly accused of improper tactics, and to protect the rights of the accused.

These justifications are uncontroversial as matters of policy; that the court resorted to its supervisory

power for the authority to impose the new rule was extraordinary and unprecedented. The Wisconsin Constitution vests the Supreme Court with "superintending and administrative authority over all courts."[41] Never before has the superintending power been interpreted so expansively—in essence, to permit the court to reach beyond supervision of the court system to regulate the practices and procedures of another branch of government. The majority attempted to characterize its decision as merely controlling "the flow of evidence in state courts,"[42] but by this interpretation the court's superintending power is almost limitless.

Again, Justices Prosser and Roggensack dissented, joined by Justice Wilcox. The dissenters did not take issue with the benefits of tape-recorded interrogations but objected to the majority's assumption that the court has the power to regulate police conduct that violates neither the constitution nor a statute. Justice Prosser decried the extreme breadth of the majority's view of the court's power: "If the majority opinion represents a proper use of the court's 'superintending . . . authority,' then, logically, there is no practical reason why the court could not dictate any aspect of police investigative procedure that is designed to secure evidence for use at trial. The people of Wisconsin have never bestowed this kind of power on the Wisconsin Supreme Court."[43]

There is much more that could be said about these cases, but by now some common themes should be evident. The first is that the Wisconsin Supreme Court is quite vigorously asserting itself against the other branches of state government. When the court decides cases on the basis of the state constitution, its power is at its peak, because legislative correction is impossible and the constitution is difficult to amend. Three of these five cases involved interpretations of the Wisconsin Constitution, and a fourth, *Jerrell*, represents an extraordinary expansion of the court's constitutional superintending power. The terms "modesty" and "restraint"—the watchwords of today's judicial mainstream—seem to be missing from the Wisconsin Supreme Court's current vocabulary. Instead, the court has adopted a more aggressive approach to judging.

A related phenomenon is the court's apparent strong preference for its own judgment over that of either the Wisconsin Legislature or the United States Supreme Court. Only one of the decisions discussed today is capable of being modified by the state legislature, and none can be reviewed by the Supreme Court. The present Wisconsin Supreme Court is plainly disinclined to defer to the judgment of those elected to represent the people of this state, even though the structure of state government and the court's precedents require it to do so. The court has lowered the threshold for invalidating statutes by adopting a heightened standard for evaluating their constitutionality. The court is quite willing to devise and impose its own solutions to what it perceives to be important public policy problems—civil and criminal—rather than deferring to the political process.

The court has also manifested a cavalier, almost dismissive attitude toward the sources of legal interpretation generally thought to be most authoritative: the text, structure, and history of the constitution and laws, and the court's own precedents. Despite their heft, most of the opinions discussed today are notable for their failure to meaningfully engage in the usual analysis of applicable legal texts and court precedents. Instead, longstanding legal standards are rewritten or simply disregarded at will, either by reference to less authoritative decisional resources—such as disputed social science research—or simply the court's own subjective policy judgment and raw power to render a binding statewide decision. Judges who are sensitive to some limits on the scope of judicial authority and competence generally try to confine themselves to authoritative and objective sources of interpretation—the law's language, structure, logic, and history—and are skeptical of broad appeals to the court's policy judgment. Among other things, this approach has the virtue of constraining the judges to behave like judges rather than legislators.

The Wisconsin Supreme Court has enormous influence over the legal order and the political, social, and economic future of this state. These cases from the last term reflect a court quite willing to aggressively assert itself to implement the statewide public policies it deems to be most desirable. The court is loosening the usual constraints on the use of its power, freeing itself to move the law essentially as a legislature would, except that its decisions are for the most part not susceptible of political correction as the legislature's would be. Time will tell whether the court will continue the extraordinary activism of its 2004–2005 term, will adjust its pace, or take a breather. In the meantime—and this is true regardless of whether the trends of the last term continue or abate—the court's work deserves closer attention from the legal community and the public.

In closing, please allow me to emphasize that I offer these views not just as a former member of the court but as one who has been privileged to serve the Wisconsin legal system for more than twenty years as a lawyer in private practice and as a trial and appellate court judge. I recognize that others—perhaps many others—may disagree. But the court's work is so important to the people of this state that I urge all—both those who might agree with me and those who might not—to discuss and debate these issues. My thanks to Marquette Law School for providing this forum and to all of you for your kind attention this afternoon.[44] •

Notes

1. Ferdon v. Wisconsin Patients Comp. Fund, 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440.

2. Thomas v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523.

3. State v. Knapp, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899.

4. State v. Dubose, 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582.

5. *In re* Jerrell C.J., 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110.

6. One notable exception is the following: Hon. Michael B. Brennan, Op-Ed, *Are Courts Becoming Too Activist? Wisconsin's Supreme Court Has Shown a Worrisome Turn in That Direction,* Milwaukee Journal Sentinel, Oct. 2, 2005, at 1J.

7. 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440.

8. 2004 WI 100, 274 Wis. 2d 28, 682 N.W.2d 866.

9. *Id.* ¶ 106, 274 Wis. 2d at 75, 682 N.W.2d at 890 (quotations omitted).

10. *Ferdon*, 2005 WI 125, ¶¶ 78, 80, 284 Wis. 2d at 613-15, 701 N.W.2d at 460-61.

11. *Id.* ¶ 214, 284 Wis. 2d at 684, 701 N.W.2d at 495 (Prosser, J., dissenting).

12. 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523.

13. 116 Wis. 2d 166, 342 N.W.2d 37 (1984).

14. *Id.* at 191-92, 342 N.W.2d at 49.

15. 26 Cal. 3d 588, 607 P.2d 924 (1980).

16. *Thomas*, 2005 WI 129, ¶ 177, 285 Wis. 2d at 328, 701 N.W.2d at 567-68 (Wilcox, J., dissenting).

17. *Id.* ¶ 133, 285 Wis. 2d at 307, 701 N.W.2d at 558.

18. 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899.

19. State v. Knapp, 2003 WI 121, 265 Wis. 2d 278, 666 N.W.2d 881.

20. 542 U.S. 630 (2004).

21. *Id.* at 634.

22. Wisconsin v. Knapp, 542 U.S. 952 (2004) (per curiam).

23. *Knapp*, 2005 WI 127, ¶ 56, 285 Wis. 2d at 112, 700 N.W.2d at 912.

24. *Id.* ¶¶ 75, 81, 285 Wis. 2d at 124, 129, 700 N.W.2d at 918, 921.

25. *Id.* ¶ 84, 285 Wis. 2d at 130, 700 N.W.2d at 922.

26. *See* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977).

27. *Id.* at 503.

28. 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582.

29. 432 U.S. 98 (1977).

30. 409 U.S. 188 (1972).

31. *Dubose*, 2005 WI 126, ¶¶ 29-30, 285 Wis. 2d at 162-63, 699 N.W.2d at 591-92.

32. *Id.* ¶¶ 29, 32, 285 Wis. 2d at 162, 164, 699 N.W.2d at 591, 592-93.

33. *Id.* ¶ 33, 285 Wis. 2d at 166, 699 N.W.2d at 594.

34. *Id.* ¶ 45, 285 Wis. 2d at 177, 699 N.W.2d at 599.

35. *Id.* ¶ 39, 285 Wis. 2d at 172, 699 N.W.2d at 597.

36. *Id.* ¶ 41, 285 Wis. 2d at 173-74, 699 N.W.2d at 597.

37. *Id.* ¶ 65, 285 Wis. 2d at 185-86, 699 N.W.2d at 603-04 (Wilcox, J., dissenting).

38. 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110.

39. *Id.* ¶ 58, 283 Wis. 2d at 172, 699 N.W.2d at 123.

40. *Id.* ¶ 35, 283 Wis. 2d at 163, 699 N.W.2d at 119.

41. Wis. Const. art. VII, § 3.

42. *Jerrell*, 2005 WI 105, ¶ 49, 283 Wis. 2d at 168, 699 N.W.2d at 121.

43. *Id.* ¶ 155, 283 Wis. 2d at 220, 699 N.W.2d at 147 (Prosser, J., dissenting).

44. I would also like to thank Jeffrey R. Ruidl, Marquette Law School Class of 2006, for his research assistance on this lecture.

JUDICIAL CLERKSHIPS

Many Marquette lawyers begin their legal careers by serving as law clerks to judges. Photographed in Eisenberg Memorial Hall this past March are eight members of the Class of 2006 who this coming year will serve as judicial law clerks (with the judges for whom they will work indicated in parentheses): from left to right, **Kristin J. Eisenbraun** (Judge Roderick T. Kennedy, State of New Mexico Court of Appeals); **Daryl J. Olszewski** (Magistrate Judge Aaron E. Goodstein, U.S. District Court for the Eastern District of Wisconsin); **Lance W. Leonhard** (Judge John L. Coffey, L'48, U.S. Court of Appeals for the Seventh Circuit); **Donna M. Wittig** (Judge Roger L. Hunt, U.S. District Court for the District of Nevada); **Christopher D. Brunson** (Judge R. Thomas Cane, L'64, Wisconsin Court of Appeals); **Carol A. Chapman** (Judge Joan F. Kessler, L'68, Wisconsin Court of Appeals); **James J. Wawrzyn** (Justice Jon P. Wilcox, Wisconsin Supreme Court); and **Cynthia M. Davis** (Justice David T. Prosser, Jr., Wisconsin Supreme Court). Other clerks during 2005-06 (not pictured) are **Katherine M. Longley, L'05** (Judge Diane S. Sykes, L'84, U.S. Court of Appeals for the Seventh Circuit), and Class of 2006 members **David D. Cherner**, **Andrea L. Neuman**, and **Sarah L. Schulz** (First Judicial Administrative District, Milwaukee).

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