Robert C. McKay Law Professor Award

Aaron D. Twerski, L'65, is the Irwin and Jill Cohen Professor at Brooklyn Law School and the former dean of Hofstra University School of Law. He recently received the prestigious Robert C. McKay Law Professor Award from the Torts and Insurance Section of the American Bar Association. The McKay Award recognizes an academic for his or her "commitment to the advancement of justice, scholarship and the legal profession demonstrated by outstanding contributions to the fields of tort and insurance law." The award winners have included such luminaries as Professors Robert Rabin and Charles Alan Wright and Judges Robert Keeton and Richard Posner.

No law school counts more McKay Award winners among its alumni than Marquette University Law School: in addition to Professor Twerski, other winners include James D. Ghiardi, L'42, V. Robert Payant, L'57, and John J. Kircher, L'63. With thanks to Brooklyn Law School and to the *National Law Journal* (in whose pages some of the following previously appeared), we reprint Professor Twerski's remarks upon receiving the McKay Award in San Francisco. They bear a message not only about Marquette University Law School but, far more broadly (and rather more sharply), the obligations of legal academics and the extent to which those obligations are being met.

Remarks of Professor Aaron D. Twerski, L'65

I am deeply touched by this honor. To receive an award named for Robert McKay is cause enough to be both humble and proud. And when I look at the names of previous honorees, I feel nothing less then a sense of awe. The scholars who preceded me in receiving this award shaped the discourse in tort law for the last half-century. That my modest contributions are reckoned to be mentioned in the same breath with them leaves me almost speechless.

But there is a more significant reason that this is an occasion of great pride for me. The criterion for the award is "commitment to the advancement of justice, scholarship, and the legal profession" in the field of tort and insurance law. For reasons that escape me, that goal is not shared by many in the legal academy. I need not repeat here tonight

the controversy that has swirled around the content of law reviews. Judges and lawyers have been telling us for over a decade that they no longer read the law reviews because they lack relevance to the work that they do—that the reviews are too theoretical and too esoteric. In short, we are being told that scholars are out of touch.

Let me be clear. The infusion into the legal academy of professors with doctorates in economics, philosophy, psychology, and sociology has brought perspectives into the law school curriculum that have enriched the academy and brought new insights into the law. But the idea that the legal academy is a closed club whose members speak only to each other and not to the bench and bar is decidedly not healthy. If interdisciplinary work is to have an impact on the changing face of the law, it must be made accessible to the lawyers and judges who are not schooled in other disciplines. And the scholars must demonstrate that the theories they set forth have real-world relevance—that they make a difference.

One additional point. Courts are faced daily with issues of incredible complexity and sophistication, and they need the thinking of the best and the brightest to help organize and wade their way through these problems. But young scholars today shy away from doing traditional doctrinal scholarship. The prestigious law reviews appear less interested in publishing such works, and the young scholars are justifiably afraid that when tenure time comes around their articles will be viewed as pedestrian. I often wonder whether William Prosser would be tenured today at a great law school. And I am almost certain that his article, "The Assault upon the Citadel," published in the *Yale Law Journal* in 1960, would not grace its pages today. It would be viewed as "too much case-crunching." Never mind that it accelerated the demise of privity and the adoption of strict tort liability in less than a decade.

We are told that lawyers and judges have no time to read because of their heavy workload. But they have time to read and digest the Restatements of Law and the lengthy comments that are appended to them, as well as the voluminous Reporters' Notes. Whereas citations to law reviews have plummeted, this year alone there were over 3,000 court citations to Restatements. Ah!—but you may say—the Restatements are anti-intellectual and black-letter law, not the product of sophisticated analysis

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of law and policy. I invite you to read the controversial sections of the Products Liability Restatement, such as sections dealing with defective product design and liability for drug products. They are the result of bitter hard work that took years to fashion. It is not necessary that all agree with them, but we framed the discourse for lawyers and judges for years to come. And when I read a majority and dissent of the highest court in a state that cites the Products Liability Restatement over thirty times, my heart swells with pride. Jim Henderson and I struggled with difficult issues of public policy. We did not slavishly follow authority when the authority made no sense. We heard many criticisms of our work. We received hundreds, if not thousands, of letters and comments from the bench, bar, and legal academy. But the one criticism we never heard was that our work was irrelevant.

Prof. Aaron Twerski and Prof. James Ghiardi

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In our travels as reporters for the Restatement, we were engaged by lawyers and judges who had read our writings and debated us about our views. Our appearances then and now before the ABA seminars made us better teachers and scholars. If that is what the Robert McKay Award stands for, and I believe it is, I can only say that I hope to be worthy of it. If I have not fully earned it, I hope to do so in the future.

A final word. The second recipient of this award, in 1988, was Professor James Ghiardi, who recently celebrated sixty years on the faculty at Marquette Law School. Jim was my torts professor more than a few years ago, and I had the privilege of being his research assistant for a full year. For decades he taught law students that they had an obligation to master the law and to be advocates for its betterment. This award belongs as much to him as to me. Thank you once again for this marvelous evening for me and my family. •