



The Law School's pro bono efforts rise to the challenge of the pandemic, with some innovations likely to endure.

By Alan J. Borsuk

“Come see us!” Angela Schultz, the assistant dean for public service at Marquette University Law School, said that, for years, that was the standard response when people called to ask for legal help. It was the way Marquette Law School opened the door to programs located around Milwaukee that helped thousands of people who couldn't afford a private lawyer.

Then, abruptly in mid-March 2020, the standard response was no longer possible. “Come see us”—of course, that was all off the table,” Schultz said.

But the determination to provide free legal help remained, and a scramble to find ways of doing this during the pandemic was launched. “We were optimistic that this was going to be a shift we could make,” Schultz said. “We needed to just go.”

In short order—by the end of April 2020—more than half a dozen pro bono programs involving law students were underway, all conducted remotely. Within a year later, that had grown to a dozen programs, with well more than 100 students involved. The number of students doing pro bono volunteering during the 2020–2021 academic year was almost identical to that in prior years, Schultz said.

One key to the success of the remote efforts was the creation of a civil legal “help line” that connected people with law students who could answer basic questions and advise them on where to turn for legal help.

Until the COVID-19 shutdown, people who called the Law School's public service office or the Milwaukee Justice Center, a collaborative program at the Milwaukee County Courthouse that supports pro bono efforts, heard phone messages directing them to visit clinic locations. To respond to the pandemic, a telephone help line was created instead, so that people could connect with the Law School's pro bono efforts. Thousands of people have been given help or directed to help as a result.

Look at a few selections from a summary that Schultz passed along (in anonymous form) of some calls:

- “Client needs help filling out legal separation paperwork.”
- “Would like help with guardianship for his mother.”
- “Domestic violence in household. I want a divorce and sole custody of our daughter.”
- “Needs help with child support forms.”
- “Trying to get all of her pension money from jobs; Spanish speaking.”
- “I am in the middle of a divorce, and I don't understand why things are happening that are happening. I need help.”

With 15 to 20 entries like these on each page of the summary, the list continued for 14 pages—and it covered only 11 days.



Student Fefe Jaber; Angela Schultz, assistant dean for public service; and student Ali Mahmood.

Illustrations by Stephanie Dalton Cowan

Rewarding Experiences, Both for Those Seeking Help and for Students

Each call gets a response from a law student who hears people out, sets up appointments with attorneys volunteering to provide help (assisted by law students), or directs callers toward help in other ways. The preponderance of the calls involve family matters, particularly divorce and custody issues. Landlord-tenant disputes, immigration matters, problems with legal identification and related documents, and employer-employee disputes are also common.

And then there are the unusual cases.

Suzanne Caulfield, a math professor at Cardinal Stritch University, is a part-time law student and a pro bono volunteer. She described a call from a woman who was distressed about a letter she received and didn't understand. Caulfield realized the letter was actually telling the woman she had inherited several thousand



Suzanne Caulfield

dollars from a relative. They checked it out and found it was for real. "She thought she was going to jail because she couldn't afford this bill, and it wasn't a bill at all," Caulfield said.

The callers aren't the only ones who are continuing to benefit from the pro bono programs in the pandemic era. The law students who are involved have found their participation rewarding, especially in a time when so many people have so much need.

Lauren Lehnberg, who worked in financial industry positions and is now a second-year student at the Law School, said, "It was such a gift to me to connect people with resources they need and to provide some sort of comfort to them in a very difficult time in their lives."

Lehnberg said, "The most important thing I do with them is to listen, to hear them out, to figure out the best way to help them, and then to provide some assurance that they can get help, that



Lauren Lehnberg



Jenn Diaz

they can make one more phone call or do a Zoom call with an attorney who can actually help them.”

Some of the calls are “heartbreaking and really difficult to hear,” she said. “Just the fact that this level of need still exists in our communities is really unnerving to me, and it makes me that much more determined.” She said that she aims “to be kind before anything else—and patient.”

Lehnberg described one of the cases that moved her, involving a woman whose son was about to become an adult but who continues to need her care and guardianship. Lehnberg helped the woman get on the path to obtaining

guardianship. “It was hard to hear her story, but it was also that much more rewarding to connect her to the resources she needed,” Lehnberg said.

Jenn Diaz, a first-year law student from Chicago, is fluent in Spanish. Much of her pro bono work has involved helping people who speak Spanish and have a language barrier, as well as income barriers, to getting help. When people’s problems are large, the help that can be offered is limited, but it is still valuable. “Even if it’s small, we definitely make a difference,” Diaz said. “Sometimes they just need someone to hear them and point them to the right resource.”



Casey Campos

Casey Campos is finishing her last semester of law school. She started doing pro bono work when the work was still in person. “It was great to work one-on-one with someone,” she said. “Then COVID hit, and that kind of changed everything.” But she is happy that the switch to helping remotely was made. In the pandemic period, it seems that the issues people are facing are giving them more stress. The problems themselves haven’t been much different, but there is “more of an underlying urgency,” she said. “Pointing people in the right direction was extremely critical to them.”

Ali Mahmood, a second-year law student, said that at a new-student picnic held when he arrived at the Law School in 2019, he saw the Mobile Legal Clinic van used for pro bono programs. He was impressed with the idea of taking services to where people were. “I knew right then and there I wanted to pursue this,” he said, and by his second week in law school, he was involved in the work. He has logged pro bono hours almost every week since then, including during summers and between semesters.





Ali Mahmood

In this COVID time, he misses the collegiality with other students, lawyers, and clients that comes from being in person, Mahmood said, but helping people online has been effective and provides connections with people who would not have been reached otherwise. He regards his pro bono activities as having been valuable to him as a student, helping him experience, in real life, aspects of what was taught in class.

“I Quickly Realized a Lot of People Need Help”

Fefe Jaber, a first-year law student who grew up in Milwaukee and attended college at DePaul University, said she

signed up for pro bono work because she wanted to get involved with the Milwaukee community. “I didn’t even know what to expect, but within even the first day, I quickly realized a lot of people need help,” she said.

Being able to offer that help remotely works, she said. Would she rather do the work in-person? Yes. “It’s not the same as having a one-on-one sit down,” Jaber said. “But under the circumstances, we do the best we can.” And most important, people are getting questions answered. “They’re still able to talk to someone about the help they need,” Jaber said.



Fefe Jaber



Naomie Kweyu

Naomie Kweyu, who is in her last semester of law school, was born in the Democratic Republic of the Congo. She came to the United States when she was nine years old and has considered Fort Worth, Texas, as her home. She did not know much about the city of Milwaukee before she enrolled at Marquette Law School. She said she’s since learned that the city is beautiful and has a lot of potential. But her pro bono involvement has taught her things about the city that weren’t positive, including the level of racial and economic segregation. “I’ve gotten to realize a lot more people have problems in Milwaukee than I thought,” Kweyu said.



But she said she has been helpful to many of the people whom she met, both in person and during the virtual period. She recalled someone whose mother had died; the client was stressed about what he was supposed to do as executor of her estate. When Kweyu spoke with the man, she related that her grandmother had died recently, and the conversation between her and the client extended to what needed to be done legally and to their overall situations. “I was able to calm him down,” she said. Kweyu said she has accepted a position with a large firm in Milwaukee and is eager for that opportunity, but she also is committed to continuing to do pro bono work.

Leaders of the pro bono efforts, as well as students who are involved, said that overcoming technological issues with people seeking help has been a challenge at times. Some people don’t have adequate internet access and good devices for conducting a Zoom call or for sending a lawyer or student volunteer material electronically. Some are simply not adept at using smartphones or similar devices. But overall, the virtual-communication hurdle has not been as big a factor as was feared, and solutions to overcoming impediments have been found in most cases.

Schultz said that initially legal aid leaders statewide had great concern about cyber-access issues. But the reality, she said, is that “we’re reaching plenty of people—every clinic is full.” She added, “If we built more, we’d serve more.” But everyone who seeks help gets an appointment.

Finding Upsides to Offering Help Remotely

In fact, the remote world has benefited many of those who need help. If they have the capacity to be in touch electronically, they are spared having to make a visit in person and the hassles with accompanying factors such as parking, child care, and weather, Schultz said. In addition, without the need to



Marisa No

seek assistance in person, people have been calling the help line from places in Wisconsin beyond the Milwaukee area.

Marisa No, a first-year law student, said pro bono work had been more emotional than she expected. She described it as “90 percent listening, 10 percent doing something.” She said that sometimes she doesn’t need a lot of facts from someone to figure out how to get the person on track for help. But she has found that people need to talk to someone, perhaps even more so in a time when they are separated from so many other people.

No said that, most of the time, the interactions still feel “very personal” even when they are not face-to-face. “It’s listening, it’s deep breathing; a lot of the time it’s making time for comfortable silence and letting people get out what they need to get out” before turning to matters such as scheduling an appointment.

Many of the people who call are, in one way or another, dealing with what professionals refer to as trauma in their lives. Caulfield, the math professor, was asked what the word *trauma* means for her when it comes to pro bono work. She said that sometimes people have experienced physical violence or medical trauma. More often, they have experienced emotional and psychological trauma. For example, she said, an eviction is a traumatic event to many people. “A lot of the time, trauma is stress.” In what percentage

of calls does the word *trauma* apply? “Probably 95 percent,” she said.

One comment that was volunteered by several students about switching over to virtual work was that “Alexi was a huge help.” They were pointing to Alexi Richmond, intake supervisor for the Milwaukee Justice Center, the collaborative effort of the Milwaukee County Circuit Court, the Milwaukee Bar Association, and Marquette Law School, located in the county courthouse. Richmond supervises and schedules clinics. As the impact of COVID-19 and the need to operate in new ways became clear, new ways of training volunteers were needed, and she became a key to creating and carrying out the training, as well as to overseeing the law students’ work.



Alexi Richmond

Richmond said that in the first month of the pandemic help line, only about 20 requests for help came in. More recently, that number has risen to about 1,000 requests each month. In her revised role, Richmond said, she spends as much as six hours a day on Zoom, shadowing the efforts of the pro bono volunteers.

Lehnberg was among the students who sang Richmond’s praises. “Alexi was just amazing to work with—she was there with me for the first few times I was taking calls.” One result of virtual operations, though, is that Richmond and most of the students have never met in person.

Building a Pro Bono Legacy

The Law School's pro bono effort has become a broad-based one. In addition to the students, the volunteer lawyers, and partnerships with outside agencies, Schultz leads a team of Katie Mertz, L'11, director of pro bono service at the Law School; Marisa Zane, L'11, leader of an estate-planning clinic at the school; and Mindy Schroeder, coordinator of the work of the Marquette Volunteer Legal Clinics, the school's largest pro bono project. Financial support comes from alumni and friends—most notably, in the form of a multiyear gift from the Gene and Ruth Posner Foundation, led by Josh Gimbel, a lawyer in Milwaukee.

"We created the Office of Public Service in 2006. A big part of our thinking was to establish a legacy honoring the late Dean Howard B. Eisenberg," said Dean Joseph D. Kearney. "Looking forward, the faculty were clear that the Law School

should help lead the effort to close the civil legal services gap in this region." Progress had been made over the years, but the pandemic was a whole new challenge, Kearney said. "We all very much admire what Angela Schultz and her team—including especially, of course, the students and the lawyer volunteers—have been able to do."

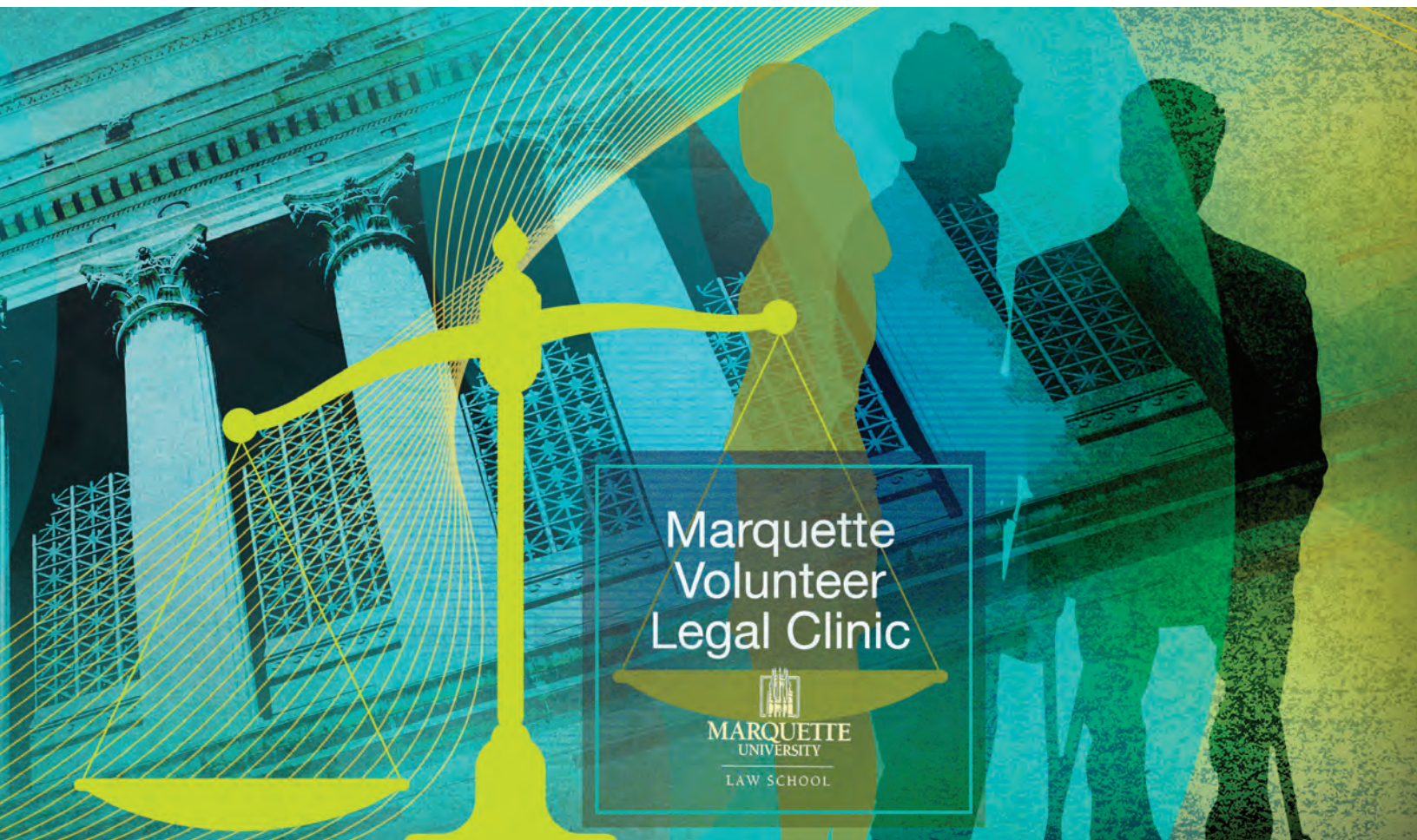
The pandemic will fade away. Will the impact it has had on pro bono work fade also? Only partly. Everyone involved wants to return to in-person work and understands what can be gained when working face-to-face. But the upsides of remote efforts also have been seen.

Schultz said, "Part of what we all know at this point is that we want some form of these remote services to outlast the pandemic. This will be part of our delivery service forever because it is convenient for so many of the people we are serving." And it's been convenient for students also.

"I hope there will be a narrowing in the justice gap between the urban centers and the rural parts of the state," she said. On the positive side of that hope is the way people can get help wherever they are. On the negative side is the fact that internet service issues are a bigger problem in rural areas than in urban areas.

"How do we further refine, refine, refine this system?" Schultz asked. Work on improving collaboration, cooperation, and overall service is necessary, she said.

Whether in person or virtually, the pro bono efforts will continue. Thousands of people will be shown ways to get help with issues in their lives, while volunteer law students gain their own benefits from their involvement. Lehnberg said pro bono work was "a life-changing experience" for her. "It showed me how I can help. It opened doors for me that I didn't even know were there." ■



Still Winning in the Court of Public Opinion

VIEWS OF THE U.S. SUPREME COURT REMAIN GENERALLY FAVORABLE, AND THAT MAY HAVE AN IMPACT ON WHAT THE JUSTICES DO IN THE COMING TIMES.

by Alan J. Borsuk

“It’s absolutely true,” Tara Leigh Grove said in a recent interview, “that in order for any court to function, the court needs some level of support from the political branches and from the general public as a whole.”

Grove is an expert on the United States Supreme Court. The “sociological legitimacy” of the Court has been a subject of interest to her for years. In October 2019, at a conference at Marquette Law School on public opinion about the Supreme Court, she said, “In our society, so far the losers [in cases before it] view the Supreme Court as a legitimate source of authority, and that’s what allowed the Supreme Court to function.”

Yet that legitimacy has become an issue of increased concern recently, even as signs emerge that overall deference to the Court and its decisions continues to prevail. Strong reasons for saying that confidence in the Court is steady lie in the results of two consecutive years of national surveys, by the Marquette Law School Poll, of adults on their opinions related to the Court, individual justices, and issues that have come before or may come before the Court. The poll results for both years showed much more respect for the Supreme Court than for the presidency or the Congress. The surveys also showed the majority of Americans believe that the Court makes its decision more on the basis of the law than on the basis of politics.

The first poll was “the deepest and broadest analysis of the Supreme Court that anyone has done,” Professor Lawrence Baum, a prominent political scientist at The Ohio State University, said at the time. The second poll matched the depth of the first—and Marquette Law School intends to make the poll an annual event.

It was the first poll, conducted in September 2019, that brought Grove and other highly regarded observers of the Court to the conference in Eckstein Hall. It was the second poll, with results that were nearly identical, that led to the

The first poll in 2019 was “the deepest and broadest analysis of the Supreme Court that anyone has done.”

Professor Lawrence Baum,
political scientist,
The Ohio State University

more recent interviews with Grove and other experts on the Court.

But a set of major events involving the Supreme Court unfolded in short order after the fall 2020 polling was completed. The field work on the poll concluded on September 15. Three days later, shortly before the poll results were released, Justice Ruth Bader Ginsburg died. Both years of the Marquette poll showed her to be unusually well known among the justices, and with the most favorable overall standing in the public nationwide.

Ginsburg’s death led to then-President Donald Trump’s appointing Amy Coney Barrett, a judge of the Chicago-based U.S. Court of Appeals for the Seventh Circuit, to the Court and swift confirmation of the nomination by the U.S. Senate, with only one Republican dissenting and no Democrats in support. That increased to six the number of justices on the nine-member Court who are regarded as conservatives.

Then came the election of Joe Biden as president and Trump’s unrelenting effort to get courts—and particularly the Supreme Court—to intervene in the election results. Trump’s effort, of course, did not succeed, and the justices did not accept any of several challenges filed with the Court. That left a Democrat as president and the balance of power in the Senate and House with Democrats, while the Supreme Court, including three Trump appointees, continues with six of nine justices appointed by Republican presidents.

The tumultuous recent events reemphasize questions about the Court’s standing in public opinion, the effect that public opinion has on what the Court does, the strength of the assumption that those who lose major decisions will defer to the Court, and, most broadly, what lies ahead for the Court.

Asked whether the acceptance of Court decisions is changing, Grove said, “Unclear, but not yet.” She said, “The norm seems to have held through the Trump administration.” Although Trump announced at times that he would defy court decisions, in reality, he did not, Grove observed. ▶▶



Views on past decisions

The Marquette Law School Poll gave brief summaries of past decisions by the Court and asked respondents for their opinions; the full summaries are available online.

PAST RULINGS	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose	Don't Know
Permit college use of race in deciding admissions	5%	12%	19%	54%	10%
Allow private employers with religious objections to exclude contraception coverage from health plan	17	17	18	33	13
Public financial aid may include religious schools' students	21	30	16	16	15
Uphold Indian treaty rights limiting reach of Oklahoma's criminal laws	21	25	13	12	27
Strike down certain regulations on abortion providers	27	19	16	20	18
Reject Trump administration effort to end DACA immigration policy	31	19	15	20	14
Hold 1964 anti-discrimination statute to include LGBTQ in its protections	38	25	12	13	11

Looking forward to possible decisions

The Marquette Law School Poll gave brief summaries of possible future decisions by the Court and asked respondents for their opinions; the full summaries are available online.

POTENTIAL RULINGS	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose	Don't Know
Limit federal agency rulemaking	17%	36%	14%	5%	27%
Overturn <i>Roe v. Wade</i>	18	14	15	41	12
Rule religious schools to be substantially exempt from employment discrimination laws	18	23	19	24	14
Strike down limits on gun magazine capacities	20	17	17	33	11
Permit government to exclude from operating a foster-parent program a religious organization not willing to certify same-sex couples as foster parents	21	19	19	24	15
Strike down Affordable Care Act as unconstitutional	22	14	15	37	11
Rule against voting laws that have unequal party impact	30	19	14	15	21

Poll Shows Broad Approval of How the Court Does Its Job

The fall 2020 Marquette Law School Poll found that 66 percent of people nationwide approved of the way the Court was handling its job, while 33 percent disapproved. Overall, 59 percent said that they trusted the Court the most among the three branches of the federal government, with 24 percent trusting the presidency the most and 16 percent trusting Congress the most. Approval of the Court was higher among Republicans and conservatives, but a majority of Democrats (57 percent) also approved of how the Court was doing its job.

And 62 percent of those polled said that the Court decides cases mainly based on the law and not politics. There was little partisan variation in answering that question: 60 percent of Republicans, 61 percent of Democrats, and 65 percent of independents answered, “Mainly the law.”

The poll found that favorable public opinion about past and potential-future judicial decisions included issues where a decision by the Court could be called liberal, such as 63 percent of the public in favor of the ruling in 2020 that extended federal anti-discrimination laws to people who are gay or lesbian and 56 percent opposed to a potential decision overturning *Roe v. Wade*, the 1973 case legalizing abortion. On other issues, public majorities could be called conservative, such as 73 percent opposing the Court’s past decisions allowing use of race as a factor in college admissions. And on still other issues, public opinion was split, without clear majorities for either side.

As the year before, the 2020 poll also found that justices were not widely known by the public overall. More than 50 percent of people offered opinions, favorable or unfavorable, on only three justices: Ginsburg, Brett Kavanaugh, and Clarence Thomas. Fewer than half of those polled offered opinions on the other six justices, including Chief Justice John Roberts. In both years, Justice Stephen Breyer was the least-known member of the Court.

Professor Charles Franklin, director of the Marquette Law School Poll, said that the similar results of the two Marquette polls indicate that “people have limited information about the Court, that they do their best to apply that information when they’re thinking about the Court, but that, outside of the rare blockbuster decision that rivets public opinion, for the most part, people are not moved by day-to-day decisions of the Court very much.”

Which of the three branches of government is trusted most?

The Supreme Court

59%

President

24%

Congress

16%

Fall 2020 national Marquette Law School Poll

But, Franklin said, that stable and favorable standing could shift. “Where there is potential for more change is that a lot of views of the Court are filtered through a partisan lens, and that partisan structuring is pretty strong.” He added, “It’s surprisingly less strong than the way partisanship shapes our views of Congress, state legislatures, governors, and so on.”

Franklin said that it can be argued that justices can have an impact on public opinion of their work by deciding cases in ways to some degree attuned to general public opinion—or, as he put it, by “avoiding counter-majoritarian decisions on a variety of issues.” There is much debate about this among Court experts, with wide agreement that Chief Justice John Roberts is the person on the Court who most keeps an eye on public opinion on hot issues such as the constitutionality of the Affordable Care Act (Obamacare). Roberts is regarded as the member of the Court who is most concerned about losing the “sociological legitimacy” that Grove described.

Substantial Support for Changes in the Court’s Structure

Even with the relatively supportive public opinion of the Court, both years of the Marquette polling found levels of support for changes in the Court’s structure that surprised a number of experts. Among members of the public surveyed in the 2020 poll, 75 percent favored term limits for justices, 46 percent favored increasing the number of justices, and 41 percent favored limiting the ability of the Court to rule whether at least some laws are constitutional.

President Biden has appointed a commission to consider changes in the structure of the Supreme Court, but he has not given much support to substantive proposals along those lines. Term limits probably would require a constitutional amendment, and it is hard to picture that happening. Adding to the size of the Court could be done by Congress, but with an even split between Democrats and Republicans in the Senate, it is hard to see this occurring in the near future.

In an “On the Issues with Mike Gousha” program presented by Marquette Law School in October 2020, Russ Feingold, formerly a U.S. senator from Wisconsin and now president of the American Constitution Society, strongly criticized the appointment of Barrett to the Court. He said that Republicans had “stolen” two seats on the Court, the ones now held by Justice Neil Gorsuch and Barrett. “They are delegitimizing the United States Supreme Court, they are making it look like a kangaroo court in the eyes of the



American people because of this process,” Feingold said. “They’re setting off a situation where progressives and Democrats and others may have no choice but to consider the basic nature of judicial tenure or the number of members on the Supreme Court.”

In a phone interview in March 2021, Feingold stuck by these criticisms and said there needs to be “conversation” on how to change the Court’s structure to reestablish its standing in the eyes of the public as fair and nonpartisan.

But in a separate “On the Issues” program in October 2020, David French, a commentator, warned against trying to alter the Court’s structure. “Every escalation is accompanied by a greater and opposite additional escalation,” he said.

Knowledgeable observers interviewed for this story offered a range of opinions on what is likely to lie ahead for the Court. A few of their expectations:

A quiet period. Thomas W. Merrill, Charles Evans Hughes Professor at Columbia Law School and a former deputy solicitor general of the United States, said, “I have sort of perceived in the past that when the Court begins to be a matter of public controversy . . . , [the justices] tend to sort of draw under their shell like a turtle.” He added, “I should think that should very much be the case now, probably amplified.” If people are alarmed about the way Barrett was appointed and if there is substantial support for structural changes, “that is likely to cause them to be very cautious about provoking the Democrats and the Biden administration.”

A not-so-quiet period. David A. Strauss, Gerald Ratner Distinguished Service Professor of Law at the University of Chicago Law School and also a frequent advocate before the Court, said, “I’d group things into two categories: [first,] a set of high-profile issues that have been with us for a decade or more—abortion, affirmative action, gun rights.” He said, “There is no question what the majority’s inclination is on those issues. It’s really a question of how fast they’ll want to go and how sharply divided they will be.” He said he expected to see continued movement in conservative directions and that fast movement “is not impossible.”

The second category that Strauss described involves emerging issues, such as religious rights. Religion, he said, is “clearly something [the justices] are thinking about a lot and an area where they are willing to be fairly aggressive in recognizing rights of religious groups not to have to comply with laws that apply generally.”

More attention to challenges of administrative powers. Recent presidents, including Trump and Biden, have made extensive use of executive orders and administrative rule-making to accomplish their goals. Strauss said that challenges to such actions “set the stage for a different kind of confrontation between the branches.”

Marquette Law School Professor Chad M. Oldfather said he anticipates that, over time, this court “will try to pare back presidential power in a variety of ways.”

But Merrill suggested that, in the near term at least, the

Court might move cautiously in such cases because justices may not want to look as if they were asserting their power over administrative agencies or to appear to be opposed to Biden.

Uncertainty about the upcoming role of Chief Justice John Roberts. Strauss said, “It is no longer clear that the chief justice is at the center of the Court.”

Sarah Isgur, who works with David French on *The Dispatch* online news organization, said during a Marquette Law School “On the Issues” program that, with Barrett’s joining the Court and adding to the conservative majority, Roberts “just lost his swing vote privileges, if you will.” But, she noted, as the chief justice, Roberts still generally decides who is assigned to write opinions (where he is in the majority). This can be an important factor in shaping the impact of decisions. “I think you’ll see a lot more chief opinions,” Isgur said, because he will give himself more of a role.

Grove said, “It’s hard for justices not to care about the public view of the Supreme Court, and that often is particularly true of the chief justice.” A chief justice is the institutional caretaker, she said, and “when you’re the caretaker of an institution, you do care about that institution being able to go forward.” That could put Roberts in the role of trying to keep at least some of the Court’s decisions somewhat in line with public opinion.

Merrill suggested that Roberts is “hypersensitive” to perceptions of the Court. Some other justices also are concerned about the Court’s reputation if it overrules a lot of steps by the other branches of government, he said.

Lobbying from liberals for Justice Breyer to retire. When a vacancy occurs, appointing younger justices, with the hope that they will stay on the Court for many years, has become important to both Republicans and Democrats. Breyer is one of the Court’s liberals. At 82, he is currently the Court’s oldest member. He was appointed by then-President Bill Clinton in 1994. Breyer is believed to be in good health, but some liberals are suggesting he should step down, perhaps in June at the end of the Court’s current term, so that a younger liberal can be named while Democrats in the Senate have the votes to confirm. Feingold said, “I’d be a little surprised if he didn’t step down.”

A shift of more issues to the states. Marquette Law School’s Oldfather said, “I’m happy to be teaching state constitutional law now because I think state constitutions are going to matter more.” Oldfather suggested that, in coming terms, the Court will be “less inclined to make issues national” and will leave more to states. And, he said, if the Court takes steps to reduce abortion rights, the issue is likely to become important in some states.

In the end, Oldfather said, positive public regard for the Court is tied to people’s thinking that what the justices are doing is about the law and not about politics.

So far, the majority public opinion in the Marquette Law School Poll has been that the Court is more interested in the law. As long as that remains true, the legitimacy of the Court, in the eyes of the public, is likely to keep at bay both proposals for major structural change and calls for paring back the Court’s power. ■