

every year the state supreme court goes on the road and hears a day or two of oral arguments in one of Wisconsin's 72 counties. The court's traveling sessions are always accompanied by a visit with the local bar association and area civic and school groups. A year or two after the *Oakley* case was decided we heard arguments in Portage County and during a break went to visit with the students at the Stevens Point Area Senior High School.

We were all seated at a long table on the stage in the high school auditorium, and there were thousands of students present—Stevens Point is the largest high school in the state—and after an introduction and initial presentation about the court by the Chief, we took turns answering questions from the students. When it was my turn, a student asked what was the most interesting case the court had recently decided. I explained that many—though not all—of our cases were interesting because we only accepted cases that had statewide importance, but that even so, most of the time our decisions did not get a lot of attention outside the legal profession. I was buying a little time trying to think of a case that would be sufficiently interesting and explainable to the students. I decided to go with the *Oakley* case.

I gave a brief description of the facts and the issue in *Oakley* and then explained our split decision. I told the students that the case was novel and difficult and had attracted quite a bit of attention—including commentary on the fact that the court had divided along gender lines, with the male justices in the majority and the female justices in the minority. But, I hastened to add, the issue in the case really had *nothing* to do with gender—at which point the Chief leaned into her microphone and said: “But it had everything to do with *sex*!” This had the effect you might expect on the assembled students and ended my serious discussion of the court's interesting caseload.

Now, *Huebner* and *Franklin*—the six-person jury cases—obviously had no gender-salient issues (assuming there is such a thing), and in truth *Oakley* didn't either. I suppose you could view the *Oakley* case as a clash between the interests of single mothers and their children and the rights of support-delinquent fathers, and in that sense our dissenting votes were counter-gender intuitive. But the case was really about the limits of state power, which is a legal question; and I think the way that judges approach legal issues cannot be gender-stereotyped. ■

Hoarding Ceremony Address

Doing the Right Thing When the Crunch Comes

This is an excerpt from the address given at the Law School's Hoarding Ceremony this past spring by Joan Biskupic, Supreme Court reporter for *USA Today* and author of *Sandra Day O'Connor: How the First Woman on the Supreme Court Became Its Most Influential Justice* and *American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia*. Biskupic has a bachelor's degree from Marquette University and a law degree from Georgetown University.

I want to relate something Chief Justice William Rehnquist told me in one of our regular lunches. As most of you know, the late Chief Justice grew up in nearby Shorewood. I very much played my Wisconsin card with him and took him regularly to lunch. Sometimes we would go out to a restaurant on Capitol Hill, which put us in a special room where he could smoke his Merit Lite cigarettes. Sometimes we would eat in his

chambers. Chief Justice Rehnquist was aware that my grandfather, who came to America from a village in Croatia, had settled in Sheboygan before moving down to Chicago, where he raised his children and where we, his grandchildren, were born.

At one of our lunches, the chief and I talked about the Watergate era and the scandal that he narrowly missed. The break-in at the Democratic headquarters that

led to the cover-up and fall of President Richard Nixon in 1974 occurred in June of 1972. Only five months before that precipitous incident in the summer of 1972, Rehnquist had left the Justice Department of Attorney General John Mitchell and taken his seat on the Supreme Court.

Several of Rehnquist's former colleagues ended up embroiled in Watergate, indicted, and convicted. In fact, when the Watergate tapes case came to the Supreme Court in 1974, Rehnquist recused himself because his old colleagues were involved.

Rehnquist told me he was relieved to have been gone from the Justice Department when the Watergate cover-up occurred. Yet, he also said something interesting to me about the temptations he might have faced if he had remained behind. "You presume you will do the right thing," he told me, "but you never know how you might handle the pressure at the time." Rehnquist spoke of potential pressure from his bosses and of simply being caught up in a bad situation while thinking you are doing good. It occurred to me then, and many times since then, what a wise thought this was. None of us can presume we are immune from the pressures of politics or money or all the other enticements that come to people in power, but especially come to lawyers.

Rehnquist was 47 years old when President Nixon appointed him to the Supreme Court. He had been around long enough to have seen plenty of colleagues and even some friends get into trouble, either in Washington or in Phoenix, where he started his legal career.

Rehnquist came to Washington in 1969 just as Abe Fortas was caught in a financial scandal and about to become the first—and still only—Supreme Court justice forced from the bench amid controversy. We remember Fortas for this dubious distinction. But recall that Fortas had been a highly respected corporate lawyer and civil-rights advocate earlier in his legal career. In fact, Fortas had represented Clarence Gideon, the indigent Florida prisoner whose 1963 landmark case established the right of a criminal defendant to be represented by a lawyer, even if it has to be at public expense.

President Johnson made Fortas an associate justice in 1965. The trouble started when Johnson tried to



quickly elevate him to chief justice in the election year of 1968. Because of Fortas's close relationship with Johnson, critics accused the president of cronyism. But Fortas' real difficulties were traced to some of his financial dealings, including that he had received a \$20,000 retainer from indicted stock manipulator Louis Wolfson. With his bid for chief justice filibustered in the Senate and mounting questions about his financial dealings, Fortas resigned from the Court in May 1969.

For him, money was the lure. But there are all sorts of ways to be tested. Maybe it will simply be not putting in the work necessary to represent a client. Maybe it will

be following the lead of a boss who is trouble. Maybe you will be simply drunk on the power of your position. Maybe you will get inside-information from the company and make that stock trade. These things may never happen to you, but I think it helps to be vigilant and not presume you are above it all.

Justice Antonin Scalia, my most recent book subject, is fond of saying the rule of law is the law of rules. But that's only part of the equation. Lawyers cannot go only by the letter of the law. They have to embrace the spirit of the law and bring their wisdom and good judgment to it.

So, how to do the right thing? The best advice I have is to get good advice. I do not think you can presume that every partner in the firm, every boss in a government office, every director of an agency will share your interests. It helps to choose your role models carefully. Look for older people who have been around, who themselves have been tested. Seek out people who are excellent at their work and who have integrity. Watch them for their smarts and savvy to be the best lawyer possible, but also watch them to be ethical and judicious.

I can immediately point you to one group of people who can be helpful: professors here at Marquette. They have already invested in you. Stay in touch with those who you believe can offer guidance as you move along in your legal career. They know that being a lawyer is a privilege and a challenge. ■