

appointed her to the Wisconsin Supreme Court in 1999. The following April she won a statewide election for that seat.

Sykes notes that she enjoyed working with the other members of the court and the cases they handled during that five-year period.

“I approached it with a view to making the process as collegial as possible, so that the final outcome—the court’s opinion—would keep the focus on the relevant rule of law emanating from the opinion, rather than any other tangential disputes that might exist on the court,” Sykes explains.

Dean Kearney, for one, views this as an important legacy. “Justice Sykes came to the Wisconsin Supreme Court at an exceedingly difficult time: it was just a few months after the court had fractured badly and publicly over Chief Justice Abrahamson’s successful bid for reelection. While I am not privy to the inner workings of the court, my sense is that during her tenure Justice Sykes helped to ensure that the arguments inside the court were about the important matters—the merits of the cases.”

But Kearney does not think that this is Sykes’s most important legacy in Madison. He views her as having been a strong and moderating voice on matters ranging from development of the common law to statutory interpretation. “It seems to me that, even in only five years on that court, she managed to leave a legacy that will affect the court’s discussions and decisions for many years to come.”

Asked about the differences between her two appellate court experiences, Sykes observes, “Getting to a decision among seven has more challenges than getting to a decision among three. Holding together a four-vote coalition or a five-vote coalition on an issue and stating it in a way that preserves that majority rule of law is different from doing so on a panel of three.”

The newest member of the Seventh Circuit acknowledges that this year is an educational experience.

“I will have to learn the intermediate appellate court triage that has to occur in terms of the allocation of my time to the higher-consequence cases,” Sykes says. “That will come with experience.”

Marquette Law School is fortunate to number these three judges among its graduates. •

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The following are the remarks of Dean Joseph D. Kearney at the investiture of the Honorable Diane S. Sykes as a United States Circuit Judge. The ceremony occurred in the United States Courthouse in Milwaukee on October 29, 2004.

Chief Judge Flaum and May It Please the Court.

The back of the program for this ceremony refers to the foundational act that structured the federal appellate judiciary and occasions today’s investiture ceremony. This is Congress’s passage of the Evarts Act in 1891, which among other things created this United States Court of Appeals for the Seventh Circuit.

The next year, in 1892, another institution was created, closer to home but also, I believe, of some significance. Two lawyers and eleven students joined together to form something that they called the Milwaukee Law Class and that four years later was named Milwaukee Law School. A few years after that, the school became known as Marquette University Law School. Today the school consists of some 600 full-time and part-time students and more than thirty faculty. It remains the only means of formal legal education in Milwaukee. As both a fact and an aspiration (albeit not an entire aspiration), it can still be called Milwaukee’s law school.

But it is not the size of the enrollment or some local monopoly that gives us any special pride. For those of us who remain behind in the academy every year, it is, more than anything else, the undertakings and contributions of our graduates. That these are rich and impressive is a view shared by many. On the most recent two occasions when the President of the United States has named a new judge to a Wisconsin seat on the Seventh Circuit, he has turned to a Marquette Law School grad-

remarks

uate. I refer, of course, to Judge John Coffey, Marquette Law School Class of 1948, and Judge Terence Evans, Marquette Law School Class of 1967, appointed by presidents from different political parties.

The appointment of Judge Diane Sykes, from our Class of 1984, continues the trend—I dare not call it a tradition or, far less, as we used to say in Chicago, a three-peat. I had the privilege to get to know Judge Sykes when she was a member of the Milwaukee County Circuit Court and I was a new and untenured member of the Marquette Law School faculty. We had a mutual friend in the late Dean Howard Eisenberg, and I recall meeting Judge Sykes at a Law School event in the fall of 1997 during my first semester at Marquette.

From this and subsequent conversations, from experiences before the Wisconsin Supreme Court, and from my work as a student of sorts of that court, I learned two things that I wish to note here about Judge, then Justice, now again Judge Sykes. One is that we will miss her service as a Justice of the Wisconsin Supreme Court. Her opinions are thoughtful and incisive. Justice Sykes's contributions to the common law of Wisconsin have been especially notable.

The other is our certainty of her contribution to this court. Permit me to share an anecdote, as I think is part of my charge. I have had the privilege of practicing and working with some truly extraordinary lawyers, in Chicago, in Milwaukee, and in other places, and it has always struck me that continuing curiosity, investigation, and self-education are shared characteristics of those I have considered to be the best models of the profession—humility and industry, if you wish a summary.

I was struck this past spring when we happened to be walking from opposite directions down 11th Street and met in front of the doors of Marquette Law School. I learned that then-

Justice Sykes, whose confirmation as a federal judge at that point seemed certain, was there because she wanted to do some research in *Sutherland on Statutory Construction*. I inquired no further, but I must admit that I did a computer search among this summer's Wisconsin Supreme Court cases as I prepared for my remarks today. It became clear that the point was not merely to read Sutherland, but, to judge from the way the treatise was invoked, to engage, quite directly, on an important matter with the Chief of the Wisconsin court—perhaps even to score a point against the Chief (or, as Chief Justice Abrahamson has already spoken today, it would be more sporting of me to say that Justice Sykes's effort was *to seek* to score a point against the Chief). Anyone who has been the beneficiary of a Jesuit education—of the old sort, at least—will not doubt that a little competition can spur on both humility and industry.

And so, admiring her talents as a judge and her underlying attributes of humility and industry, I consider it a privilege to congratulate Judge Sykes on this notable occasion. I can even claim some special authority to do so. If you return to that back cover of the program, you will see that the first holder of the seat now occupied by Judge Sykes was Judge James Jenkins. At Marquette, we remember him instead as *Dean* James Jenkins, for after stepping down from the Seventh Circuit, Judge Jenkins became the first Dean of Marquette University Law School.

So, Judge Sykes, as, like you, a successor of James Jenkins, and on behalf of all those who are associated with Marquette Law School today, I congratulate you, and I wish you well. The people of Illinois, Indiana, and Wisconsin will be well served by the actions of the President and the Senate of the United States in appointing you a judge of this court. •