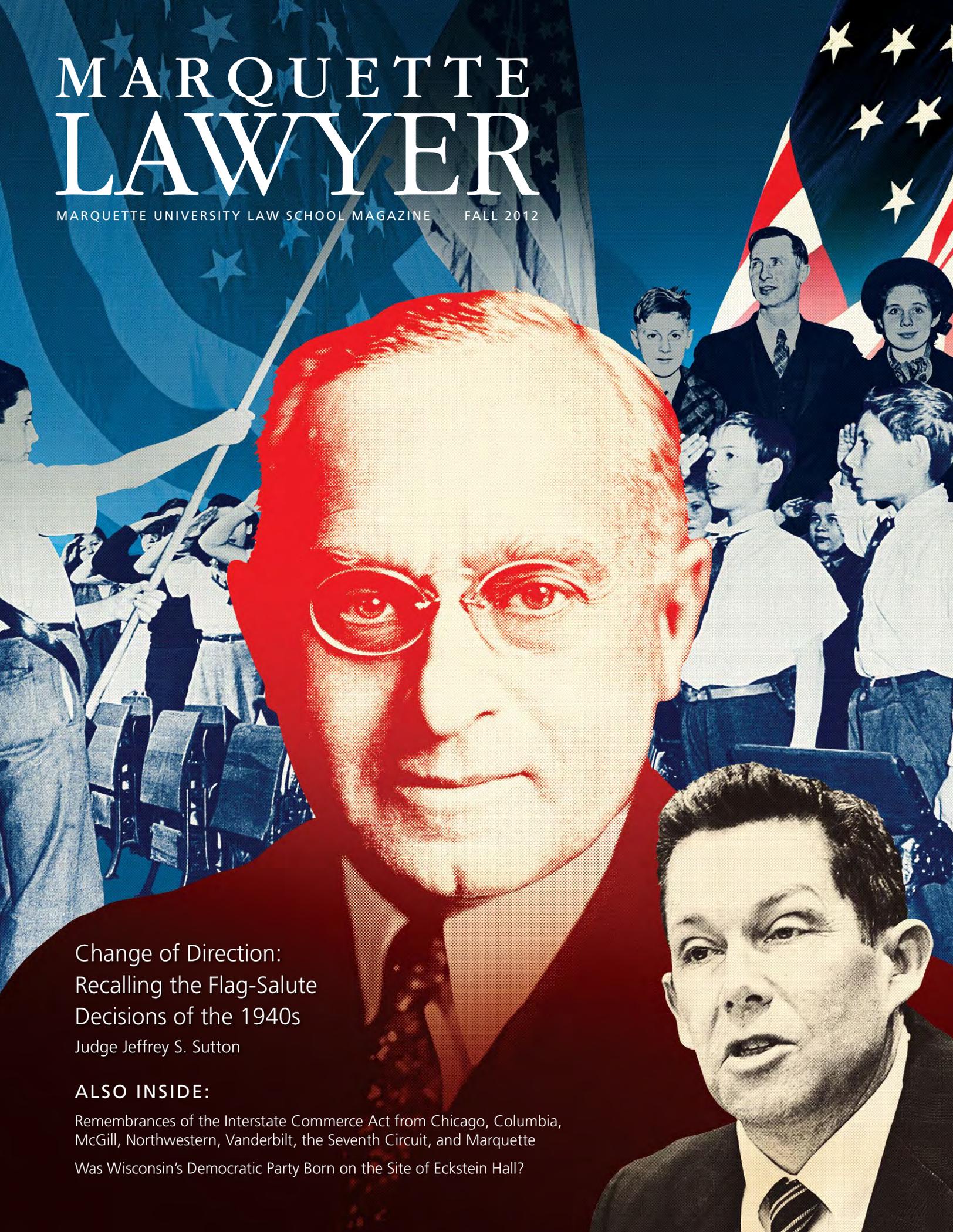


MARQUETTE LAWYER

MARQUETTE UNIVERSITY LAW SCHOOL MAGAZINE FALL 2012



Change of Direction:
Recalling the Flag-Salute
Decisions of the 1940s

Judge Jeffrey S. Sutton

ALSO INSIDE:

Remembrances of the Interstate Commerce Act from Chicago, Columbia, McGill, Northwestern, Vanderbilt, the Seventh Circuit, and Marquette

Was Wisconsin's Democratic Party Born on the Site of Eckstein Hall?

The Lawyer as Public Citizen

In recent years, Marquette Law School has assumed a prominent role in Wisconsin for convening the community for attention to public policy matters. Aspects of this are widely known (a few also being recounted on pp. 4-9 of this magazine), to the point that within the past year the *Milwaukee Journal Sentinel* has dubbed Marquette Law School “Milwaukee’s public square.”

This initiative bears on our legal education. It is true that these public policy efforts depend substantially on Annual Fund donations by alumni and friends (as opposed to students’ tuition) and are primarily in the nature of public service. At the same time, our public policy programs enable the aspiring lawyer to learn things that will help him or her in the professional world. For in addition to—and even in the process of—representing and counseling clients (the overwhelming focus of legal education), a lawyer is almost inherently a public citizen.



The significance may be clearest outside the practice. Many organizations have been able to contribute to society because of the leadership of engaged attorneys. In Milwaukee alone, Catholic Charities (Jim Brennan, L’76, and Mike Gonring, L’82), the Jewish Community Foundation (Bert Bilsky, L’79), and the Islamic Society of Milwaukee (Othman Atta, L’94) all immediately come to mind as public service organizations that have relied in recent years on the leadership of Marquette lawyers.

My claim of the benefit of our public policy initiative to our students’ formation as Marquette lawyers is nonetheless more direct. To illustrate, is there more honorable work in the legal profession than that of the criminal defense lawyer or the plaintiff’s personal injury lawyer? This is not my own background or experience, but I would maintain that the answer is “no.” And can we doubt that for these purposes knowledge of procedure and substantive law can be supplemented, to a client’s advantage, by an appreciation of larger policy and cultural challenges and trends?

My doubts are few. Criminal law, for example, is scarcely the domain of courtroom lawyers and judges alone. The Milwaukee chief of police, the district attorney of Milwaukee County, the attorney general of Wisconsin, even the Congressman from Wisconsin’s first district (now standing for vice-president of the United States) and the editor of the city’s daily newspaper—all of whom have found themselves engaged at the Marquette Law School in recent years—have an effect on the policies whereby an individual defendant may find himself treated or sentenced in the court system. So the lawyer who has followed, for example, the recent discussion at the Law School about “evidence-based decision-making” in the criminal justice system may indeed bring something to his client’s representation that a less worldly lawyer does not.

As for the plaintiff’s personal injury lawyer, it is scarcely possible, for example, that such a lawyer would not benefit from reflecting on Judge Jeffrey Sutton’s careful assessment of how and why a court reversed itself within just a few years on the viability of a plaintiff’s claim. Judge Sutton spun out that analysis in a standing-room-only Hallows Lecture in Eckstein Hall; it is found in written form as this magazine’s cover story. The general point is not news: As long ago as the nineteenth century, we knew from Holmes that the common law (historically, the particular interest of personal injury lawyers) reflected not simply logic but also “[t]he felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men.”

To be sure, the point should not be stretched beyond its breaking point. Our public policy initiative does not yield academic (or typically even CLE) credit. Yet some sense that a lawyer’s education can be adequately cabined at the 90 credits required to earn a J.D. is misplaced. The point extends well beyond public policy: some of us have even been known to use literature and poetry to a client’s advantage. But that would be another column.

Joseph D. Kearney
Dean and Professor of Law