

Paul T. Dacier

Some Recollections of Marquette Law School— and Some Advice

The editor-in-chief of the *Marquette Law Review* traditionally invites a speaker for the journal's end-of-year dinner. This past year Steven Kruzal, L'14, asked Paul T. Dacier, L'83, to address the gathering. Mr. Dacier is the general counsel of EMC Corp., a Fortune 500 company based in Hopkinton, Mass. We produce here his remarks, which blend reminiscence and more-direct advice.

It is a privilege and an honor to speak with you this evening. It took me 30 years to make it to Law Review! Thank you very much.

This evening I would like to tell you about some of my law school experiences and offer you some insights that I have gained through years of practicing law. To begin, I ask you to bear with me in a trip down memory lane. I would like to share with you a few memories from my law school years.

The first event that I attended at the Law School was a picnic. It was being held near Sensenbrenner Hall. As I approached the event, I ran into a woman, and she asked, "Are you a first-year law student?"

I said, "Yes."

I then asked if she was, too, and she said, "No, I am a third year." Then she said, "You are going to have *quite* the experience."

I thought, "Hmmm, that is interesting."

On my first day of law school, I was in a class with Professor Michael Waxman. I believe that it was his first time teaching at the Law School. He asked, "Is the law a profession or a business?"

I didn't know the answer to the question. I thought again, "Hmmm, that is interesting." (Incidentally, I now know what he meant, and I have come to regard the law as a profession.)

It turns out that those early moments were only the beginning of a most interesting journey. While I was at the Law School, I found myself constantly interacting with people who got me to think differently; who changed my world view; who caused me to think, "Hmmm, that is interesting."

One of my favorite subjects was the Uniform Commercial Code (UCC), taught by Professor Ralph Anzivino. I studied that subject every day and night during the semester and was more than ready for the



Paul T. Dacier

final exam. The night before the test, a classmate called in a panic. You see, he never studied until the day or night before an exam. He exclaimed, "Paul! Paul! I just finished reading Article 9 . . . I haven't even started studying Article 2 yet!" I burst out laughing and said, "Good luck," and then hung up the phone, convinced he'd never pass.

The next day, I took the UCC exam and wrote four-and-a-half blue books. My friend told me that he wrote two blue books. I received a very good grade. My friend? He passed with an 80—not such a bad grade on the old scale. You might assume that I thought again, "Hmmm, that is interesting." But, in reality, my reaction was stronger than that. It was a disappointment when I realized that my grade received may not always reflect the level of effort expended.

In my mind, I experienced a considerable indignity when I had to take the exam in Evidence from 3 to 6 p.m. on my birthday. That night at dinner with a friend, I was exhausted from taking the test. I could not talk—even though the dinner was to celebrate my birthday. This is another example of something that I learned quickly: life is seemingly not fair, or, somewhat more specifically, an important personal event can be trumped by reality.

As you can see, these law school experiences, as well as others, are emblazoned in my mind after all these years. And I am grateful for them—even the ones that bothered me to no end.

These moments, I believe, marked the beginning of my journey as a lawyer. Since then, three decades have gone by, and I have learned a lot of lessons and would like to pass some of them on to you. To that end, there are three pieces of advice that I would like to give as you enter the profession of law. The first is: *Always ask “Why?”* The second is: *Solve problems.* And the third is: *Embrace innovation.*

Let me begin with *Always ask “Why?”*

In law school, we are all taught the black-letter rule. In many ways, we believe that the rule says what it says. But is this really true?

In 1990, I was the only lawyer at EMC Corporation in Hopkinton, Mass. My title at the time was corporate counsel. My boss was Dick Egan, the “E” in EMC. Dick was constantly questioning my judgment. He would listen to my answers about the rule and then would ask, “Why?” or “Are you sure?” or “It does not say that.” Dick questioned me so much that I was irritated most of the time. After a while, I realized that Dick was forcing me to look at the rules skeptically. He wanted me always to consider the needs of the business and then apply the rule. This pushing by Dick caused me to change how I looked at business and legal issues. I stopped thinking that the black-letter rule was the end of the matter.

How does this apply to you? It is a given that, as lawyers, you must know the law. To effectively evaluate the situation, however, you must know the goals and objectives of the client. The challenge will always be to take the needs of the client and then apply the rule.

Also, never slow down the client or business because of the rule or related legal issues. To put it differently: Always ask yourself “Why?” Challenge your assumptions and always remember that what the client wants, the client gets, wherever possible, and you are the one to make it happen. If you say “no” too easily or discourage the taking of risk, you will lose the client. You need to enable the client to take the risk, where appropriate, on sound legal advice, and, in all events, your job is to make sure that the law is there for the client’s benefit and not to the client’s detriment. Also, you should work faster and more efficiently than everyone else. In doing so, you will be seen as a can-do lawyer who used “Ask ‘why?’” to get the task accomplished.

The second piece of advice is to *Solve problems.*

From the beginning of civilization, problems have always existed. That is why Hammurabi’s code and the Magna Carta were written. That is why the United States Constitution is in existence. For us today, the problems may be more discrete, but the fundamental question remains: What do you do when a problem comes your way? How do you react?

Trade secret misappropriation is a major problem in the high-tech industry. In the 1990s, when EMC was a much smaller company than today, this problem was particularly acute. One day we would go into court in Massachusetts seeking preliminary relief against a particular defendant, and it would be granted. A few days later, we would be back in court with the exact same facts with a different defendant, and the request for preliminary relief would be denied. We felt like—it is almost not too much to say—we were in a first-class business world with a third-world court system.

I then criticized the courts to Dick Egan and anyone else who would listen.

One night I was speaking about this situation at home, and my young son said, “Dad, can’t you fix this?”

My first inclination was to say, “Of course not. This problem is bigger than me.” But, the truth be told, his comment got me thinking. It is easy to criticize. Why not try to change the system and solve the problem?

As a result, in the late 1990s, I started an initiative





It is a given that, as lawyers, you must know the law. To effectively evaluate the situation, however, you must know the goals and objectives of the client. The challenge will always be to take the needs of the client and then apply the rule.



to establish a business court in Massachusetts. I worked on this initiative with the Massachusetts Legislature and the courts. In 2000, the Business Litigation Session was established in Suffolk County (Boston) by court order. Since then, more than 4,000 complex business cases have been filed in the Business Litigation Session. This business court has been an outstanding success. In fact, the entire civil court system in Massachusetts is working more efficiently because complex business cases are now being handled by a specialized court with a dedicated group of judges. Now there is a body of case law with consistent rulings that practitioners can rely on concerning trade secret misappropriation, covenants not to compete, and the like. Also, court rulings are issued expeditiously, and this helps businesses operate with certainty. This court has also given Massachusetts a reputation of being a more business-friendly state. Incidentally, two of the judges who presided in the Business Litigation Session during the past 10 years are now justices on the Massachusetts Supreme Judicial Court.

What can you do when a problem comes your way? Well, first and foremost, when you see a problem, don't assume that it is someone else's responsibility to fix. Your ability to solve a problem is as much about mindset as it is about capability. Even as law students, you can effect change. An example is for all of you to use the power of the pen through the *Marquette Law Review*. Over the years, the *Law Review* has published many excellent scholarly articles on the Interstate Commerce Act, the Wisconsin Constitution, the innovation undertaken by the courts with alternative dispute resolution, and the Wisconsin Consumer Act. I believe that as law students, you should use this

power to embrace critical emerging trends and solve real-time problems. For example, I suggest that articles be written that analyze the law of cybersecurity and privacy and whether the United States Constitution is scalable, taking into account the desire of terrorists who are ready to destroy our way of life. The key point is that you, as student leaders in this Law School, are taking on current real-time societal and legal problems. And, through the *Marquette Law Review*, you are giving advice on how to resolve these major issues to the benefit of all citizens.

Along the lines of being a thought leader, during the past few years I have been delighted to see the Law School achieve prominence with its political polls and in publishing an analysis about a recent judicial election contest at the Wisconsin Supreme Court. I read about the political polls and the judicial election contest in the *Wall Street Journal* and the *New York Times*. This widespread publicity is excellent for Marquette Law School and its reputation. This publicity also makes the Law School a sought-after reference source because of its impactful analysis and commentary.

My third piece of advice is to *Embrace innovation.*

Innovation is the lifeblood of civilization. Innovation is constantly taking place and changing our way of life. Even the law is being buffeted by innovation.

The innovation in law that I am talking about is the explosion in "self-help law" or "do-it-yourself law." People are learning the law over the Internet from a variety of generally available sources that offer easy ways to do legal tasks without the need for consulting with a lawyer. Shockingly, some lawyers (and associated business entrepreneurs) are encouraging the public to bypass the legal system as we know it through the use

of technology or otherwise. These lawyers are biting the hand that should be feeding them. They are thriving at *your* expense.

What can you do about this, since the train clearly has left the station and innovation in the law is going to continue no matter what? As a lawyer, you need to innovate, too. You need to show a value proposition to the public about why they need a lawyer. You need to show the public that they can afford you and that having a lawyer is essential to their well-being. You need to show the public that, contrary to popular belief, the law is not easy and that self-representation, in any way, shape, or form, is dangerous.

There is also a huge misconception about the number of lawyers in the legal profession today. People say that there are too many lawyers in the United States. This is not true. There is an overwhelming amount of legal work in this country, and there is not a glut of lawyers. I believe that many new or seasoned lawyers should focus on lower- and middle-income America. The people in these income categories have an enormous need for legal services. They need help with wills and powers of attorney. They need legal representation on real estate transactions, divorce and domestic relations issues, criminal matters, and the like. Furthermore, the huge number of pro se litigants illustrates that there is a tremendous need for legal representation in the courts—beyond that which is allegedly self-taught. With the right focus and price points, I believe that all lawyers can be gainfully employed.

The courts have to innovate, too. Whether rightly or wrongly, there is an overwhelming public perception that the courts are slow, complicated, rigid, and difficult to understand. People also think that it takes forever to get a judge to hear a case and rule on it. Interestingly, judges comment on the court system as well. Many state

court judges will tell you that they are overwhelmed with work and that state budget cuts are restricting their ability to render justice fairly and efficiently. On the other hand, some federal judges will tell you that the number of civil and criminal cases taken to trial has dropped dramatically over the years. In fact, one federal judge recently told me that in his district each year on average only 4.5 cases per judge are tried to a jury.

Most people do not understand that the judiciary is a coequal branch of government. They are also very quick to criticize the jury system. People need to be reminded that there is a system of advocacy in the United States, as established by our founding fathers, that seeks truth and justice.

In any event, because of these perceptions, innovators have gotten involved in the litigation process. This is why the private litigation industry has grown dramatically. Many lawyers and their clients have embraced private litigation in the form of arbitration or otherwise without the benefit of the rules of evidence and the right of appeal, because of the mistaken belief, in my opinion, that such a process is superior.

Some judges have realized that private litigation is competitive with the courts, and they have responded by adopting the “rocket docket” approach. This means that lawsuits are dealt with rapidly and efficiently. In fact, with rocket dockets, most civil suits are set for trial within one year from the date of filing.

I believe that all courts should adopt the rocket docket approach. By rapidly dispensing justice, the reputation of the courts will be enhanced among the public and with lawyers. Also, the number of civil litigants in private litigation will decrease, and the courts will be fully utilized, as always intended.

I would like to conclude my remarks with a personal story that I have never told anyone before this evening. The reason for this story is to illustrate to you that it is important to speak up and ask for help at any time during the remainder of your academic life or as you progress through the real world. You never know what can come from asking someone for help. >>

“Once in a while I think about Dean Boden’s kind gesture. It has served as an example for me, and I have paid it forward.”

It was the spring of 1980, and I was a senior at Marquette University. I was an average student with average grades. I was one of two student representatives on the university's Academic Area Budget Committee. The other members of this committee were the deans from the colleges and schools within the university. One of the members of this committee was Marquette University Law School Dean Robert F. Boden. After a committee meeting one day, I introduced myself to Dean Boden. I told him that I had just applied for admission to the Law School and asked for his help. He said, "Call me in two weeks."

As time went by, I was sure that he had forgotten all about it. As suggested, however, I called the dean and then met with him in his office. In the meeting, I started to tell Dean Boden about my qualifications for admission—that I was an Eagle Scout and. . . .

He interrupted me and said, "You are also on the Academic Area Budget Committee?"

And I said, "Yes, of course." I quickly realized the disconnect in that he was impressed with my

membership on a university committee, while I was trying to tell him how important it was that I was involved with scouting. Nevertheless, it seemed that the dean showed a *genuine* interest in me, and I remember him saying he'd see what he could do to help. After meeting Dean Boden, I wondered if I had done the right thing by asking him for help.

Sometime after my meeting with Dean Boden, and much to my relief, I was admitted to the Law School.

Once in a while I think about Dean Boden's kind gesture. It has served as an example for me, and I have paid it forward. Many, many times people have asked me for help, and I have tried to oblige them in any way that I can. The door to opportunity opened for me through an act of kindness, so why shouldn't I do the same thing? I urge you to do the same thing for anyone who asks for your help.

The education that I received at Marquette University Law School changed my life forever. Let the education you receive at this Law School change your life forever, too.

Thank you. ■

Sports Law Banquet | James L. Perzik

L.A. Lakers General Counsel Receives Joseph E. O'Neill Award

On April 25, 2014, at the annual Marquette Law School Sports Law Banquet, James L. Perzik received the National Sports Law Institute's Joseph E. O'Neill Award. The award, remembering a late partner at Davis & Kuelthau, is given annually to an individual who has made a significant contribution to the field of sports law while exemplifying the highest ethical standards. Mr. Perzik is the senior vice president of legal affairs and secretary of the National Basketball Association's Los Angeles Lakers and the team's former longtime general counsel. In addition to providing a glimpse into his work over the years for one of the nation's great sports franchises, his remarks in receiving the award offer, both incidentally and directly, wise counsel for Marquette law students interested in sports law.

Dean Kearney, Professors Mitten and Anderson, the O'Neill family, Chuck Henderson and his colleagues at Davis & Kuelthau, my good friend Professor Parlow, faculty, students, and anyone whom I may have missed:

First, I would like to thank the O'Neill family for creating the Joseph E. O'Neill Award and for its support of the award by Chuck Henderson and his firm. Second, I would like to thank those who believed that I should be the recipient of the award. It is my great honor to accept it. Again, I thank you all.

It was suggested that, given the number of students present this evening, I describe my path to becoming the general counsel of the Los Angeles Lakers. I do quite a bit of mentoring, and this is probably the question that I am asked most often.

I graduated from the school of business at the University of Southern California (USC) with a major in accounting. I received my CPA certificate and engaged in the practice of accounting. I primarily dealt in the areas of business and tax consulting. After seven years of practice, I thought that I could learn more about taxes if I went to law school.