

MARQUETTE LAWYER

MARQUETTE UNIVERSITY LAW SCHOOL MAGAZINE SUMMER 2016

STRENGTHENING NEIGHBORHOODS

Harvard Professor Rob Sampson and
Marquette President Mike Lovell
Take on the Challenges of Cities

ALSO INSIDE:

Justice Scalia—Hail and Farewell from a Former Clerk
Idleman on Religion and the Law
Gurda, O'Scannlain, and Henry Smith



Milwaukee—The Great American City

The cover story in this issue of the *Marquette Lawyer* is a collection, actually, with two key parts: an essay by Harvard Professor Robert J. Sampson on the importance of neighborhoods, especially as gleaned from his path-breaking research concerning Chicago (pages 8–21), and an article about the effort, led by Marquette University President Michael R. Lovell, to enhance this university's neighborhood, the near west side of Milwaukee (pages 22–28). Let me offer a connection.

A recollection will help. In inviting Professor Sampson to the Law School to deliver the Robert F. Boden Lecture (upon which his essay in this issue

is based), I immediately caught the allusion in the title of his landmark book, *Great American City: Chicago and the Enduring Neighborhood Effect* (2012). The opening phrase comes from Norman Mailer's book, *Miami and the Siege of Chicago* (1968). The second half of Mailer's book—the part discussing the Democratic national convention in 1968—focuses on Chicago. It begins thus: “Chicago is the great American city.”



When I first read the book in the 1970s as a teenager—and as a Chicagooan—I interpreted this to mean that Chicago was the *greatest* American city. And, indeed, Mailer distinguished Chicago from various other cities, including New York, Los Angeles, Detroit, and Kansas City, among others. Yet, looking back, I realize that I may have missed the point—or at least a truth that bears emphasis here.

Milwaukee was not among the cities that Mailer distinguished—and, for the fundamental point, Rob Sampson has enabled me to recognize that Milwaukee, too, is the great American city. I have long known it to be *a* great city. Since my wife, Anne, and I moved here in 1997, in order that I might join the faculty of Marquette University Law School, we have embraced Milwaukee—and Milwaukee us. It is a big-league city in the literal sense (and, mercifully, we Chicago White Sox partisans can make common cause with fans of the Milwaukee Brewers against the Chicago Cubs). Yet it is big-league more figuratively also. The sports teams, the cultural amenities, the transportation challenges and opportunities, the extraordinary waterfront, the racial and cultural diversity, the neighborhoods with their

historic ethnic traditions and new immigrant dynamism, and more yet—Milwaukee has what one would expect in a great American city.

And Milwaukee, like Chicago today and of Mailer's portrait, has tremendous challenges. These two cities share this characteristic with many other American cities. Milwaukee is up to these challenges. In this magazine, the focus is on the work of Marquette University under the leadership of President Lovell in the Near West Side Partners, Inc. This is a robust effort to enhance our remarkable neighborhood. Part of the robustness is in the partnerships with other institutional residents of the neighborhood: Harley-Davidson, Inc., MillerCoors, Aurora Health Care, and the Potawatomi community. But the key partnerships will be with residents: students, families, workers, the unemployed or underemployed, professionals—the extraordinary mix of residents who call Milwaukee's near west side their home.

All of this (together with much more) warrants the appellation of “Great American City” not just for Chicago but also for Milwaukee. I believe the future to be very promising. To look back for a moment, Mailer was a bit premature—indeed, wrong—when he maintained in his book that downtown Chicago of almost a half-century ago was “in death like the center of every other American city.” Surely, no one would offer such a grim description today of downtown Milwaukee, which has a vibrant business economy, a dynamic social scene, booming construction, and an increasing number of residents. Looking forward, Sampson's research provides a basis for more general optimism: Many distressed urban neighborhoods have great historic strengths, and with the insights of academics and the leadership of engaged citizens, these neighborhoods, too, can be enhanced.

We at Marquette University Law School look forward to continuing to be part of all of this. A great American city unquestionably requires a great law school. In our case, this includes our unusual public policy initiative, a reflection on which—by Mike Gousha, distinguished fellow in law and public policy—closes out the cover package (pages 30–31). In all events, we warmly invite you to read the cover stories and the other articles in this issue of the *Marquette Lawyer* magazine.

Joseph D. Kearney
Dean and Professor of Law

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Law School Provides Insights into Heated U.S. Senate Race

The U.S. Senate election in Wisconsin this fall will be closely followed across the country, as its outcome could be crucial to control of the Senate.

The race is a rematch of the 2010 election in which incumbent Democrat Russ Feingold was defeated by then-little-known Republican businessman Ron Johnson.

For two reasons, Marquette Law School has become an important nonpartisan source for insight into the race.

The first reason is the Marquette Law School Poll. Since mid-2015, the poll has been the primary source of information about public opinion on Johnson, Feingold, and the race itself. Early iterations of the poll found Feingold holding a lead of around 10 percentage points. The March 2016 poll showed a tightening race, with Feingold up five points among registered voters (and three points with likely voters).

In that March poll, 17 percent were unfamiliar with both Johnson and Feingold, with an additional 8 percent unfamiliar with Feingold only and 19 percent unfamiliar with Johnson only.

“That continues to leave a great deal of room for voters to learn about the candidates over the coming months,” said

Charles Franklin, poll director and professor of law and public policy.

The second reason is that Eckstein Hall has been a forum for the candidates to present their views in depth. Both Johnson and Feingold were guests recently for “On the Issues with Mike Gousha” programs at the Law School.

On January 26, Feingold told Gousha that he was motivated to run again for the Senate when he concluded that the people of Wisconsin are “hurting because they’ve been treated shabbily.” He wanted “to be part of a team that would bring us back together.”

And on February 5, Johnson told Gousha that in 2010, “I ran because I was panicked for this country. It was on the wrong path.” He continued: “I’ve been there five years. I’m more panicked.”

Polls and public policy programs from Marquette Law School will continue to provide insight into Wisconsin politics as the November elections approach. Poll results and video of the programs with Johnson and Feingold may be found at law.marquette.edu. ■

Rallying Behind the Importance of Public Libraries

The mission of American public libraries, which for many decades was to provide “the best reading for the greatest number at the least cost,” has morphed in recent years to a mission dominated by providing access to information, a leading expert said at a conference at Eckstein Hall in October.

But that hasn’t changed the great value or slowed the use of libraries, said Wayne Wiegand, the F. William Summers Professor Emeritus of Library and Information Studies at Florida State University. Wiegand, the author of an Oxford University Press book published in 2015, *Part of Our Lives: A People’s History of the American Public Library*, said research showed libraries “are much more important than we previously thought they were.”

Wiegand said the process of change is continuing. “People make libraries, and they should make them

to meet community needs,” he said. The half-day conference had some of the feeling of a rally for libraries. Milwaukee Mayor Tom Barrett and Paula Kiely, director of the Milwaukee Public Library, described how creative ideas, such as putting libraries in mixed-use buildings to replace declining standalone libraries, were turning around declining trends. They emphasized the value of libraries to neighborhoods. Miguel Figueroa, director of the American Library Association’s Center for the Future of Libraries, provided a glimpse into what may be to come.

The text of remarks at the conference from Milwaukee historian John Gurda, who is president of the city’s library board, may be found on page 47 of this issue. The conference was cosponsored by the *Milwaukee Journal Sentinel* and received support for the Law School’s Sheldon B. Lubar Fund for Public Policy Research. ■

Fast Start for Entrepreneurship Clinic Boosts Students and Businesses

Melissa Tashjian runs Compost Crusader, a small start-up business providing services to Milwaukee-area businesses that want to put their organic waste to environmentally constructive use. Tarty the Compost Truck plays a major role in the Crusader effort, and Bruno the Compost Beagle plays a support role.

Andrew Hampel is a 2015 Marquette University electrical engineering graduate who is CEO and cofounder of Seiva Technologies, which aims to build a business around sensor-embedded compression garments providing high-tech input that athletes could use to improve performance.

What do the two undertakings have in common? Both are getting help from Marquette Law School's new Law and Entrepreneurship Clinic.

"The clinic has been extremely helpful," said Tashjian. "With the clinic's help, I now have a customer contract that is presented to all customers contemplating our service."

Hampel said, "We have received customer/sales contracts, thorough review of all legal documents that have been presented to us, guidance on protecting our intellectual property, and now, during this spring semester, the clinic is helping us complete our operating agreement and file for trademarks."

Professor Nathaniel Hammons, director of the clinic, said that the two enterprises help demonstrate the range of the 14 businesses that have become clients of the clinic, which is finishing its first full academic year. Generally, Hammons said, the clients are either enterprises that serve community needs and involve a handful of employees or start-ups with high-tech orientations that want to grow into sizeable operations.

"Our clients lack access to the traditional legal marketplace," Hammons said, which is to say they can't afford legal bills starting out. But they have the potential to create new jobs and serve Milwaukee's needs, which makes them a good fit for both the entrepreneurship clinic and for Marquette University's broader economic development initiatives under President Michael R. Lovell.

Hammons's use of the term *clients* is intentional. The eight third-year law students involved in the clinic do



Left to right, Compost Crusader employee Matt Scannella; owner Melissa Tashjian; Professor Nathaniel Hammons; and law students Aleksa Sanders and Adam Marshall.

coursework in related legal issues, with Hammons as their teacher, and both semesters they provide at least 120 hours of help to the businesses involved with the clinic. The students receive academic credit, but "we operate as a law office," Hammons said. He said he treats the students as associates at the firm.

While the clinic is providing legal help to new ventures, "our primary mission is to train law students," Hammons observed. The goal is for them to be "practice-ready" when they graduate.

Hammons said that lawyers, including people associated with several major law firms, have been eager to help with the clinic's work and that the clinic also has developed active and good relationships with several "incubators" for new business ideas.

Milwaukee and Wisconsin in the past have not been rated well as places to launch businesses. Hammons is convinced that this is changing. The entrepreneurial ecosystem "has been steadily improving over the last few years, and I think it will continue to do so," he said. And the Law School's Law and Entrepreneurship Clinic? "The forecast is excellent."

Support for the clinic comes entirely from alumni through donations to the Law School's Annual Fund. ■

Mayors Debate Merits of Waukesha Water Plan

Regional cooperation on important issues is a good thing in the view of both Waukesha Mayor Shawn Reilly and Racine Mayor John Dickert.

But the two disagree firmly on one major regional issue: whether Waukesha should be allowed to draw on Lake Michigan for its water supply. The issue was their topic in an “On the Issues with Mike Gousha” session at Eckstein Hall in February.

The program provided insight and an opportunity for public education as governors of every state bordering the Great Lakes consider Waukesha’s request. If no governor casts a veto, water will be diverted from one of the Great Lakes to a community completely outside of the lakes’ watersheds for the first time since the Great Lakes Compact was signed in 2005.

Reilly said that drawing on Lake Michigan water is “the only reasonable” solution to problems with a declining and contaminated aquifer that supplies Waukesha now. The plan calls for Waukesha to treat and return the water to Lake Michigan.

Dickert said that the diversion would increase risks of flooding and pollution and could harm recreational opportunities in Racine. The mayors disagreed on whether approval would open the door to diversion requests from other places.

A Marquette Law School Poll in January found that 73 percent of people statewide had not read or heard anything about the Waukesha water issue. In the same poll, 34 percent said they would support such a plan, and just over 50 percent said they would oppose it.

“The battle over water has just begun,” Dickert told the Eckstein Hall audience. ■



Waukesha Mayor Shawn Reilly (center) and Racine Mayor John Dickert (right) discuss Waukesha’s water plan with Mike Gousha during a recent “On the Issues” at Eckstein Hall.

Acclaimed Book on Impact of Evictions Launched at Law School Program

“Without stable shelter, everything falls apart.” A new and provocative book from Harvard Professor Matthew Desmond uses that as a starting point to describe in stunning detail the lives of many low-income Milwaukeeans as they try—but frequently fail—to stay in low-cost housing.

Desmond chose an “On the Issues with Mike Gousha” session at Eckstein Hall in March to release his book, *Evicted: Poverty and Profit in the American City*, and to kick off a national book tour. Documenting both the high frequency and impact of evictions, Desmond’s book has attracted major national attention. A *New York Times* review said that, because of the book, “it will no longer be possible to have a serious discussion about poverty without having a serious discussion about housing.”

Desmond told Gousha that about one in eight low-income renters in Milwaukee was evicted in the two years that he studied (and that there is reason to think Milwaukee to be representative of many cities). The resulting instability affected every aspect of these individuals’ lives and, in a large number of cases, their children’s lives. He said the issue is especially concentrated among low-income African-American women. Evictions, in many ways, have an impact on black women that parallels the impact that high rates of incarceration have on black men, he said.

While Desmond was a graduate student at the University of Wisconsin-Madison, he spent more than a year living in low-income settings in Milwaukee and getting to know both tenants and landlords. While the book does not judge either group harshly, Desmond came away from the experience outraged at what housing issues did to people’s lives.

“Do we think that decent, affordable housing is part of what it means to live in this country?” he asked. “We have to answer ‘Yes’ to the longer question.” A big part of that answer, in Desmond’s estimation, would be to make vouchers more widely available to help pay for housing for those in need. ■

Students Take Groundbreaking Trip to Cuba

Amid easing tensions between Cuba and the United States, 25 Marquette Law School students and three professors visited the island country to see aspects of a nation that was long off limits to Americans. The weeklong trip was among the first of its kind for a group of American law students.

“If we can realize that people—whether it’s across the world or across the table—are more than the very skewed and limited narrative that we have, I think that makes us better lawyers,” said Professor Andrea Schneider, one of three faculty members who took part. Schneider has organized previous trips by law students to Israel and Europe.

Molly Madonia, a third-year law student, listed skills underscored by the trip: “Keep communication open. Develop empathy and listening skills, no matter where you are.”

The group visited with Cuban experts on the law, economy, government, and culture, including Celeste Pino Canales, a professor at the University of Havana.



Participants in the Law School trip stand at the entrance to the Law College at Havana University.

And the students got glimpses of the island nation that has been the subject of an American economic embargo since 1960.

While major differences remain between Cuban and American policies on matters such as human rights, the door is opening wider for Americans to visit Cuba—and among the first to go through it were the Marquette law students. ■

Marquette Law School and NCAA Partner for Student Externship

During her externship this past semester with the enforcement division of the National Collegiate Athletic Association (NCAA), Jill Halverson, a second-year law student, was in high-level hearings that weren’t open to the public or the media. So don’t ask her what she worked on.

“It’s definitely an introduction to the world of confidentiality,” she said. “And it’s very much a great experience. I’m glad the NCAA and Marquette Law School decided to partner.”

Marquette Law School’s sports law program has been sending student interns to the NCAA in Indianapolis during the summer since the early 2000s. Aaron Hernandez, L’13, interned with the NCAA after graduation and became its assistant director of enforcement. Hernandez recently approached Professor Paul Anderson, associate director of the National Sports Law Institute, about establishing Marquette as a feeder school for the enforcement division’s externship program even during the regular academic year. The program is open to sports law certificate candidates.

“This can be—based on the skills the students can get—one of the best experiences possible,” Anderson said. “It’s a fast transition, but what you can get involved in is amazing.”

Fast transition, indeed. Halverson moved to Indianapolis and took classes at Indiana University’s Robert H. McKinney School of Law for a semester. Yet she remained part of Marquette, working remotely on the *Marquette Sports Law Review*, doing research for a professor, and even clerking for a Milwaukee firm. The experience was worth the effort.

“I’ll be able to take that with me wherever I go,” she said. “A lot of people competing for the same jobs with me won’t have that experience.” ■





Illustration by Stephanie Dalton Cowan

NEIGHBORHOOD INEQUALITY AND PUBLIC POLICY:

What Can Milwaukee Learn from Chicago and Boston?

BY ROBERT J. SAMPSON

It is an honor to deliver the annual Boden Lecture at Marquette Law School and in the great city of Milwaukee—otherwise known as Brew City or Cream City, depending on your perspective. I like both beer and yellow bricks, but having grown up in Utica, New York, home of the West End Brewing Company and Utica Club Ale, I rather like Brew City for a moniker. That is especially so since your beer is better tasting than what I remember from the suds of my youth—Schlitz notwithstanding!

On a more serious note, I am genuinely honored to be here, and I thank Dean Joseph Kearney for his masterful job orchestrating my visit and realizing a vision that connects Marquette so closely with the city. I also genuinely consider Milwaukee one of the great American cities, despite having spent most of my years on the East Coast and in that other city on the lake down I-94 a bit. Milwaukee has large challenges, to be sure, but there are many assets, and I am optimistic that social science research, new forms of data, and university–city partnerships can make Milwaukee better.

My road map for the lecture is as follows. I begin with an overview of what neighborhood inequality looks like in Chicago, based on a large-scale project that I have directed for the past 20 years. I focus on the “big picture,” but with enough detail that you can get a concrete idea of how inequality works on the ground. I then turn to a project in Boston, which is taking advantage of some newer forms of data that provide additional leverage in understanding cities and which explicitly involves a city-university partnership. Finally, I address Milwaukee’s challenges and potentials that may benefit from the lessons that have emerged from Chicago and Boston. ▶▶



Robert J. Sampson

Robert J. Sampson is the Henry J. Ford II Professor of Social Sciences at Harvard University and also serves as director of the Boston Area Research Initiative. He previously was a professor at the University of Chicago. Sampson is internationally known for his work on crime, disorder, neighborhood effects, civic engagement, inequality, and the social structure of the city. His book, *Great American City: Chicago and the Enduring Neighborhood Effect* (University of Chicago 2012), has been widely hailed as a landmark in urban social science. This is a lightly edited version of Professor Sampson’s Robert F. Boden Lecture at Marquette Law School in September 2015. We intersperse a number of reactions to the lecture and follow (page 22) with an article about Marquette University’s work under President Michael R. Lovell in its own neighborhood on the near west side of Milwaukee.

Let me be clear: I am not here to assert that Chicago or Boston is somehow better. Rather, I have intensely studied both cities and believe that some of what we have learned has general import. Nor am I here to claim an instant policy cure. Instead, I aim to give you as much information as possible on the fundamental nature of urban social problems so that we may better ask the right questions and, by working together, design better public policies that build on that knowledge. As the social psychologist Kurt Lewin wrote more than 50 years ago, “There is nothing more practical than a good theory.” I agree: Theory and ideas can shape the direction that policy takes.

Neighborhood inequality in Chicago

Much of what I have learned about neighborhood inequality is presented in my book, *Great American City: Chicago and the Enduring Neighborhood Effect*. My thesis is reflected in the very title: Chicago, like all cities, is a mosaic made up of very different and highly unequal neighborhoods. These neighborhood differences are surprisingly persistent and have effects on a broad

variety of life outcomes—hence, the enduring neighborhood effect. The main empirical vehicle for my effort is the Project on Human Development in Chicago Neighborhoods (PHDCN), an original longitudinal study of children, families, and neighborhoods. Although Chicago is a great

and now gentrification of Cabrini Green on the near north, inequality by place is everywhere to be seen. It is no small irony that one of the major streets in Chicago is called “Division Street,” but Chicago is not alone in its division. In fact, in the book I went as far as to argue that what is truly American is not so much the individual but the neighborhood inequality. Having toured Milwaukee, it is clear to me that neighborhood inequality is alive and well here, too. Whether crossing from the north and Milwaukee’s Lindsay Heights or Brewers Hill to the downtown area’s Third Ward, or crossing the 16th Street viaduct into Latino neighborhoods on the near south side, the tale of multiple cities seems more pertinent than ever.

It is not just impressions. Taking a bird’s-eye view, I also demonstrate in the book the deep structure of neighborhood stratification that has persisted in Chicago across decades and up to the present day. Key dimensions of neighborhood difference that I studied include poverty, affluence, unemployment, and family structure. Racial segregation is unfortunately part of this story, as the spatial isolation of African Americans produces exposure to multiple strands of resource deprivation, especially poverty and single-parent families with children. Again this is not limited to Chicago. Nationwide, close to a third of African-American children born between 1985 and 2000 were raised in high-poverty neighborhoods, compared with just 1 percent of white children. Crucially, income does not erase place-based racial inequality—affluent blacks typically live in poorer neighborhoods than the average lower-income white resident.

The great neighborhood divide extends to the fundamentals of well-being. Violence, poor physical health, teenage pregnancy, obesity, fear, and dropping out of school are all unequally distributed. What many have come to call “mass incarceration” has a local face as well: Only a small proportion of communities have experienced America’s prison boom, whereas others are relatively untouched. I was taken aback to learn that the highest incarceration rate among African-American communities in Chicago was more than 40 times higher than the highest-ranked white community. This is a staggering difference of kind, not degree. And it does not go unnoticed, even by children. In one neighborhood, I came across a wall behind a school with sketches of the grim faces of black men behind prison bars. An open book and diploma were drawn underneath—hope, to be sure, but against a backdrop of despair. ▶▶

Chicago, like all cities, is a mosaic made up of very different and highly unequal neighborhoods.

American city, to be great is hardly to be flawless. Quite to the contrary, and to the dismay of city boosters, some of the worst excesses of American life, such as inequality, violence, racial segregation, and corruption, are rife in Chicago. But this stark inequality and the diverse urban environments of the city make it an ideal site for social scientific inquiry.

To illustrate what I mean, the book begins by taking the reader on a walk down the streets of the city. What is revealed is not one but several cities. In a relatively short walk, we see visual evidence of marked variability by neighborhood, across a wide range of how Chicagoans experience life. From the glittering Trump Tower near the Loop to abandoned lots a bit farther south or the rubble

Neighborhoods in Chicago and Milwaukee

by Amanda I. Seligman

Robert Sampson's *Great American City* abounds with insights for those of us concerned with the future of cities. He describes "neighborhood effects" and encourages cultivation of "collective efficacy." We need to focus on the neighborhood—the level between individuals and the whole city—to understand and effectively intervene in problems, and we should do so by cultivating "community shareholders" who will implement local programs. And Sampson's Boden Lecture urges us to apply his Chicago-based analysis to Milwaukee. A coordinated big data project, like those Sampson led in Chicago and Boston, could underpin transformations of Milwaukee's most-troubled neighborhoods.

Sampson's project rests on a century-old tradition of data about Chicago's neighborhoods. The founders of the Chicago school of sociology understood the city's neighborhoods as a "mosaic of little worlds which touch but do not interpenetrate." To track the social characteristics of each distinctive neighborhood and build a portrait of the city as a whole, they drew a map of "community areas" whose boundaries have been almost entirely unchanged since. They systematically collected demographic, housing, and economic data about each community area. Sampson uses the community areas as a spatial base for portions of his research, such as his examination of leadership networks in South Shore and Hegewisch.

Milwaukee lacks stably classified neighborhoods—and therefore also lacks the kind of longitudinal, neighborhood-based data that Chicago's community area system provides. Although the subtitle of local historian John Gurda's newest book assures us that Milwaukee is indeed a "City of Neighborhoods," Milwaukeeans have never agreed on a standardized set of neighborhood boundaries. The Milwaukee, Menomonee, and Kinnickinnic rivers effectively carved early Milwaukee into "Divisions" (each with its own eponymous high school). Sometimes the term "Side" substituted for "Division," an idea manifested by today's East Side neighborhood. For political purposes, Milwaukee was also divided into numbered wards. Suburban Bay View, annexed into Milwaukee in 1887, functioned as a distinctive neighborhood, but it was not until the 1960s that Milwaukeeans sought to map neighborhoods throughout the city.

Chicago's boundaries were mostly settled by the turn of the twentieth century. In contrast, Milwaukee pursued an aggressive program of annexation into the 1960s. As Milwaukee's expansion ended, scholars at the University of Wisconsin-Milwaukee (UWM) described the city's neighborhoods systematically. Following the model of Chicago's Local Community Fact Book series, UWM researchers designated 23 neighborhoods covering the entire city. They published a pair of volumes that provided place-based data drawn from the 1940 through 1970 censuses and assembled an unpublished data set for 1980. Since then, lists and maps of Milwaukee neighborhoods have proliferated. The City of Milwaukee recognizes 16 strategic planning neighborhoods. A popular series of neighborhood posters associated with John Gurda's work has expanded from its original 29 neighborhoods to 37, while the Milwaukee Neighborhood Identification Project maps a whopping 177 different neighborhoods.

Without a standardized neighborhood system, no one has provided foundational longitudinal data about smaller areas within Milwaukee. Yet the absence of a consensus neighborhood system should not prevent us from responding to Sampson's call for a Milwaukee big-data project. At various points in *Great American City*, Sampson draws on conceptualizations of neighborhood beyond Chicago's standard 77 community areas. His analyses also make use of resident-identified neighborhoods and an original set of neighborhood boundaries which his project team mapped. Often, Sampson discusses what might better be called "proximity effects"—the idea that adjacent spaces, however delimited, affect one another. As we apply Sampson's analysis in Milwaukee, we must specify what we mean by *neighborhood* and clarify the purposes of our inquiry before we collect the data and reflect on its significance.



Amanda I. Seligman is professor of history and urban studies at the University of Wisconsin-Milwaukee.

Neighborhoods and Crime—A Prosecutor’s View

by John Chisholm

Robert Sampson began his Boden Lecture with this statement: “Theory and ideas can shape the direction that policy takes.” One would hope that it works both ways—that the rigorous testing in practice will help refine or shape the theory. Certainly Professor Sampson’s own work is impressive in the depth and scope of its examination of “the physical *and* social infrastructure of a neighborhood.” His results support the theory that, in order to affect the actions of so many of our fellow citizens, we must consider the environment in which they live.

This is our approach in Milwaukee. “Neighborhoods Matter” is the core principle behind two conjoined crime-reduction efforts spearheaded by the Milwaukee District Attorney’s Office and the Milwaukee Police Department: community prosecution and community policing, respectively. Both reflect policy decisions based on decades of practical experience of police and prosecutors, who have encountered a relatively small proportion of troubled people coming from well-known locales that create a disproportionate amount of harm in the community.

The most vexing problem for law enforcement professionals in major cities is the generational persistence of crime in concentrated locations and among closely associated people. Great attention is devoted to the short-term rise and fall of crime rates, to specific types of crime, to tactics and strategies to combat crime, and ultimately to the byproduct of crime, incarceration. Yet there is a glaring lack of information about the complex underlying conditions that give meaningful context to the “why” of persistent crime. Sampson’s work in Chicago and Boston provides an extraordinary platform for analyzing this “why” and explaining how certain parts of a city and the people residing there are locked into long-term, overlapping, and layered adversity.

It is crucial that policy makers throughout the civic spectrum understand the importance of Sampson’s work. The problems of impoverished neighborhoods are systemic and cannot be resolved through law enforcement action alone. Jeremy Travis, president of the City University of New York’s John Jay College of Criminal Justice, warned in a 2009 speech at Marquette Law School that “the systems of justice are traditionally far removed from the places where crimes occur, where victims and offenders live, where prisoners return after serving their sentences.” Far too often, the other systems and institutions charged with addressing longstanding inequality are too removed from the neighborhood context described by Sampson.

What can be done? One answer is to encourage more collaboration across the civic spectrum and more meaningful “boots on the ground” relationships. We can achieve this result by focusing on neighborhoods in long-term partnerships that involve significant public safety enhancement. Milwaukee’s Clarke Square, Amani, Avenues West, and Washington Park neighborhoods—which long featured historic concentrations of adversity—demonstrate the success of this approach. If we can combine such efforts with economic investment in the neighborhoods, we can see long-term change in their patterns of inequality.

A most promising example of this vision comes from the effort of the Near West Side Partners (NWSP) to revitalize and sustain their business and residential corridor. One of NWSP’s most promising programs is Promoting Assets, Reducing Crime (PARC), a three-year initiative. Promoting assets is, in large part, as simple as a marketing effort aiming to make more people aware of the good things going on. The crime-reduction aspect includes multiagency efforts—including increased involvement of Milwaukee police and the district attorney’s office in the area—to deal with specific and frequent sources of neighborhood problems.

NWSP is described more generally in the article by Alan J. Borsuk beginning on page 22.

This collaborative effort, which couples business and educational leaders with committed residents and law enforcement, exemplifies the concrete application of Professor Sampson’s theories. In his lecture, Professor Sampson noted that nothing is more practical than a good theory. Milwaukee County’s policy makers, myself included, would be well served to keep this central idea of Professor Sampson’s theories in mind when addressing the social and criminal justice issues facing our community.

John Chisholm is the district attorney of Milwaukee County.



Even the simple act of mailing a lost letter found lying in the street varies greatly. As part of our larger project, we conducted a field experiment to determine the rate at which strangers mailed back more than 3,000 stamped letters randomly dropped in the streets of Chicago. The rate of return by neighborhood ranged from zero to more than 75 percent. After adjusting for things such as weather conditions, land use, and housing patterns, concentrated poverty predicted lower rates of return. This kind of altruism also correlates with giving CPR to strangers.

Less visible but just as powerful are the long-term legacies of poverty and the consequences of growing up in concentrated poverty for human-capital development. Poverty is surprisingly persistent in the same neighborhoods, even though people move in and out every day. We found persistence over four decades, for example, with the Great Recession only making things worse for the most disadvantaged—a classic form of “the poor get poorer.”

Moreover, we found that early exposure to severely disadvantaged communities was associated with diminished verbal skills later in childhood. We estimated that living in concentrated disadvantage depressed the rate of verbal learning by about four I.Q. points, akin to missing a year of school. Again, Chicago does not appear to be unique. This result was replicated in Baltimore, using an experimental design, and recent research has shown that getting ahead economically is also shaped by where you live. Despite the effects of globalization and the rise of technologies that allow us to work or interact virtually anywhere, recent economic research has found that upward mobility—the odds of a child raised in the bottom fifth of income rising to the top fifth as an adult—is less likely for those who grew up in cities characterized by racially and economically segregated neighborhoods.

In short, social inequality is deeply concentrated spatially, it is multidimensional in nature, and it is persistent even though neighborhoods constantly change. Neighborhood effects thus cut across multiple scales of influence and time, and from the individual level of analysis to the structural organization of the city. The archaeologist Michael Smith has argued that the spatial division of cities into neighborhoods is one of the few universals of urban life, going back even to ancient cities. Neighborhood, in other words, is a near universal theme of human history, and the salience of neighborhood differences has persisted across long time

scales and historical eras despite the transformation of specific boundaries, political regimes, and the layout of cities. The consistency of differentiation from ancient cities to contemporary Chicago suggests the general and enduring process of neighborhood effects.

Ecometrics and the study of neighborhood processes

Another goal of *Great American City* was to understand the social processes and mechanisms behind neighborhood inequality—the nuts and bolts of *why* and *how* neighborhoods matter. What is the process, for example, by which concentrated disadvantage is translated into crime? Answering this kind of question required new methods for the study of context and new concepts. To meet this challenge, my colleagues and I developed the method of “ecometrics,” i.e., metrics for the study of ecology. The central idea is that neighborhood phenomena demand their own measurement logic and are not stand-ins for individual-level traits. We specifically designed and carried out community surveys, systematic social observation (videotaping of city streets), and interviews with

organizational informants to develop direct measures of theoretically relevant neighborhood processes. I will briefly discuss three kinds of processes we were able to examine using the strategy of ecometrics (further details on these findings may be found in *Great American City*).

The first process relates to the theory of *collective efficacy*, which refers to the combination of shared expectations for social control and cohesion among neighborhood residents. Using original surveys administered to more than 10,000 Chicagoans, we measured collective efficacy by asking questions such as these: How likely is it that your neighbors would take action if children were skipping school? If there were a fight in the neighborhood? How much do residents trust their neighbors? Are people willing to help their neighbors? The results show that among neighborhoods that ▶▶

The consistency of differentiation from ancient cities to contemporary Chicago suggests the general and enduring process of neighborhood effects.



As part of his visit to Marquette Law School, Harvard Professor Robert J. Sampson took part in an “On the Issues with Mike Gousha” program on September 17, 2015. Sampson is flanked on the left by Gousha, the Law School’s distinguished fellow in law and public policy, and on the right by Professor Charles Franklin, director of the Marquette Law School Poll.

are otherwise similar, those with higher scores on our combined scale of collective efficacy have lower rates of crime. The book also presents evidence that collective efficacy is relatively stable over time and that it predicts variations in future crime rates, after adjusting for things such as concentrated poverty, racial composition, and traditional forms of neighbor networks (e.g., friendship/kinship ties). Dense friendship ties may facilitate collective efficacy, but they are not sufficient. Perhaps more importantly, highly efficacious communities do better on a lot of other things, including birth weight, rates of teen pregnancy, and infant mortality, suggesting a link to overall health and well-being independent of social composition. In most cases, then, whether rich or poor, white or black, I argued that collective efficacy signals a community on a trajectory of well-being. This generalization extends to other far-reaching places, including Australia, England, Tanzania, China, the Netherlands, and Sweden. The evidence across such varied settings suggests that collective efficacy is a basic social property that goes beyond the aggregated composition of individuals to predict lower violence and enhanced public health—transcending poverty, race, and political boundaries.

Second, we were able to use the method of *systematic social observation* (SSO) to study the

so-called broken-windows theory. By driving very slowly around the city and videotaping thousands of streets, we were able systematically to observe and code both physical disorder (e.g., graffiti) and social disorder (e.g., drinking on the street). This methodological innovation permitted us to look at old questions in new ways. For example, is graffiti related to crime? What is disorder? Perhaps surprisingly, we found that how Chicagoans perceive disorder is a function of the composition of the neighborhood by race and class—much more than the objective level of disorder. Moreover, objectively measured levels of broken windows had only a weak link to crime rates once we accounted for concentrated poverty and collective efficacy.

Third, we measured the *social networks* among community leaders to study how communities vary in their social-organizational structure. When we look at the networks among leaders in the entire city, we see the expected concentration of ties at the center, some cliques or clusters, and a bunch of disconnected leaders at the edges. But this pattern masks large differences across neighborhoods. In places such as Chicago’s South Shore community, leaders are far from united—there are many isolates and a few cliques—whereas in places such as Hegewisch, the leadership structure is more cohesive. I would hypothesize that there exist similar divisions

across Milwaukee in both the internal leadership networks and how community leaders are connected to citizens. In some communities, the trust between citizens and leaders may be almost nonexistent. This matters because organizational density and connections predict levels of collective efficacy.

In brief, the theory of the book ties together how neighborhood structural inequality (e.g., concentrated disadvantage and racial segregation) influences social processes such as collective efficacy, public disorder, and the closure of leadership networks, and in turn how these processes predict the well-being of communities. Importantly, I argue, both the physical *and* social infrastructure of a neighborhood matter. We need to be careful not to think about social processes such as collective efficacy or organizational leadership cohesion independently of the structural conditions of everyday life in our neighborhoods, such as poverty and housing quality.

The Boston Area Research Initiative

I wish now to discuss even more recent work, which extends beyond Chicago all the way to the East Coast. I direct the Boston Area Research Initiative (or BARI), which was founded three years ago to promote an urban research agenda that takes full advantage of next-generation data, with a focus on interdisciplinary study of the greater Boston area. To do this, BARI supports research-policy collaborations that leverage opportunities created by the ongoing digital revolution, which has seen public agencies and private companies (such as Google, Microsoft, and Verizon) collect and archive extensive amounts of data on their operations and the services they provide. Such projects and partnerships increase our understanding of urban issues and provide important scholarly insights into daily life in greater Boston, helping policy makers develop and carry out more-effective policies.

We are capitalizing on the torrent of such “big data” by adapting the methodology of econometrics from Chicago to develop new measures of tapping Jane Jacobs’s famous idea of “the eyes and the ears of the city,” which she proposed after observing the streets of Greenwich Village in the 1950s. In particular, we have examined citizens’ requests for services through the City of Boston’s Constituent Relationship Management (CRM) system, which allows Bostonians to request city services

through three channels—the mayor’s telephone hotline, a self-service website, and a smartphone app called “Citizens Connect.” By working with the City of Boston’s Department of Innovation and Technology (DoIT), we translated more than one million records of calls in Boston into a diverse set of measures spanning physical disorder, social disorder, and crime. These “eyes and ears of the city” data are continuously produced by the city and support reliable measurements at multiple time intervals and spatial scales.

In a recent paper, we used these data to study the dynamics of broken-windows theory. Although we found that forms of public disorder are clearly evident and on the minds of citizens, we also discovered that the drivers of future crime were not the usual suspects like graffiti or panhandlers, but what we called “private conflicts.” Things such as tenant-landlord troubles, partner disputes, and restraining-order violations tend to cluster in specific neighborhoods and even houses, with their consequences spilling out into public spaces. Our results support a *social escalation model* where future disorder and crime emerge not from public cues but from private disorder within the community. The large-scale digital data allowed us to detect private behaviors that would be difficult to measure using traditional methodologies such as a survey.

Our concerns are not just to test academic theories. We make all of our data public and have compiled the econometric measures so that any citizen or policy maker can map selected neighborhoods on multiple dimensions in a user-friendly format. Users can also zoom in on specific streets and potentially link other forms of data at the address or building level (see <http://worldmap.harvard.edu/boston/>). Furthermore, BARI is promoting a growing partnership with the leading actors in city government, nonprofits, and private sector organizations in the Boston area. The core idea is to share data and ideas to improve urban governance. ▶▶

Our results support a *social escalation model* where future disorder and crime emerge not from public cues but from private disorder within the community.

Policy implications for Milwaukee

I want to be sure to address the policy implications of our work in Chicago and Boston for Milwaukee's current challenges. For years, Milwaukee suffered a long exodus of manufacturing and people, severely eroding its economic and social base. As has been in the national news, Milwaukee also suffered from a spate of violence in the summer of 2015, with homicide rates up significantly over 2014. What might not be equally visible is that the sort of neighborhood economic inequality I have been talking about is increasing and is deeply implicated in the area. In fact, in looking at the most recent data, I came across a rather startling statistic. Of all the large metro areas in the United States, Milwaukee is ranked first in the segregation of the poor. Economic inequality and the isolation of the poor are generally on the rise, but the problem appears more pronounced here. The deterioration of housing in

The spatial foundations of inequality imply that policies should aim to change either the neighborhood context of individuals or the places themselves.

many of Milwaukee's neighborhoods is clearly evident as well.

But rather than just counsel despair, I think it is fair to say that Milwaukee has several strengths that can be harnessed to effect social change. Moreover, the kinds of findings and methods I have described offer a general framework for thinking

about the city and a set of concrete possibilities for policy intervention. After outlining this policy framework, I highlight the assets that Milwaukee can draw upon in implementing a new vision for urban change.

Simply stated, the policy focus should be on integrating person-based and place-based interventions. Let me elaborate.

The spatial foundations of inequality imply that policies should aim to change either the neighborhood context of individuals or the places themselves. The person-based approach to reducing spatial inequality focuses on individual residential mobility—attempting to move individuals out of poor communities and into middle-class or even rich areas. One strategy involves giving housing vouchers to encourage residents to move away from areas of concentrated poverty, as occurred in

the famous Moving to Opportunity (MTO) experiment. Another variant is to tear down poor communities and disperse their residents, as occurred in the Robert Taylor Homes and Cabrini Green projects in Chicago. The front-page headline in the *New York Times* reporting long-term results on the MTO study and another study of moving across neighborhoods laid bare the dominant policy takeaway: “Change of Address Offers a Pathway out of Poverty” (May 4, 2015). I call this the “move out” approach.

Instead of moving out, the goal of *place*-based interventions is to intervene holistically at the community level and renew the existing but disinvested and often-troubled neighborhoods in which the poor live, with an infusion of new resources. When poor individuals are asked about problems in their communities or why they want to move, the answers typically revolve around issues such as getting away from violence, drugs, gangs, and poor-performing schools. Logically, this consistent finding suggests that what poor residents want in their neighborhoods is what everyone wants, and that living among the poor is seen as a problem by residents only insofar as it means the denial of valued resources like safety and quality education. In theory at least, people can stay in place at the community level but still “move up” or realize improved lives and access to resources through place-based intervention.

Although both person- and place-based interventions have a mixed record of success, the data on persistent inequality point to the need for creative thinking on sustained interventions. It is surprising how few neighborhood policies take the long view; most interventions are single-site or time-constrained, with outcomes measured locally and in the short run. We need durable investments in disadvantaged urban neighborhoods to match the persistent and longstanding nature of institutional disinvestment that such neighborhoods have endured over many years. I have written elsewhere about strategies to improve communities that are logical candidates for retooling, with an emphasis on sustained investments. Candidates include:

- Violence reduction integrated with community policing and prisoner-reentry programs that foster the legitimacy of criminal justice institutions. Recent experimental-based research shows that “hot-spot” policing and situational crime-prevention strategies targeted to small ecological areas (about two blocks in size) reduce crime. Moreover, crime is not simply displaced elsewhere—instead, there is a spatial diffusion of safety. ▶▶

Collective Efficacy in Milwaukee's Zilber Neighborhood Initiative

by Susan Lloyd

Rob Sampson is one of those academics from whom we can learn much as we seek to end urban poverty. From his recent book, *Great American City: Chicago and the Enduring Neighborhood Effect*, to his Boden Lecture, Sampson has given us the theory and data we need, as practitioners and policy makers, to address some of the “large challenges” of urban poverty.

Sampson's discussion of crime is but one example of research and analysis usefully applied. Considering both theory and evidence to explain crime rates, Sampson discounts the popular “broken windows” model of crime in favor of a “social escalation” model, saying that unresolved personal conflicts (such as between father and son, husband and wife, landlord and tenant), not signs of disorder (such as graffiti or broken windows), are the more likely source of increased crime. The social escalation model helps make the case that problem-based policing and restorative justice programs are smart allocations of limited public resources.

More generally—and more locally—Sampson's theory of collective efficacy, depending on the shared expectations for social control and cohesion among neighborhood residents, provides the framework for several practical initiatives underway in Milwaukee. The federally funded Building Neighborhood Capacity Program, augmented by matching grants from the Greater Milwaukee Foundation and Northwestern Mutual Foundation, focuses on resident engagement. The program organizes residents in very distressed neighborhoods to identify and address local concerns, and it then builds on their relationships to plan and undertake community improvement projects. The restored Moody Park in the Amani neighborhood, and the resident-led Friends of Moody Park to maintain it, illustrate collective efficacy in action.

Sampson's insights and research results also influenced the development of the Zilber Neighborhood Initiative. The initiative was started in 2008 by Joseph J. Zilber, a Marquette lawyer from the class of 1941. It is a \$50 million philanthropic program to support resident leadership development, community planning, and local action in three Milwaukee neighborhoods over a 10-year term. The Zilber initiative makes grants to local organizations to develop and carry out plans to improve the quality of community life, support activities that increase neighborliness and strengthen social relationships, and develop the organizational capacity of local nonprofits to stimulate and sustain community action.

Since the start of the Zilber Neighborhood Initiative, the foundation has awarded \$30.5 million in grants to support the revitalization of 110 square blocks on the city's north side and 170 square blocks on Milwaukee's south side. In turn, these grants have attracted \$54.4 million in other investments to the neighborhoods, including \$48.3 million in revenue, \$6 million of in-kind donations, and more than \$100,000 in volunteer service.

In eight short years, these efforts to increase collective efficacy and strengthen community organizations in Milwaukee neighborhoods have produced important results:

- crime reduced
- more than 300 homes and other properties restored to productive use, with nearly \$25 million in commercial-corridor investment alone
- new schools, community centers, and health services attracted to the neighborhoods
- dozens of jobs and businesses created or established in landscaping, snow removal, home repair, health care, elder care, child care, janitorial services, and food services
- hundreds of community gardens and farmers' markets established, improving access to healthy food
- 75 acres of green space restored to public use, including new and refurbished playgrounds, pocket parks, and fruit orchards

Sampson has pointed the way forward, showing the “nuts and bolts of *why* and *how* neighborhoods matter.” We have the opportunity, and the obligation, to heed Sampson's call for “durable investments” in policies that attend to the social processes as well as the physical conditions in urban neighborhoods. The Zilber Neighborhood Initiative is seizing that opportunity.



Susan Lloyd, Ph.D., is executive director of the Zilber Family Foundation.

Collective Efficacy in Clarke Square

by Ian Bautista

When we are intimately involved in work on a daily basis, it is sometimes hard for us to know if real progress is happening. This is why it is so refreshing to hear a nationally respected scholar such as Rob Sampson pointing to Milwaukee's assets as opportunities. More specifically and personally, it is inspiring to know that his studies on the leading edge of community change measurement are very congruent with our work and intended impact at the Clarke Square Neighborhood Initiative (www.ClarkeSquare.org).

Six years ago, Clarke Square neighbors and partners from other parts of Milwaukee worked together to create a plan for the neighborhood to move toward prosperity. The neighborhood, comprising a little more than 40 square blocks on the city's near south side and almost 8,000 neighbors, is very dense and pleasantly urban. The neighborhood's plan does not oversimplify the complexity of the community. Neighbors, being experts about their own neighborhood, identified 10 strategy areas that will lead the community to improved prosperity.

This is our work at the Clarke Square Neighborhood Initiative. We work with neighbors and dozens of organizations to build the collective efficacy that Sampson documents. And we seek to ensure that implementing organizations are accountable to our neighbors as they seek to build prosperity together.

Many of the challenges to which Dr. Sampson points from Chicago and Boston are real daily struggles right here on the near south side of Milwaukee. But in equal measure, he strikes a chord with our Milwaukee neighborhood by mentioning the great opportunities and energy that come along with immigration's positive impact on communities such as Clarke Square. This cycle of renewal through migration is the long-term narrative of Milwaukee neighborhoods such as ours. We are honored to celebrate it and to leverage the infusion of the rich cultures that our neighbors live into economic and social opportunities, through art, commerce, and shared experience.

As the executive director of the Clarke Square Neighborhood Initiative, I was very honored to have the opportunity, along with a group of other civic leaders, to meet, talk with, and learn from Rob Sampson when Marquette Law School brought him to us in Milwaukee this past September.

Many of Sampson's illustrations of how to measure community change reinforced our efforts at the Clarke Square Neighborhood Initiative and the ideas that we have on the proverbial drawing board to pursue in the near future. For example, we have become more deliberate about collecting and analyzing data about the neighborhood so that neighbors themselves understand the data and begin to utilize them for decision making, goal setting, and measurement toward their self-defined standards of prosperity. Thus, in 2015, the Clarke Square Neighborhood Initiative began to work with neighbors to gather observational data about housing conditions in the neighborhood. In discussing the results of these surveys, neighbors have determined that improving housing quality should be a priority for the neighborhood—and thus for themselves.

More generally, as Dr. Sampson pointed out, this is not easy work, or an effort that occurs overnight. It requires resources and time to accomplish. We have not arrived yet, but we are journeying to clearer mutual understanding. It is refreshing to know that Milwaukee as a city and as a collective of numerous organizations and neighborhoods is getting serious about data. The city's reinstatement in the National Neighborhood Indicators Project affirms this commitment and inspires neighborhood-level organizations like ours to keep on pushing forward.

As we continue our work, such resources will allow us proudly to point to Clarke Square's "enduring neighborhood effect," in the not-too-distant future, as one of increasing prosperity, in keeping with our neighborhood's long heritage of opportunity.



Ian Bautista, AICP, is executive director of the Clarke Square Neighborhood Initiative.

- As incarceration rates begin to ebb and an increasing number of prisoners are released back into society, we also need to direct resources and social support systems (e.g., drug treatment, housing assistance) to both ex-prisoners and the disadvantaged communities that will disproportionately receive them.
- Based on the Boston findings, I would propose adding to the crime-policy list the policing of private conflicts and problem properties. “Hot properties” and maybe even “hot relationships” that are on the cusp of exploding have been neglected. To counter this will require new training for the police and other city officials so that they may mediate disputes, provide referrals for drug/alcohol treatment, and, crucially, work with landlords.
- The fragile landlord-tenant relationship, especially conflicts over evictions, has been shown by my colleague Matt Desmond to be a severe problem in Milwaukee. Thus there needs to be a better integration of community-based social services that recognize the multidimensional nature of poverty, private conflict, and housing trouble, coupled with code enforcement and crackdown on landlord disrepair and illegal eviction practices.

Consistent with the results of our research in Chicago, however, we need to build and nurture collective efficacy—city representatives such as the police or housing officials cannot do it all. Nonprofit organizations are crucial in this regard. But poor residents need to be given a greater stake in their communities—possibly through what Patrick Sharkey and I have conceptualized as “community shareholders,” where residents receive rewards for contributing to the public good. Community shareholder tasks that might foster collective efficacy include

- organized community supervision of leisure-time youth activities
- monitoring and reduction of street-corner congregation in high-crime areas
- parent supervision and involvement in after-school and nighttime youth programs
- adult–youth mentoring systems and forums for parental acquaintanceship.

Federal or large-scale interventions are needed, too—local collective efficacy is not enough. In many cities,

programs such as Choice Neighborhoods and Promise Neighborhoods are, to date, relatively small scale and unevaluated, but they may prove useful in informing the next generation of place-based interventions. Educational reform and support for healthy child development in high-risk, poor communities are crucial to these efforts, as seen, for example, in the implementation of the Harlem Children’s Zone in New York City.

A policy option that more explicitly integrates a person- and place-based approach is to give cash assistance or reduce the tax rate for those in compounded deprivation—that is, poor residents who also live in poor or historically disinvested areas. Cash assistance or tax relief along the lines of a negative income tax could be combined with job training or public works job creation. The logic behind this idea is that poor individuals who have lived for an extended period in poor neighborhoods have accumulated a set of disadvantages very different from poor individuals who have otherwise been surrounded by the resources of better-off neighborhoods. African Americans, more than whites or Latinos, have historically borne the brunt of differential exposure to compounded deprivation, in Milwaukee as elsewhere.

But this inequality can be addressed, and communities potentially preserved, even with a policy targeted at all qualified persons regardless of race. The reason is that the ecological impact would disproportionately benefit disadvantaged minorities, and unlike MTO-like voucher programs, such a policy would allow poor residents to remain in place, if desired, while at the same time increasing their available income. Extra income would also lower the neighborhood poverty rate and, in theory, lead to longer-run social investments in the community among stayers. Length-of-residence requirements could be imposed to counteract attempts to game the system by in-movers, and vouchers could remain an alternative for residents wishing to leave. ▶▶

... we need to build and nurture collective efficacy—city representatives such as the police and housing officials cannot do it all.

Milwaukee's potential

There are encouraging trends that give hope to the idea that revitalizing disadvantaged communities through a combination of place-based and person- or property-based interventions such as described above is not naïve. I am not a local, but, from what I have observed, I would submit that there are many capacities in Milwaukee that have not been fully tapped. These include strong community foundations and universities, committed local leaders, and a latent collective efficacy among city residents (e.g., organizational capacities, reservoirs of informal social control) that may otherwise have been suppressed by the cumulative disadvantages built up after repeated everyday challenges. I have witnessed

collective efficacy in action in disadvantaged communities in Chicago and am certain it exists here, too.

The further good news is that some of the major challenges to disadvantaged communities have abated. Violence in the United States is down dramatically from the heights of the 1990s, for example, and even with the recent increases in violence, Milwaukee is way down from where it was in the 1990s and is not one of the top U.S. cities in the homicide rate. People are also moving back into cities. Milwaukee's population has increased

since 2010, to the point where it is likely now more than 600,000, and Rustbelt cities such as Milwaukee are quietly experiencing what Richard Florida calls a "brain gain"—the educated and creative class wants to live in cities. Add to this the fact that racial segregation is declining and immigration has revitalized many neighborhoods across the country by reducing housing vacancies and increasing population. I am guessing this

kind of revitalization is occurring in some of Milwaukee's south-side neighborhoods. Taken together, these facts suggest real prospects for meeting the challenge of persistent spatial inequality and increasing the sharing of neighborhoods across race and class boundaries in urban areas (like Milwaukee) that, not too long ago, were thought to be dying.

Finally, I want to emphasize the importance of city–university connections and the process of sharing data to guide local action. A rigorous system of measurement and evaluation is at the core of what I have called ecometrics, and it is the guiding philosophy of the Boston Area Research Initiative. As we have demonstrated with BARI, there is a wealth of new data and technologies that can be harnessed to enhance community. Regularly bringing together scholars, stakeholders in the community, and policy makers also enhances transparency and creates a positive cycle of mutually beneficial interactions. I can report that there is a real hunger for this sort of interface. We held a public conference in 2011, hoping a few dozen people would show up; instead, hundreds did. That transformative event motivated us to found BARI in 2012. In December 2014, we held another conference, addressed by the mayor, which took the next step of data sharing, eventually leading to a formal collaboration that I am happy to share.

In September 2015, the White House and the Department of Treasury announced the formation of MetroLab Network. Our affiliation with this network, as in other cities, is to connect policy makers with researchers to better understand and address key challenges. At the same time, policy makers and practitioners associated with BARI help scholars to learn more deeply how these issues are manifested in everyday life. This, in turn, helps scholars and students refine their theories and analyses of urban dynamics. Over time, these collaborative interactions produce better policies and better-run programs in local governments, as well as more insightful and nuanced research.

I thus urge Milwaukee to join this growing movement to better understand and improve our cities. Considering the number of people and the level of energy that I have encountered during multiple phases of my visit here for the Boden Lecture, I have no doubt that you can and will take the city to a better place. ■

There are encouraging trends that give hope to the idea that revitalizing disadvantaged communities through a combination of place-based and person- or property-based interventions . . . is not naïve.

Public Policy, Yes, but Personal Responsibility, Too

by Tonit M. Calaway

Last year I participated in a panel discussion at the Clinton Global Initiative on Comeback Cities. I heard promising stories about how Detroit, Buffalo, and other cities are tackling the challenges of eroding urban neighborhoods and addressing economically disadvantaged areas with various levels of gentrification. I told them the truth: Milwaukee isn't there yet.

In some respects, the deck is stacked pretty high against success, but my purpose here is not to review the statistics. In fact, as a lifelong Milwaukee resident, born and raised in the heart of the city, I'm committed to seeing a better Milwaukee emerge. Is Robert Sampson's public policy response the solution?

He's certainly right in his backward look—in particular, that “Milwaukee suffered a long exodus of manufacturing and people, severely eroding its economic and social base.” Yet for the future, too, we cannot overlook the importance of manufacturing in the sustainability and viability of our country.

As a community, we should focus our efforts not just on helping students finish high school to continue on to college but also on making education in the trades an equally important priority. There remains great value in the work of manufacturing. It is a better fit than college for some of our smart and talented young adults. Longer term, manufacturers can also offer family-sustaining skilled jobs. Yet as vice president of human resources for Harley-Davidson Motor Company, I can tell you that it is difficult to fill some good-paying manufacturing jobs because we as a society have not focused attention on this opportunity.

Here is my perspective: The responsibility for helping Milwaukee turn the corner lies in more than one place and cannot be solved by public policy alone. Individual members of the community have to stand up and demand different behaviors from each other. Mr. Sampson discussed the theory of “collective efficacy”: I believe it to be the linchpin to changing a community. As members of the community, we all have to be willing to force continued discussion and action plans to address the issues facing Milwaukee, such as poverty, crime, mental health, segregation, and human trafficking—just to name a few.

In addition, our African-American citizens should stand up and demand more of each other. The easiest thing to do is complain about what the city, county, state, or federal government is or is not doing for us. The harder, more helpful action is to work at being part of the solution.

My mother, a retired Milwaukee Public Schools principal, grew up just off 20th and Lloyd streets, on Milwaukee's near west side. She often talks about her parents' neighbors and the impact they had on her life. The people of this neighborhood were not rich, but they were proud people who wanted something better—for themselves and for the greater community. Discipline and expectations came not just from my mother's immediate household. Most of her neighbors would expect good behavior, and, short of that, there was hell to pay from the neighbors—and then again when my mother returned home, because someone had already contacted her parents.

The saying “It takes a village” may be a cliché, but it's accurate. Members of the African-American community care, but many of us are passively letting things get worse without demanding better.

We in the African-American community have to own our faults, celebrate our strengths, and expect nothing but the best for our children. This means that we can no longer tolerate bad behavior from anyone—a family member, a friend, or a friend of a friend. Oftentimes we know who is doing wrong, and we turn a blind eye, even as we expect the police to have eyes on everything.

I know that I also have to step up and do more. I owe that to my mother and the generations before her and to the generations to come. No one is going to care more for our community than we will—no one. It is time we step up our caring and do more than just pay lip service.



Tonit M. Calaway is vice-president for human resources at Harley-Davidson, Inc., and president of the Harley-Davidson Foundation.

WRITING A NEW WEST SIDE STORY

BY ALAN J. BORSUK

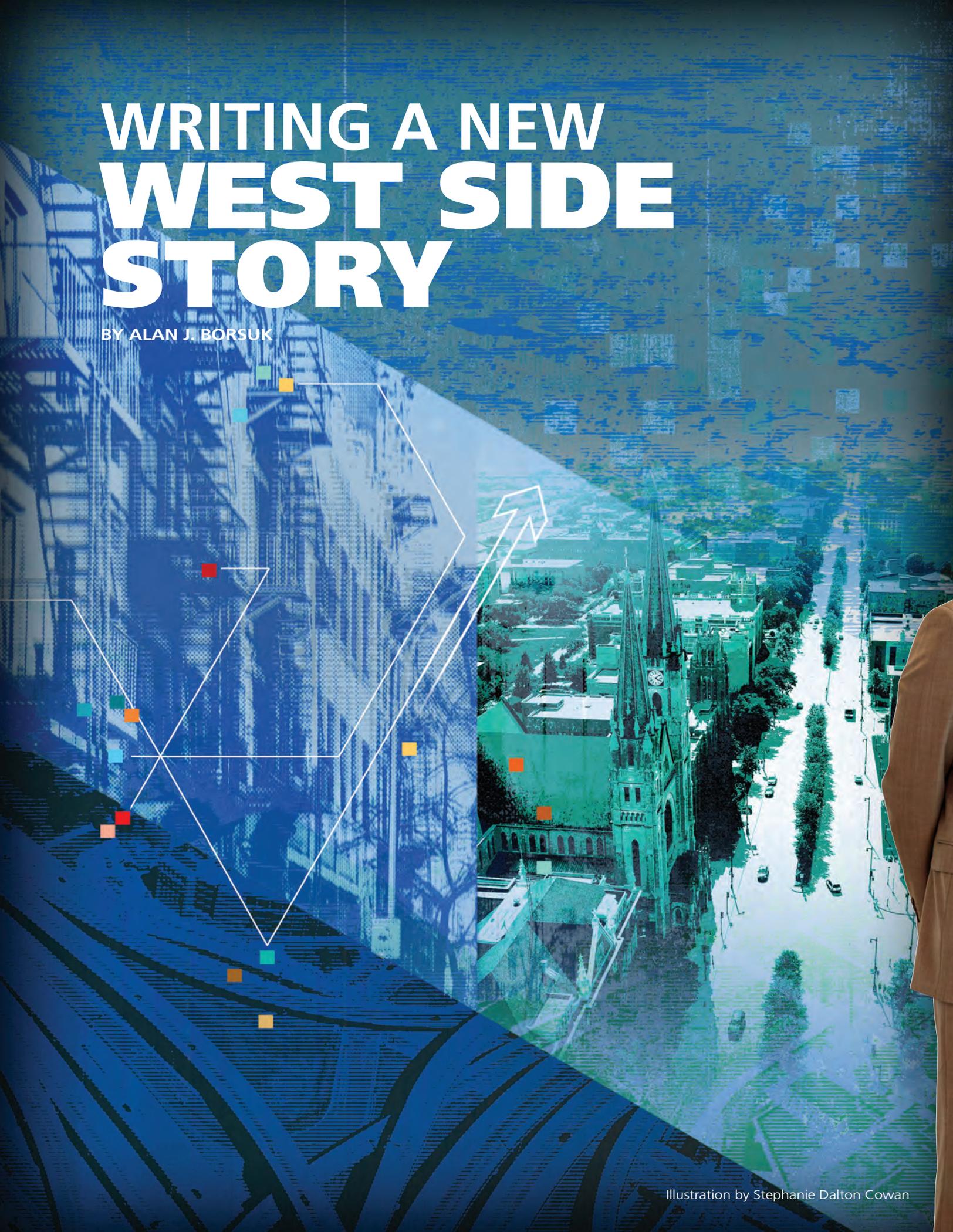


Illustration by Stephanie Dalton Cowan

Michael R. Lovell has learned a lot since becoming president of Marquette University in 2014, but this seemed like an unexpected example: “I’ve learned more about what it takes to run a grocery store than I really care to know,” Lovell wryly acknowledged to more than 200 people who filled the Appellate Courtroom of Eckstein Hall one morning last fall.

What does a grocery store have to do with being president of a major university? The answer in Lovell’s case: A lot. It is an important piece of a bigger picture

that many Milwaukee leaders and institutions, including Marquette, hope will add vitality to a struggling area near the Marquette campus.

The success of Near West Side Partners, Inc., in the next several years will say a lot not only about that area but also about Marquette’s future and its aspirations as a Jesuit institution. Lovell said in an interview, “In my career, this may be the most significant project I’ve worked on because of the impact on the city. The impact could really help change Milwaukee.”

Collective efficacy—that is a term used by Harvard Professor Robert J. Sampson to describe urban neighborhoods that are doing better than one might expect. (See the essay version of Sampson’s Boden Lecture at the Law School in this issue, page 8.) In essence, the term means that the more that people and entities involved in a neighborhood jointly contribute to maintaining and improving the quality of life, the better a neighborhood will be.

The near west side effort is bringing together a large number of people and organizations who hope their work will be a prime example of collective effort that is effective. Marquette University has joined with four other “anchor” institutions, as well as with neighborhood residents, business owners, nonprofits, and government agencies, in a concerted effort to build up the health of

the near west side as a community—or, as those involved in the effort call it, “a neighborhood of neighborhoods.”

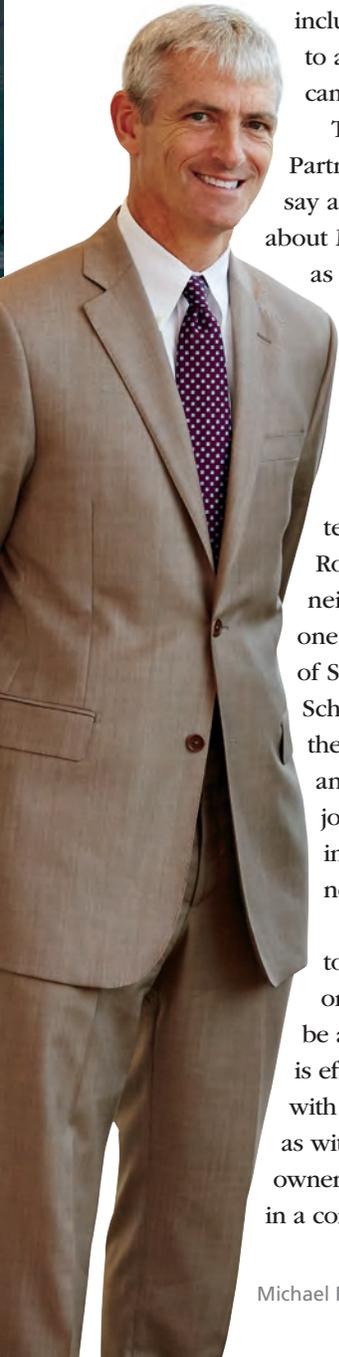
For Lovell, the initiative is one that addresses both Marquette’s direct needs and its broader mission. On the direct side, assuring the security of areas adjacent to the campus and making those areas more attractive as places to live will help recruit students, faculty, and other staff. On the mission side, Lovell said, “We’re a university that wants to educate students to improve the world.” Marquette’s overall goal, as a Jesuit institution, is to put people on paths not only to successful careers but also to lives of service. “There is a mind/body/spirit approach to Jesuit education,” Lovell said. “We want faculty, staff, and students to think about how to solve the city’s problems. The near west side couldn’t be a better test case.”

“We want faculty, staff, and students to think about how to solve the city’s problems. The near west side couldn’t be a better test case.”

President Lovell

In the first months of the project, Marquette students and faculty, as well as the university’s top administrators, have shown initiative and gotten involved in projects on the near west side. One of the projects receiving major attention is the proposed grocery store. The idea started with two students who were concerned about lack of access to nutritious and fresh food in the vicinity of Marquette. That has grown into a core group of students who continue to play important roles in pushing for creation of a market that will meet that need—a push all involved hope will (pun intended) bear fruit soon. The grocery store is “a huge student issue,” said Jeanne Hossenlopp, Marquette’s vice president for research and innovation.

But the grocery store is hardly the only example of what members of the Marquette community are tackling. An example: Amber Wichowsky, a political science professor, and a team of students are working on ways to help area residents get more involved in the process of deciding the future of the community. Another example: Scores of Marquette students are taking part in “service learning” efforts, including tutoring students in local schools and enhancing recreation options in the area. ▶▶



Overall, Hossenlopp said, the near west side effort is an opportunity to think about Marquette’s role in the broader community. She said she wants Marquette faculty and students to be involved in research that’s relevant to the neighborhoods and in partnerships to help institutions in the area.

The overall picture

The area generally between downtown Milwaukee on the east and Washington Park on the west and between I-94 on the south and Vliet Street on the north was part of the solid fabric of Milwaukee for many decades, home to thousands of German and Irish immigrants and their families. It was also home to a concentration of about 10 hospitals for many years. But the Germans and Irish mostly moved out of the area to the suburbs and beyond, and, in the 1970s and 1980s, all but one of the hospitals closed, merged, or became part of the regional medical center in Wauwatosa, some five miles to the west. Only Aurora Sinai Medical Center remains in the area.

As their conversation developed, the Marquette and Harley-Davidson leaders realized that to deal with safety problems, what they really needed to do was to improve the whole neighborhood.

Milwaukee Alderman

Robert Bauman, who represents much of the area on the Milwaukee Common Council, said the departure of the hospitals “really devastated the neighborhood.” He elaborated: “In one fell swoop, you yanked all that employment and business activity out of that neighborhood. The land use has never adjusted.”

One problem, Bauman said, is that numerous low-rise apartments built

in the 1960s, many then occupied by people working in health-related jobs, have become sore spots. They have aged poorly, don’t meet the interests of today’s renters, and, in too many cases, have been occupied by people whose unstable lives affect neighborhood stability itself.

But the area also has kept a lot of its vitality. About 40,000 people live there, including about 10,000 Marquette students. Some 29,000 people work in this section of the city. There are major businesses and institutions in the area, some with histories that go back more than a century. The area includes some high-quality schools, art and entertainment venues, and stretches of high-quality, even elegant, housing.

In fact, detailed analysis of the area suggests that a relatively small number of locales and specific addresses account for disproportionate shares of the neighborhood problems. Advocates for improving the area say that this means that the dimensions of the issues they must face are not as intimidating as one might think.

So how do you build up and spread what is good and deal with what is not? That is the challenge of the near west side initiative. And the large cast of those involved expresses confidence that the efforts will succeed.

Launching the initiative

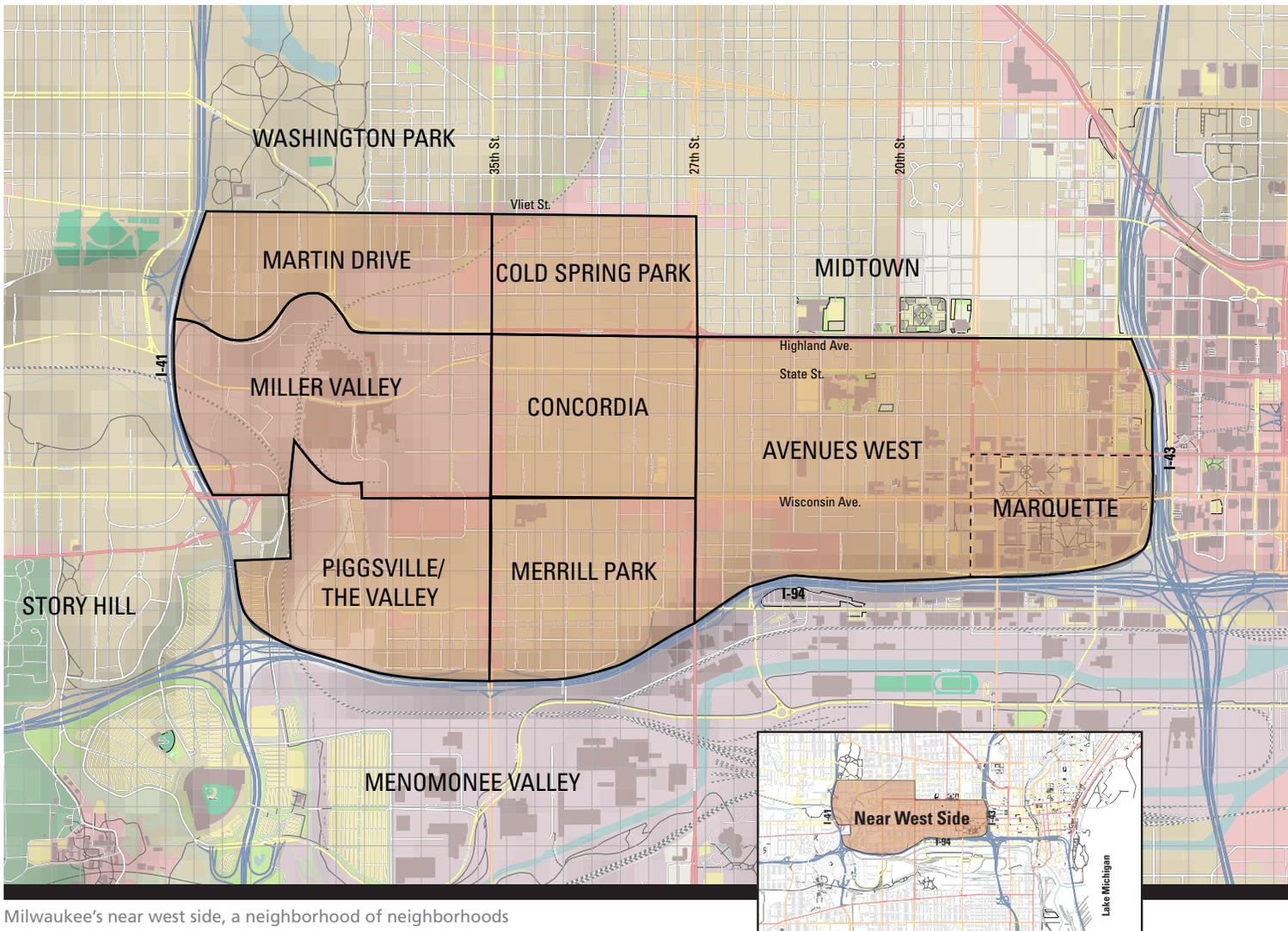
The creation of the Near West Side Partners organization dates to shortly after Lovell took office.

In July 2014, Lovell went to see Keith Wandell, then CEO of Harley-Davidson, to talk about safety in the area. Marquette is on the east side of the expanse; the corporate headquarters of the world-famous motorcycle company are a couple miles to the northwest. Both Harley-Davidson and Marquette—and a lot of residents and institutions in the area—put high priority on combating crime, enhancing safety, and improving perceptions on both fronts.

At the “On the Issues with Mike Gousha” session at the Law School where Lovell talked about grocery stores, the Marquette president recounted his meeting with Wandell. As their conversation developed, the Marquette and Harley-Davidson leaders realized that to deal with safety problems, what they really needed to do was to improve the whole neighborhood. A vibrant neighborhood is a safe neighborhood. They began considering what was needed and how it might be done.

Several months later, in October 2014, a meeting of many of the stakeholders connected to the near west side was held at Harley-Davidson’s offices. There was agreement that the need was there, the time was right, the potential was strong, and the willingness existed to join together in a new surge of work on improving the area.

Five major institutions agreed to be the anchors for a new organization, Near West Side Partners, Inc. In addition to Marquette and Harley-Davidson, partners include MillerCoors brewing company, Potawatomi Business Development Corporation, and Aurora Health Care. Potawatomi is putting tens of millions of dollars into developing businesses on 11 acres of tribal land in the heart of the area. The land was previously used as the campus of Concordia College, which relocated to suburban Mequon a few decades ago. MillerCoors has a major brewery and offices for many of its corporate employees across the street from Harley-Davidson on the west side of the area. And Aurora Sinai Medical



Milwaukee's near west side, a neighborhood of neighborhoods

Center is on the east side of the area, just north of the Marquette campus.

The anchor institutions have pledged more than \$1.5 million to fund the effort. They are also putting a large amount of time and energy of employees, including top executives, into the initiative.

But leaders of the five anchors go to lengths to say they do not want this to be a top-down project in which the future of the area is decided and imposed by a small number of heavyweight players. Through numerous meetings in the community, residents, small business owners, and others have become involved.

“A top-down approach is not going to work,” Kelly Grebe, chief legal and corporate services officer at MillerCoors, told the audience at the “On the Issues” program. “Just throwing money at the problem is not going to work. We need to have residents involved, and we have had that involvement from day one. We’re here as anchoring institutions, and we have a little bit of money to

throw at the problem. We need the residents, and I think we’re seeing the residents and the businesses step up.”

The group also has emphasized that this is not intended to be a gentrification effort, aimed at moving out lower-income people and moving in people who are better off. The goal is to make the area better for everyone, including the people who live there now, and to continue to have a high number of social service and nonprofit agencies serving the people of the neighborhoods involved.

As Rana Altenburg, vice president for public affairs at Marquette and president of the board of directors of Near West Side Partners, put it, this is not a “not in my backyard” effort aimed at keeping people with needs of many kinds at a distance. “We’re the backyard,” she said. “We like our backyard.”

So what needs to be done for the project to succeed? The answer can be broken down into several subjects. ▶▶



Rick Wiegand, owner of the Ambassador Hotel and area developer

Aiming to improve safety

All involved agree that safety is a prerequisite to improvement. Hossenlopp said, “The safety piece is absolutely critical.” For Marquette, that is a big factor in keeping student enrollment strong.

Across the area, community leaders have built rapport with the Milwaukee Police Department, the city’s Department of Neighborhood Services, and the Milwaukee County District Attorney’s office, both on general strategies and on ways to focus on specific needs. The latter include such efforts as trying to close down a tobacco store on N. 27th Street that has required several hundred visits by Milwaukee police in the last several years and shuttering an apartment building several blocks away that was the source of problems. Both the apartment building and the tobacco shop have been closed.

The launch in May 2015 of the Marquette University Police Department, succeeding the university’s public safety department whose officers had fewer enforcement powers, was “a huge step forward for us,” Lovell said. In his State of the University address in January, he said that since the Marquette police initiative began, the area that officers patrol had 34 percent fewer robberies and 26 percent fewer crimes overall than in the comparable period a year earlier.

Near West Side Partners has launched an effort called Promoting Assets and Reducing Crime (PARC), which aims to pursue two goals: actual improvement in safety and improvement of people’s perceptions of the neighborhood. Perceptions are sometimes as influential as the reality itself, leaders say, and they can be improved. The effort includes promoting an awareness of the facts about the area as well as knowledge of the many cultural and lifestyle assets the area already has.

Improving the array of housing

The five anchors are making it a priority to improve the overall quality of the places people have available to live. One goal is to attract more of their employees to live close to work. Investments to offer better living situations—whether in existing properties or in homes needing renovation—are increasing, said Keith Stanley, executive director of the Avenues West neighborhood association and the Near West Side Partners organization. Leaders talk optimistically about developers’ interest in area projects.

The goal is not to price people out of the neighborhood. But several key figures, including Alderman Bauman and real estate developer Rick Wiegand, said that tearing down some of the problematic properties built a half century ago may be a needed step, because the properties are not of high quality and the density in the area is too high.

But, Bauman said, the area can—and in his expectation will—become increasingly attractive as a place to live. He notes its affordable housing, proximity to downtown and other areas, good access to transportation, nearby employment opportunities, and neighborhoods that are in themselves attractive.

“These assets should naturally be blooming and growing and prospering,” Bauman said. “Instead, there’s the big lead weight that sits on top of them,” which is too much rental property.

One new resident in the area is Thomas J. Devine, CEO of the Potawatomi Business Development Corporation. While the Potawatomi name is associated with the casino and hotel south of the Marquette campus, the tribe owns 11 acres in the heart of the near west side. The tribe is building businesses on the land, including a high-security data storage center, and it

expects to employ 700 people on the land in the future, Devine said at the Law School event last fall.

Devine himself lives in the neighborhood, several blocks from the tribe’s land, and often walks to work. “I want to show people that living here is safe,” he said. “There’s a true beacon of hope if we live here, if we work here. And if we can stand on that and show others that we do that, it just changes” the way others regard the area.

Attracting business and jobs

Nobody personifies the drive to bring in new businesses and jobs more than the developer Rick Wiegand. In the mid-1990s, he bought the Ambassador Hotel, on W. Wisconsin Avenue at 23rd Street, which had been a trouble spot for years. He said he “nursed it along” for years but, around 2005, decided to invest in turning it into an art deco hotel that would draw visitors. Many people thought it couldn’t be done, he said, but the project has been a success. He also bought several surrounding properties and took firm steps to assure that responsible tenants rented his apartments. Wiegand has succeeded in putting new energy in the area and, as he puts it, extending “the safe zone” around Marquette a half dozen blocks or more to the west.

Now he has bought a set of buildings known as City Campus at N. 27th and W. Wells streets. With the recent departure of some Milwaukee County offices, the buildings, including a former hospital, are vacant, and Wiegand is working on ideas of what to do with them, including attracting business tenants, commercial storefronts, and residential renters.

“I like the challenge of trying to turn around the neighborhood,” said Wiegand, who also owns a substantial number of properties offering students apartments closer to the Marquette campus. Wiegand said he has succeeded with the Ambassador. “Why can’t we do it on 27th Street?”

The grocery store idea has been at the forefront of efforts to bring in new businesses. “As of today, that’s my top priority,” Lovell said. There has not been a full service food market in the area since a Kohl’s grocery store at N. 35th Street and W. Juneau Avenue closed many years ago. Keith Stanley, the main staff person for the near west side initiative, called the grocery store “so important.” But the food business is complicated and highly competitive and working out specifics of a plan for a store has been a challenge—which is why Lovell has learned so much about selling groceries.

Marquette and Harley-Davidson also have announced that they are launching a “shark tank” competition in which entrepreneurs with ideas for launching small businesses in the area will compete for support for their plans.

Improving schools

Advocates for the near west side initiative say that quality schools are a major attraction for any good neighborhood, and that needs to be true on the near west side.

They point to the quality schools that exist in the area as often-unrecognized assets. Schools from each sector of Milwaukee’s complicated education landscape are included. Examples include Milwaukee High School of the Arts, a public school; Highland Community School, a charter school; and Marquette High School, a private school.

But improvement in other schools in the area is an important need. And some of the people involved want to see creative partnerships with existing schools. For example, Lovell said he envisioned aiming to build a partnership with the Milwaukee Academy of Science, a charter school in a former hospital building near the university, and help give the school a focus on water issues.

* * * *

Rep. Evan Goyke, a 2009 Marquette Law School graduate who represents much of the near west side in the State Assembly, also is a good example of the hopes and challenges facing the area. He and his fiancée, Gabriela Leija, a 2014 Marquette Law School graduate, live near N. 27th and W. State streets.

Goyke said he bought the house five years ago with the thought of rehabbing it and selling it. Now, he and Leija have decided to stay. “That’s because of the changes we’re seeing in the neighborhood,” he said. “It’s an exciting place to live.” He describes his neighborhood as “unique, diverse, chaotic—we love it.” ▶▶



Keith Stanley, executive director of the Avenues West neighborhood association and the Near West Side Partners organization

But he would like to have more places to shop and enjoy within walking distance of his house, which would require more people in the area who would patronize such places.

The opening several years ago of a well-regarded charter school, Woodlands East, not far from their house, is important to Goyke because he and Leija hope to have children and would love to have a nearby school that would be a good choice in a few years.

Goyke said there is one big concern: “Crime is unacceptably high.” On the other hand, there is big hope: “That area has all the potential in the world.”

That latter thought is echoed among the leaders of the initiative.

What makes a good neighborhood? Tonit Calaway grew up on the near west side, and her parents still live in the area. Calaway is now vice president of human resources for Harley-Davidson and president of the Harley-Davidson Foundation. As someone involved in the near west side initiative, she is asked often what people in the area want. She tells those asking the

question to look at their own neighborhoods and the good qualities those neighborhoods have.

“That’s what you want to see,” she said. “It’s the same thing every other American wants who lives in a good neighborhood.”

Calaway is hopeful about the initiative. “You’ve got a great group of companies and people and citizens and organizations

working to make change here, and I’m really excited about that,” she said. “This is about doing the right thing, period.” If the issue were just Harley-Davidson’s wanting to make its employees safe, “we could build a fortress, and that is not what this is about.”

Matthew S. Levatich, the new CEO of Harley-Davidson, recalled the first time he drove up N. 35th Street from I-94, heading toward the Harley-Davidson headquarters. He was not impressed by what he saw.

“I would like the future Matt Levatich to come driving up 35th and have a different experience than I had 20 years ago,” he said. “Actually, there have been improvements over the 20 years. Not enough. This neighborhood has so much potential, and the power in that potential is really spectacular. I would just love



Tonit Calaway, vice president of human resources for Harley-Davidson

the idea that, in five, ten years, that 27-year-old coming up 35th has a different feeling.”

Levatich’s hope—and almost a promise: “We will be a symbol for what is possible when a community truly comes together and works on the right things in the right order.”

Wiegand, the developer, was asked what he expects in the area five years from now. “It’s going to be a completely revitalized neighborhood,” he said. Look at other areas near the heart of Milwaukee that have improved greatly in recent years—such as Brewers Hill, Walker’s Point, Bay View, and the immediate Marquette area where a project known as Campus Circle had substantial positive impact in the 1990s. It can happen on the near west side, too, he said.

Lovell shares the expectations and hopes. “If you align enough people together, that’s when really good things happen, and we have really great alignment,” he said.

In February 2015, a group including leaders of the five anchors went to Philadelphia to see what had been done over the last 17 years as part of a large renewal effort led by the University of Pennsylvania and involving land adjacent to its campus. Lovell said they were impressed by what they saw. The group learned that simple things can really help—including a successful quality food market, programs promoting employees living within walking distance of work, and the presence of good schools.

Lovell said, “The biggest takeaway for me from that trip was Penn essentially did it by themselves, and we have these great partners.” And it took Penn 17 years. “It’s not going to take us 17 years,” Lovell said.

The Penn project has become the go-to place to visit for universities considering improvements in urban areas near their campuses. Lovell has one particular hope for the Milwaukee effort: Not too far in the future, people will want to go to the place where the work has been done especially well and with especially good impact.

And they’ll head to Milwaukee. ■

“If you align enough people together, that’s when really good things happen, and we have really great alignment.”

President Lovell

The University as Neighbor

by Daniel J. Myers

In the landscape of organizations that populate cities, colleges and universities play a pivotal role. That is especially apparent in the quintessential “college town.” But even in larger cities, higher-education institutions provide not just direct economic input (often being among the largest employers in their locality and a key portal for funneling outside dollars into the region) but also the intellectual catalyst for the development of industry and the education and training of the workforce. Universities also can prove to be heavyweights in their *neighborhoods*—sometimes as good, thoughtful, and integrated neighbors, while other times being less thoughtful about their impacts and connections to those around them. As a Jesuit institution, Marquette University is striving for the former, and this is nowhere better exemplified than through its leadership in the Near West Side Partners project, which seeks to revitalize its neighborhood(s) not through an all-too-common gentrification process but rather through a truly engaged partnership with the institutions and community around it.

Marquette University, of course, is no slouch when it comes to community service. It has a long and honorable history of sending students into its neighborhood and greater Milwaukee to make contributions, ranging from more than 25 years of “Hunger Clean-Up” to the decade and a half of service by the Marquette Volunteer Legal Clinic to, most recently, the College of Business’s fraud victims’ assistance project. The president’s office calculates that, in the past year alone, our students contributed no fewer than 455,000 hours of service to the community. Indeed, in my short time at Marquette, I have come to appreciate the organic integration of service into student life—whether those students are undergraduates, those seeking the Ph.D., or professional students such as those in Law and Dentistry. It is a core part of what defines the Marquette experience and the character of its graduates.

But Jesuit tradition does not define service as a charitable gift flowing from the more fortunate to the less but rather calls on us to engage fully with those in our environments, in mutual respect, to collaboratively confront the problems and challenges in our social and physical environments. This type of engagement benefits all who are involved—not just by improving their environment but also by inducing a deeper understanding of the problems we are confronting and the assets that exist to address these problems. That flavor of engagement is the route toward the collective efficacy that Professor Robert Sampson identifies as so critical to the success of neighborhoods and the cities that they constitute. This is why we have asked Marquette’s newly formed Office of Community Engagement, headed by Dr. Dan Bergen, to take this orientation as its guiding principle when facilitating our work with the local community.

Like other types of institutions, universities bring special resources to the table when developing partnerships with city governments, nonprofits, community action groups, and for-profit corporations. Their special charge is to provide intellectual resources to the enterprise. Marquette, for example, promotes the pursuit of engaged scholarship through teaching and research that address problems through collaboration across community divides and disciplinary boundaries—and with explicit involvement of nonacademics. In this role, it not only produces research resulting from the assessment of theoretically driven interventions, but it also informs the iterative development of those theories and subsequent interventions. And it provides a special brand of intellectual leadership by acting as a neutral convener of scholars, activists, politicians, business leaders, and community members to depose and promulgate the best thinking about our collective societal condition and how to improve it. This very issue of the *Marquette Lawyer* and, more generally, the Marquette Law School’s public policy initiative stand as shining examples of that critical role.

Daniel J. Myers is provost of Marquette University.



THE LAW SCHOOL'S PUBLIC POLICY INITIATIVE: CREATING A SPACE FOR CIVIC— AND CIVIL—ENGAGEMENT

BY MIKE GOUSHA



Location. Location. Location. It may be the number-one rule in real estate, but it also helps explain Marquette Law School's emergence as a public square for southeast Wisconsin. After all, what better place exists for conversations about the future of this region than a service-minded university in the heart of the state's largest city?

That Marquette's fortunes are intertwined with Milwaukee's is hardly an exaggeration. Within a mile of campus, one can find both Fortune 500 headquarters and empty storefronts. Neighborhoods in the midst of a renaissance stand alongside neighborhoods with great challenges. And so it seems appropriate, logical even, that for almost a decade, the Law School's public policy initiative has often focused on the shared future we have with the region's 1.5 million residents. The preceding articles in this issue of the magazine present recent examples of the Law School's continuing exploration of the city's challenges and opportunities. And there are many more instances at the Law School, including looks at urban education, the best ways to fight crime, the pros and cons of a new downtown sports arena, and Milwaukee's role in the Chicago megacity. The future of Milwaukee, in short, is a point of emphasis for us.

But the Law School also plays another important role, one that warrants mention, especially given the fractious nature of American politics today. Two years ago, the Pew Research Center released a major report confirming what many of us had sensed: America has become a more partisan nation. We're less tolerant of opposing views, more apt to live and associate with those who share our politics. We even get our news from like-minded media outlets, reflecting our desire to be informed *and* affirmed. Those are facts. This growing political chasm is especially acute in

Wisconsin, as Craig Gilbert, *Milwaukee Journal Sentinel* Washington bureau chief and the Law School's former Lubar Fellow for Public Policy Research, reported in a past issue of this magazine.

So, given this divide, how do you explain the success of the Law School's public policy initiative, an effort that prides itself on its independence—on *not* taking sides?

First, a little background. The Law School's public policy initiative began, as Dean Joseph Kearney would say, as more of an intuition than a fully formed idea. But at its core was a desire to add to and build on the Law School's strong academic, research, and public service missions. The Law School would become a community convener, leading important conversations about issues facing the region.

Nine years later, that intuition has evolved into something both more specific and larger: a modern-day public square, featuring candidates in significant political debates, topical conferences on important issues, a continuing series of conversations with news and policy makers, and public lectures by leading scholars. It's even the *vox populi* for Wisconsin, with a highly respected polling project: the Marquette Law School Poll offers regular insights into how the people of this state feel about their lives and the policies that affect them. In short, Marquette Law School has arguably become the leading venue in the region for serious, civil discourse.

But back to the question. Why has the Law School's public policy initiative succeeded? Perhaps ironically, the answer may lie in its old-school approach to civic engagement. In a media world that focuses on brevity, the Law School offers depth. It allows students and citizens to hear from their elected officials directly, not through sound bites, 30-second TV ads, or 140-character tweets. It features not "a" point of view, but many.

It places a premium on civility in a too-often uncivil society. And it doesn't promote an agenda. Instead, it seeks to fill a different role, that of "honest broker."

Of course, proclaiming your independence is one thing. Demonstrating it is something else. And so it is no accident that the Law School's roster of guests includes elected officials and policy makers of all stripes. Consider just some of the political figures who have visited in the last two years: President Obama's former senior advisor David Axelrod, Wisconsin Congressman and Speaker of the House Paul Ryan, Wisconsin Senate Majority Leader Scott Fitzgerald and Senate Minority Leader Jennifer Shilling, U.S. Senate candidates Ron Johnson and Russ Feingold. Republicans and Democrats alike, they're all welcome at Eckstein Hall. And that has not gone unnoticed by those in the political arena. They see the Law School as fair and nonpartisan, a place where issues and ideas matter more than ideology.

There's been another key to the success of the public policy initiative: the audiences who attend our events. Since joining the Law School in 2007, I have moderated more than 200 conversations, debates, and conferences. Many have drawn capacity crowds of more than 200, and almost without exception, those in attendance have been remarkably civil. Not only are they interested, attentive, and engaged. They're also polite. Perhaps that's because of our "something for everyone" approach. In other words, certain guests draw crowds who are more favorably predisposed to their views—and others in attendance know that another day will bring another guest. In all events, the civility certainly is not for want of diversity: the crowds are a real cross-section of this region. And that's to say nothing of who's watching as we webcast live all our programs.

Whatever the reason, the Law School has created an atmosphere that encourages reasoned, thoughtful discussion. That doesn't mean our audiences always agree with our guests. They ask blunt questions that challenge their elected officials. But mostly, they come to listen, and to learn. As an example, the state has experienced no more contentious time in recent history than during the 2012 recall election of Governor Scott Walker. Marquette Law School hosted the final debate of the campaign. The atmosphere in the Appellate Courtroom—packed with supporters of both the governor and his Democratic challenger, Milwaukee Mayor Tom Barrett—was electric. But for 60 minutes, the only voices heard were those of the candidates and the moderator. Spirited, civil debate between two men with very different visions for Wisconsin.

That's not to say that the Law School's work in the public policy arena has been immune from criticism from a more-partisan and more-skeptical citizenry. Some want to ascribe motives to what we do and how we do it. They question whom we invite, the questions we ask, the topics we tackle. And that is well and good, because a reputation for fairness and independence *should* be earned, even hard-won.

During the historic recall election of 2012, the newly created Marquette Law School Poll was challenged in the spring by Democrats, who were unhappy when it consistently showed Governor Walker leading Mayor Barrett. By fall, it was unhappy Republicans questioning the survey because it showed President Barack Obama leading GOP nominee Mitt Romney, and Democrat Tammy Baldwin moving past Republican Tommy Thompson in the race for U.S. Senate. In both cases, and in all the contests

of 2014 as well, the polling proved spot-on. Today, the Marquette Law School Poll is routinely referred to as the "gold standard" in Wisconsin and is respected across the country, by Democrats and Republicans alike, for its accuracy and independence.

In some respects, the public policy initiative at Marquette Law School seeks to be a value-added proposition. First and foremost, we're a law school, and many of our offerings (not specifically mentioned here) primarily reflect that. But our mission is also to be of value not just to students and the legal community, but to the larger community. To offer fresh thinking and new ideas about the challenges facing our city. To be a gathering place for people from all walks of life, no matter their politics. In a world of increasing partisan animosity, the Law School is offering a clear alternative: a civic engagement that is predicated on fairness, civility, and independence. ■

In a world of increasing partisan animosity, the Law School is offering a clear alternative: a civic engagement that is predicated on fairness, civility, and independence.

Mike Gousha is distinguished fellow in law and public policy at Marquette University Law School.

At the Intersection of

Marquette Law School Professor Scott C. Idleman is coauthor of a new book offering a comprehensive review of the many ways that religion and government policy intersect in American law. *Religion and the State in American Law* was published in 2015 by Cambridge University Press. Many years in the making, the treatise already has been praised by experts. A prominent First Amendment scholar, Professor Paul Horwitz of the University of Alabama School of Law, described it as “magnificent,” and wrote, “If I were to recommend a very short list of essential books on religion and American law, I would first recommend my books and then, after an awkward silence, more honestly and accurately would recommend this book.” Idleman’s coauthors were Professor Boris I. Bittker, of Yale Law School, a renowned expert in tax policy who died in 2005, and Professor Frank S. Ravitch, Walter H. Stowers Chair of Law and Religion at Michigan State University College of Law.

Idleman responds here to questions from Alan J. Borsuk, senior fellow in law and public policy at Marquette Law School, based on issues raised in the book.



Scott C. Idleman

In terms of the law, how is religion defined?

For the First Amendment, as well as for many statutes, there is no authoritative, meaningful definition of religion. Courts, legislatures, and agencies are typically reluctant to define religion, perhaps fearing that a narrow definition could itself cause independent First Amendment problems, while a broad definition could unduly expand the availability or impact of the law in question.

That said, when religion does get defined by a court or other governmental entity, the tendency is to err on the side of breadth and inclusiveness. At the Supreme

Court level, this tendency was most apparent in the conscientious-objector cases arising in the context of Vietnam War conscription. There the Court adopted a functional and relatively subjective approach to religion, looking to the role that a belief system played in the life and outlook of the claimant rather than to specific tenets such as a belief in God or to objective criteria such as affiliation with a recognized religious body. And while those cases involved the construction of a federal statute, their approach has been influential in other contexts in the lower courts.

God and Country

“Separation of church and state” is a phrase often heard in discussions of issues involving interaction between government and religious entities. In Wisconsin, critics continue to say the voucher program that pays public money for educating children in religious schools goes against that principle, although the state supreme court ruled in 1998 that the program is constitutional. What does the phrase mean today?

The phrase itself is not actually in the text of the First Amendment’s Establishment Clause, but it has been used, sometimes starting with “wall of,” as a metaphor under the clause. This works—to a point—because institutional separation between organized religion and the national government was an original objective of that provision.

Regarding school vouchers, the critics are correct to see a potential establishment issue where government directs money toward religious bodies, given that tax-based support of religion, particularly one religion, was a classic feature of religious establishments. Nevertheless, voucher-based school choice programs have been allowed, today in Wisconsin and some other places (and despite federal challenges), so long as the schools take part pursuant to religiously neutral criteria and so long as the ultimate decision to direct the money to a religious organization rests with parents rather than the state. (This is so even if the majority of participating schools are religious and even if the majority of parents choose to use the vouchers at religious schools.) If a different test were used—at least, say, a blanket ban on government funds being distributed to religious groups—then such programs presumably would be unconstitutional.

As is pointed out in your book, 12 of the 13 colonies had established churches or involvement in religion before the American Revolution. “Christianity as Part of the Law of the Land” is one of the section headings in the book, describing earlier eras of American history. From a legal perspective, what is the legacy of the Christian roots of American government?

That’s a great question, in part because variations of the “Christian America” motif periodically surface in political and cultural

debates. It is beyond question that Christianity, particularly Calvinist and other Protestant strains, influenced the founding generation’s view of human nature, of government and its limits, and of the role and content of law. And, especially at the state level in the late eighteenth and nineteenth centuries, one could justifiably have noted the influence of these strains of Christianity on the legal landscape. Some state constitutions even mention specific Christian doctrines or terms, which is not a feature of the U.S. Constitution.

Today, by comparison, it is harder to claim that Christianity manifestly informs the nation’s laws. Although we do not follow a model of affirmative secularism—what the French, who do, call *laïcité*—nevertheless our religious diversity and collective experience have moved us toward a framework of law and governance that do not support the notion that America is a Christian nation in any formal or normative sense. Of course, if we are simply speaking of the citizenry’s beliefs, then the United States is a relatively religious nation, and a largely Christian one at that. But its governmental and legal landscape is essentially nonreligious, even if it is generally congruent with the religious values of citizens. One can certainly find discrete vestiges of Christian influence, such as Sunday closing laws or Christmastime holidays. Yet these have been upheld by courts precisely because they have gradually acquired secular value apart from their original religious significance.

“In God We Trust” on coins and “One Nation Under God” as part of the wording of the Pledge of Allegiance—what do these say about the relationship between government and religion?

These are both clearly governmental expression, and so they pose an issue under the Establishment Clause. Such phrases are often defended as statements not about the government itself, however, but about the historical beliefs or cultural character or aspirations of the American people. A large number of Americans do in fact believe in a traditional notion of God, even though that percentage has decreased somewhat in recent years. Additionally, it is meaningful to consider the specific contexts in which these particular phrases were adopted. “In God We Trust”

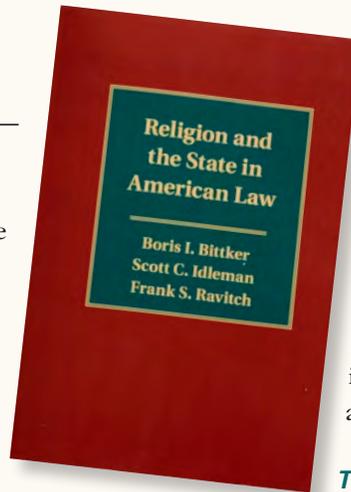


emerged on coinage during the Civil War, when many—including, most notably, Abraham Lincoln—maintained that the nation was being divinely tested or chastened. “One Nation Under God” was added to the pledge and “In God We Trust” became the national motto in the mid-1950s, in the thick of the Cold War, thereby serving as one means to distinguish the United States from the atheistic Soviet Union. Today, these phrases either have been upheld or would likely be upheld under the Establishment Clause, partly for the historical and cultural reasons I mentioned and partly because of the relatively generic, albeit monotheistic, religious concepts they embody.

What are your thoughts on the interaction between law and religion when it comes to the Supreme Court decision last year legalizing same-sex marriage?

There are many layers to this inquiry, so I can only scratch the surface. Regarding religious individuals and organizations, it is important to note that they, like the rest of the nation’s citizens, espouse a variety of perspectives on same-sex marriage, several of which were aired through amicus briefs before the Court. That said, it is true that many, though not all, of those espousing a conservative view of marriage do so on religious grounds. Thus the ruling raises questions in general about the continuing influence of traditional Christian and Jewish teachings on the law and also, I suspect, raises or reinforces concerns specifically for religious traditionalists about their place in contemporary culture, law, and politics. There aren’t many physical places left where one can go and form a “city upon a hill,” as John Winthrop described the Massachusetts Bay Colony, and so these citizens will somehow have to come to terms with the legal reality of same-sex marriage. This dynamic, fueled as well by the Affordable Care Act’s contraceptive coverage mandate, is exactly why the question of *exemptions* under religious freedom laws has become so contentious.

Having said this, I wish to note that it is not clear to me that the fundamental relationship between law and religion has changed or ever can change. In its same-sex marriage ruling, for example, the Court emphasizes the importance of “dignity.” If by this the Court means something nonsubjective—a moral concept apart from self-perception—it is arguably quite religious, for it purports to refer to some transcendent ethical principle, essentially in the tradition of natural law. It differs cosmetically, of course, from express reliance on a specific



scriptural injunction, but I’m not certain that it truly differs from reliance on an identifiably religious worldview. It is just a different and relatively unarticulated worldview, with its own set of implicit assumptions and philosophical propositions about human nature and, in turn, about what is best for persons and for society as a whole.

The Associated Press reported in December 2015 results of a poll that showed more support nationwide for protecting the rights of Christians than those of Muslims, Jews, and Mormons. Donald Trump has made a major issue in the presidential race of a proposal to bar Muslims from entering the United States, at least temporarily. Is there legal argument or history to support these views?

First, as to the poll, if the contemplated “protections” are implemented domestically by law, then any discrimination among religions will presumably violate the Establishment Clause, which may not ban such discrimination altogether but at the very least requires the government to show that the discrimination is necessary to achieve a compelling interest. And “necessary” under this test means that there is no other, less-discriminatory way to achieve the interest. It is hard to see how blanket differential treatment of entire religious groups could satisfy that standard. Indeed, it is hard even to imagine a “compelling interest” for such a law in the first place. It is true that there has been domestic religious discrimination by the government in the past, variously against Mormons and Catholics and other groups, but it was typically less direct and often bound up with other issues such as ethnicity or, in the case of Mormons, the practice of polygamy. That this discrimination may have been upheld in the nineteenth or early twentieth century, moreover, says little about its validity today. One need only compare the legality of intentional racial discrimination then and now to appreciate the point. Today’s legal environment is entirely different.

As for Donald Trump’s proposal, that’s a bit more complicated because of the traditional deference that courts have given to the federal government in the field of immigration. In addition, if the restriction is limited to noncitizens and essentially operates externally, the applicability of constitutional protections becomes less certain. That said, a categorical ban on Muslims, even

a temporary one, sends up a number of constitutional red flags, not least the Establishment Clause, which was specifically meant to limit federal meddling in the realm of religion and which, as a result, is not necessarily disabled just because the field is immigration or the affected persons are noncitizens. To the extent that citizens are affected—say, a U.S. Muslim who wishes to reenter the country—then Trump’s proposal is on its weakest ground, for a full array of constitutional issues arises, the basis for judicial deference becomes somewhat diminished, and the affected citizen would have a strong claim of standing in federal court. As for history, there have indeed been bans or quotas by nationality—most notably the 1882 Chinese Exclusion Act—as well as by ethnicity or race or even religion, such as restrictions on Jews and others under the 1924 Immigration Act. But these and similar enactments are overwhelmingly denounced today, and it would be unwise to view them as dependable precedents.

The Kentucky county clerk who refused to issue marriage licenses to same-sex couples drew much support and said she was answering to a higher law. Does this thought carry legal validity?

The clerk’s position strikes me as much less tenable than that of the small-business owner who, for example, declines to bake a wedding cake for a same-sex couple. In both cases, the same-sex couple will likely feel marginalized, but the clerk is uniquely undermining the general public’s confidence in government and the law, the legitimacy of which stems precisely from such confidence and the funding for which comes from people’s tax dollars. For stability’s sake, the government and the legal system must appear evenhanded in their dealings with citizens, and persons who cannot project such evenhandedness ought not to serve in government roles, at least none of any importance. In short, I think that the clerk should have complied with the federal injunction—or should have resigned, just as President John F. Kennedy said he would do were he ever unable to fulfill a duty as president because of conflicting religious obligations.

The more doctrinal answer is that, even under a broad religious freedom law such as Kentucky’s Religious Freedom Restoration Act, the clerk would presumably face a real uphill battle because of the compelling interest in having government officials discharge their legal duties and, unless state law is

changed, the need to have the clerk’s signature on marriage licenses. By comparison, the baker would have a much more plausible argument that the interest at stake—if precisely rather than generally defined—is not truly compelling or that this interest, even if compelling, could still be fulfilled by other means such as the availability of other bakeries.

The U.S. Supreme Court ruled in June 2014, in a case brought by the owners of Hobby Lobby, that private business owners, on the basis of freedom of religion, could not be required to offer contraception coverage to employees, notwithstanding federal regulations under the Affordable Care Act. What’s your perspective on the impact of that case and how it relates to the past and present of tensions between laws and personal religious practices?

At the outset, it is important to note the potential limitations of the ruling. First, it involved the interpretation of a federal statute—the Religious Freedom Restoration Act, or RFRA—and Congress can thus override the interpretation should it wish to do so, which is not true of the Court’s constitutional interpretations. Among other things, Congress could clarify the protective scope of RFRA, excluding for-profit entities, or it could make RFRA entirely inapplicable to the Affordable Care Act. Second, the case dealt with an objection to four abortifacient contraceptives, as opposed to all contraceptive coverage, and further the Court determined that any employees seeking these four contraceptives would still have alternative access to them at no greater cost. Finally, the ruling involved three closely held, family-run companies whose owners had undeniably sincere religious objections. It did not involve other corporate forms, and I suspect that there are not many other large companies that could demonstrate comparable religious sincerity.

At the same time, the ruling does indeed open the door to RFRA claims by certain for-profit entities, treating them as “persons” under the statute—and, because RFRA is written broadly, these claims could theoretically arise under any type or area of federal law. To date, the specific definitional holding of RFRA has not spawned significant litigation beyond the Affordable Care Act context—the Court, in fact, has another RFRA-ACA case this term—and it may take several years to gauge the full impact of the ruling.

Just in time for the second edition of Religion and the State in American Law, perhaps?

It is certainly a book that will require updates. ■

The Declining Ranks of Lawyer Legislators

By Alan J. Borsuk

They're called lawmakers, right? So it should be expected that a significant portion of state legislators are lawyers. But in fact, there has been, nationwide, a long-term trend toward fewer people with law degrees among the members of state legislatures.

The Wisconsin legislature, with 132 members (33 in the Senate, 99 in the Assembly), is representative of the national trend. In its current session, 12 state representatives in the Assembly and only 2 senators hold law degrees, just over 10 percent of the total. Two lawyers in the Senate is the lowest number in decades and perhaps in state history.

In 1969–1970, there were 32 Wisconsin legislators who had been trained in the law, just under a quarter of the total, according to a 2012 article in the *Wisconsin Law Journal*. The total was based on review of biographies in editions of the *State of Wisconsin Blue Book*, the official compendium of information about state government.

By 1999–2000, the number had fallen below 15. It leveled off after that, even rising to close to 20 in following sessions. But it was 12 in 2012–2013. The subsequent arrival of three lawyers as new members of the Assembly and the departure of one lawyer who was a senator (Glenn Grothman, upon his election to the U.S. House of Representatives) yielded the current total of 14.

Nationwide, the National Council of State Legislators said in a fall 2015 report, 14 percent of legislators listed their profession as “lawyer.” The actual percentage of those with at least a law degree may be a bit higher, since 12 percent listed their occupation as “legislator” and some of those may be lawyers or have law degrees. Thirty percent of legislators gave their profession as “business people,” which also might include some with

training in the law. Legislators were allowed only one answer in the survey.

In all events, “[t]here are substantially fewer lawyers serving in state legislatures than there were 40 years ago,” the report said. In 1976, the portion of legislators giving “lawyer” as their occupation was 22.3 percent, according to the organization.

Three members of the current Wisconsin Assembly graduated from Marquette Law School. Their personal histories and their thoughts on being members of the legislature shed light on the value they see in being a lawmaker with training in the law and on why the ranks of lawyers have thinned. We profile these Marquette lawyers here in the order of their length of service.



State Representative Jim Ott

After many years as a television meteorologist in Milwaukee, Jim Ott was a well-known figure before he went into politics. He had been considering what he might do beyond the TV studio and thought that a law degree would improve his chances of finding “something interesting.” It took him five years to complete Marquette Law School, sometimes squeezing in classes between early-morning and noon-hour on-air appearances. He graduated in 2000, at the age of 52.

Ott became a member of the bar but never maintained a private practice. He left WTMJ-TV in 2006 and decided to run as a Republican for the Assembly in a district generally covering northern



State Representatives Cody Horlacher, Jim Ott, and Evan Goyke at the Wisconsin Capitol.

Milwaukee suburbs along the Lake Michigan shore. “I’ve always been interested in the political world,” he said. He won that race and has been reelected every two years since.

As with many lawyer-legislators, Ott’s committee assignments have in large part been tied to legal matters. He currently is chair of the Assembly’s Judiciary Committee, and he co-chairs the Law Revision Committee. He is a member of the Joint Committee for the Review of Administrative Rules, the Committee on Criminal Justice, and the Wisconsin Judicial Council.

“The legal background has been just invaluable,” Ott said. He has a voice in consideration of almost every bill that involves matters of the law. In his work on the judicial council—a body made up of representatives of the court system, the legislature, the law schools, and others—he has been involved extensively in a large undertaking in recent years to overhaul the state’s statutes related to the judicial and criminal systems. “I’ve been able to help shepherd this through the legislative process,” he said, adding that he thinks the process will reach a successful conclusion in 2018. Ott’s own involvement “would never have happened without the law degree.”

A lot of what he has worked on does not attract public attention. One accomplishment, he said, was the adoption, with bipartisan support, of a law on transfer of structured legal settlements. Until recently, Wisconsin was the only state without such a law, Ott said. Other legislative efforts have attracted attention, such as a bipartisan effort that led to making “upskirting”—shooting unauthorized photographs of a person’s covered body parts—illegal.

Ott said that pay is certainly one of the reasons that there are relatively few lawyers in the legislature. “If you have children in college and you are facing other expenses involved in raising a family, it can be difficult to get by on \$50,000 a year,” he said. (The legislative salary is \$50,950, to be exact.) The pay, he said, “may be why they call it public service.”

Can you supplement the salary by maintaining a private practice? Both nationally and in Wisconsin, many who have looked at that say there has been a trend toward treating legislative work as a full-time job and not as the part-time matter it was in the past.

Ott said, “I just do this as my full-time job. . . . It’s definitely not a part-time job.” He said he doesn’t think he could maintain a private practice >>

with his schedule of commitments related to being a legislator.

Ott intends to seek reelection this fall, and he is uncertain whether that will be his last race—he'll be 71 at the end of that term. But he finds the work interesting and challenging, and he is proud of his accomplishments. There's a lot more cooperation in the legislature than many people realize, he said. But, "obviously, it's a lot more confrontational than doing the weather."

State Representative Evan Goyke

Evan Goyke grew up in a political family, so his interest in running for office was probably no surprise to those who knew him. He graduated from Marquette Law School in 2009 and worked for three years as a public defender. During that period, he also was one of the leaders of the Law School's "Street Law" program in which law students engage and educate Milwaukee high school students about the legal system.

In 2012, Goyke won a contested Democratic primary to represent a district covering much of the west side of Milwaukee. He was reelected in 2014.

Goyke sits on committees dealing with subjects such as agriculture and veterans' affairs, but, as with other lawyer-legislators, his assignments lean toward legal matters. He said, "Would it make sense to have a farmer on the agriculture committee? . . . Having expertise in an issue area can be a great benefit." He pointed out that all three Marquette lawyers in the Assembly are on the criminal justice committee.

Being a lawyer is a plus in the legislature in general, Goyke said. He said his legal training gives him a better understanding of how passing or changing a law could affect people. And it gives him more confidence in expressing himself on controversial issues.

"Look how many laws we've passed in the last five years that ended up in the [state] Supreme Court," he said. To be sure, being a Democrat in a legislature with Republican majorities in both houses, Goyke does not often see his views prevail. "The court of public opinion is not

necessarily swayed by intense legal arguments," Goyke said. "It doesn't seem to necessarily carry the day when I argue that something is unconstitutional, but I argue it nonetheless." Those arguments are part of the record when issues go to court, he said.

Why are there not more lawyers in the legislature? "It's a combination of time and money," he said. He tried to maintain a private practice when he started in the Assembly. "I was miserable," he recalled. He felt that each role reduced his effectiveness in the other role. "I can't maintain a practice outside of being in the Assembly," he concluded. He said some legislators do it by belonging to larger firms where colleagues can cover for them when legislative duties intervene.

Goyke, now 33, intends to run for reelection in 2016.

State Representative Cody Horlacher

Cody Horlacher said he was just finishing his last exam at Marquette Law School in 2014 when news broke that longtime State Sen. Neal Kedzie was not going to run for reelection and Rep. Stephen Nass was going to give up his seat to run for Kedzie's seat (which Nass won). The assembly district covers parts of Waukesha and Jefferson counties, near where Horlacher grew up. Horlacher said he knew he was young, he didn't have family or job commitments, he liked and had been involved in politics since he was in middle school, and "these opportunities don't come around very often." He ran for the seat and, in the heavily Republican district, won a contested primary, which equaled winning the seat.

Now 29, Horlacher is one of the younger members of the legislature. "I love this job," he said. "This is a dream come true." He said the first months were "like drinking from a fire hose," but his experience working during law school as an intern for Wisconsin Supreme Court Justice Michael Gableman gave him some familiarity with the state capitol and life within it.

Horlacher considers his strength in legal matters to be in criminal law. While campaigning for the Assembly in 2014, he worked half time in

Being a lawyer is a plus in the legislature in general, Goyke said. He said his legal training gives him a better understanding of how passing or changing a law could affect people.

the Walworth County district attorney's office, and he continues to do that on a limited and pro bono basis when the legislature is not in session. He is currently vice-chair of the judiciary committee.

He said his legal education gives him a better understanding of procedure and the way courts and the broader legal system work. "It gave me a certain level of authority to share within my caucus," he said.

Why are there relatively few lawyers in the legislature? "People have other priorities," he said. They might be more interested in private practice or have concerns about how the life of a legislator would affect them.

The legislature is not the road to riches? "For sure," Horlacher agreed. You can't bill for additional hours when you go to a lot of events in your district, which Horlacher does. "It's a full-time job," he said, and it often needs to be done at unusual hours, both on the legislative floor and at home.

"For me personally, it's worked out" to be in the Assembly, he said. "I'm a very social person, and that's what I love about this job—being part of the community."

Money and time. Too little of the former, too much of the latter. That appears to be the consensus on the causes for the erosion in the percentage of lawyers in legislatures. For those who continue in the job, and in many cases love it, they are willing to make sacrifices on those two scores.

Alan Ehrenhalt, a senior editor for *Governing* magazine, wrote in a piece in the November 2015

issue, "Half a century ago, the notion that lawyers wrote most of the laws was pretty accurate. . . .

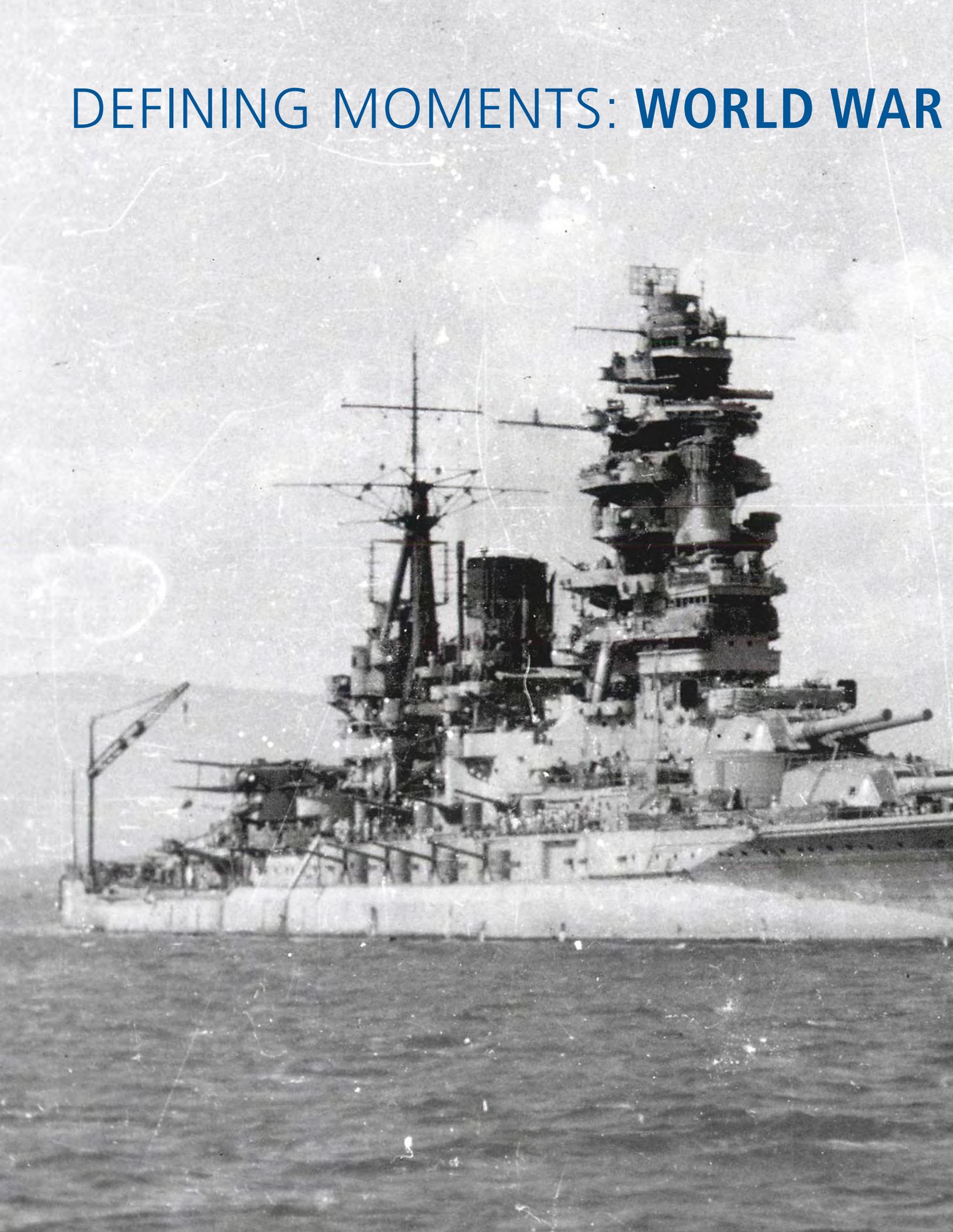
That began to change in the 1960s and 1970s for a variety of reasons. Legislative sessions came to take up more of the year, making it difficult for attorneys to keep up with their practices while they served in office. Legislative pay fell further and further behind the amount lawyers could earn on the private side. And lawyers were permitted to advertise for clients, challenging the traditional idea that serving in office was the best way to promote one's name and attract new business."

It's hard to justify a forecast for an upward trend since the factors of time and money (to say nothing of lawyer advertising) are not likely to change.

In the case of Wisconsin, there is no guarantee that even the current total will be sustained. One of the freshman lawyers in the Assembly, Republican David Heaton of Wausau, announced in January that he would not seek a second term, citing the needs of his family, which includes three children under seven. And one of the only two lawyer senators is Fred Risser. May he live and be well, he is America's longest-serving state legislator (he was first elected to the Assembly in 1956) and will turn 89 in May.

Horlacher has a two-word summary for how he feels about using his legal education to help shape laws: "It's awesome." But these days, for lawyers, the sentiment is more often outweighed by other factors. ■

DEFINING MOMENTS: WORLD WAR



II HEROES, MARQUETTE LAWYERS

By Thomas G. Cannon

Seventy years ago, demobilized veterans flooded American law schools following the end of World War II. Marquette Law School's enrollment for 1946–1947 typified the national tide of returning military, but it was almost certainly unique in one respect: Two students in Sensenbrenner Hall wore the Navy Cross—America's second-highest military decoration—"for extreme gallantry and risk of life in actual combat with an armed enemy force and going beyond the call of duty." These are their stories.

Ensign William J. Schaller, United States Navy (Reserves)

The morning mist evaporated just after eight o'clock on October 24, 1944. An American reconnaissance pilot, completing a quiet grid search above Leyte Gulf in the Philippine Sea, took one final glance below. His heart nearly leapt out of the cockpit. Beneath him steamed the largest battleship in the history of naval warfare—surrounded by an escort fleet of 25 surface ships.

The Japanese battleship, IJNS *Musashi*, with an overall length of 862 feet, displaced 74,000 tons. The flagship was 50 percent bigger than the largest American capital ship, making it the heaviest and most powerfully armed battleship ever built. Its 150 antiaircraft guns could fire 12,000 large-caliber shells per minute. Designed to be unsinkable, the super dreadnought contained 1,147 discrete watertight compartments and was encased in two and a half feet of armor plate. When launched, *Musashi's* enormous size created a four-foot tsunami that traveled for miles.

Maintaining radio silence, the reconnaissance pilot raced back to his carrier to report the prize. He was the first foreigner to lay eyes on the ship, which had been built in extreme secrecy at Mitsubishi's shipyard in Nagasaki. U.S. Navy planners immediately began assembling a task force from five aircraft carriers: *Enterprise*, *Essex*, *Franklin*, *Intrepid*, and *Lexington*.

At 10:40 a.m., the first of five waves of fighters, bombers, and torpedo planes began attacking *Musashi* and its convoy. Ensign William "Billy" Schaller, a 25-year-old Milwaukee native, piloted one of them. Schaller had graduated from Marquette High and the University of Notre Dame (where he was undefeated on the golf team), and he had completed one year of law school (1941–1942) at Marquette University.



Ensign William J. "Billy" Schaller, USNR (center), with crewmates aboard USS *Enterprise*. Photo courtesy of Marjorie Schaller Feerick Schlosser.

Schaller was catapulted off *Enterprise* in a Grumman TBF Avenger. His torpedo bomber carried a single Mark 13 torpedo weighing more than a ton and packed with 600 pounds of Torpex, a high explosive. Sinking *Musashi* would require considerable flight skill, courage, and luck. First, the diminutive Schaller had to evade antiaircraft fire from the cruisers and destroyers that formed a protective ring around the battleship. Next, he had to find an open flight path between the escort ships that would allow his single weapon to strike *Musashi*.

Schaller's torpedo could be released only from an elevation below 1,000 feet and at a relatively slow speed of 125 miles per hour. Both of these features made his Avenger an inviting target for Japanese naval gunners. At the same time, he had to trust that his own plane would not be hit by "friendly fire" from dozens of American fighters that were simultaneously attacking the Japanese fleet accompanying the giant battleship. ▶▶

Tom Cannon is a decorated Marine combat veteran of the Vietnam War and a former professor at Marquette Law School.



Musashi itself was a floating artillery platform. Its massive guns could fire in all directions, creating a killing field through which an attacker would be forced to fly to reach his target. The battleship's weapons included nine 18-inch guns, the largest-caliber naval artillery pieces ever built. Each was capable of firing a high-explosive, armor-piercing 3,200-pound shell a distance of

26 miles. *Musashi's* intimidating secondary battery contained six 155 mm guns mounted in four triple turrets, twenty-four 127 mm guns in six double turrets, and one hundred thirty 25 mm anti-aircraft guns. Schaller's two .50 caliber machine guns were no match for his opponent's massive arsenal.

In lethal combat, the warrior must mentally override the natural instinct for self-preservation—especially when flying directly into a maelstrom of enemy lead. To keep his focus on the task at hand, as Schaller later told *Milwaukee Sentinel* columnist Bill Janz, he invoked a basic golf precept: keep your head down. That served the Marquette law student well. Diving toward his release point, with explosions going off all around him, Schaller kept his head down and slipped *Musashi* his big fish. He scored a direct hit on the mammoth warship.

Over the course of a four-hour battle, the mighty *Musashi* sustained fatal damage from 17 bombs and 19 torpedoes. Amazingly, all of Schaller's squadron (VT-20) scored hits. The air group was credited with sinking the giant ship, and all eight members were awarded the Navy Cross. More than a thousand Japanese sailors went down with their ship in water 3,300 feet deep.

The sinking of *Musashi* marked the eclipse of the battleship by the aircraft carrier. In fact, no battleship has been built since *Musashi* sank. And the battle of Leyte Gulf may have been the last great naval battle in history—at least none has occurred in the 71-plus years since then.

Billy Schaller made it back to Marquette Law School for the 1946–1947 academic year. In addition to the Navy Cross, he carried another prized possession: a chunk of enemy shrapnel that his plane caught during one of its 50 combat missions in the Pacific.

Schaller was one of Milwaukee's great characters. In the Navy, he was said to have made a million dollars at

poker, gin rummy, and other games of chance. He became Wisconsin's amateur state golf champion in 1947. Throughout a long and colorful career as a business lawyer and racehorse owner, he made, lost, and remade several fortunes. He died in Milwaukee in 1993.

Lieutenant Clair H. Voss, United States Marine Corps

In February 1945, one of the largest armadas in naval history began converging on a tiny Pacific atoll. The convoy contained nearly 800 vessels (ominously including morgue and hospital ships) and stretched out 100 miles in length. Its destination was Iwo Jima, an obscure volcanic rock that would soon become the bloodiest battle site in the history of the United States Marine Corps.

Japan's Imperial Army embedded 21,000 soldiers on the island. They spent seven months constructing an elaborate series of tunnels, underground bunkers with electricity and reinforced concrete, camouflaged pillboxes, sniper holes, and interlocking artillery, machine-gun, and mortar positions covering every inch of the terrain. Defenders also sewed thousands of land mines to augment these formidable defenses.

On February 19–20, after just three days of U.S. naval shelling (the Marine commander, General H. M. Smith, had requested 10), three reinforced divisions totaling 75,000 Marines landed. Among them was Clair Voss, a 24-year-old former Marquette University football player from Antigo, Wisconsin. He commanded a platoon of 58 Marines, 55 of whom would be killed or wounded on Iwo Jima. The savage struggle for control of the strategic island would be the only World War II battle in which U.S. casualties (22,000) outnumbered those of the enemy.

A week after landing, Voss's unit (A Company, 1st Battalion, 27th Marines) was ordered to assault Hill 222, directly forward of its position. Previous attempts at taking the key vantage point had been stalled by a heavy volume of enemy mortar and machine-gun fire. Yet the obstacle had to be taken.



Lieutenant Clair H. Voss, USMC, on leave before Iwo Jima. Photo courtesy of the Voss family.

Service. Sacrifice.



Voss grabbed his work tools: a satchel of grenades and plastic explosives. Under cover of suppressive fire provided by his own men, he slowly crawled forward and around to the rear of the Japanese position. The lieutenant expertly pitched grenades to silence an enemy machine-gun nest, but his success drew hostile fire from nearby “spider holes.” Voss then crawled toward the Japanese pillbox, climbed onto its roof, and tossed demolition charges into the fortification. The resultant explosions wiped out the position.

Voss later wrote: “I was frightened, scared, and apprehensive about everything connected with being shot at on Iwo Jima; however, the training the Marines gave me overcame any fears that I had about what had to be done.”

Voss’s exceptional valor at Hill 222 would result in the award of the Navy Cross. More immediately, it also freed up his company to take its next objective. However, after he moved out with his men, a Japanese mortar round exploded next to Voss. Multiple shards of shrapnel lacerated his arms and legs, severed his nose, tore up his skull, and pierced his lung.

Voss blacked out, but a Navy corpsman wrapped a body bandage over his sucking chest wound and tagged him for emergency medical evacuation. He was placed on a stretcher, carried to a battalion aid station, and given several transfusions. From there, Voss was transported by jeep under continuous enemy fire to the beach and placed with a stack of dead bodies.

A Higgins boat conveyed Voss to a hospital ship filled with wounded and dying Marines. Navy physicians, including George E. Collentine, a former Marquette University basketball player and an alumnus of the medical school, began stabilizing Voss by draining blood from his lung cavity.

The Marine lieutenant slowly came back from the near dead. A long convalescence followed at a naval hospital on Guam, where physicians began the delicate process of removing shrapnel from Voss’s skull. Due to the difficulty of extraction, though, surgeons had to leave many bits of metal inside their patient’s arms, legs, and face. Voss was transported to naval hospitals in Honolulu, San Francisco, and Naval Station Great Lakes (north of Chicago) for six months of additional treatment and rehabilitation.

Upon discharge from the Marines, he decided to enter law school at Marquette. He graduated in the famous 1948 “class of judges.” Voss went on to a distinguished career in public service as assistant district attorney (1953–1960) and trial judge (1960–1978, 1985–1997) in Waukesha County and a term as presiding judge of the Wisconsin Court of Appeals (1978–1983). He died in 1998. ■

What would Carl Zeidler have accomplished in life if he had not decided that duty to country came first?

Zeidler was a top student at Marquette Law School, serving as editor-in-chief of the *Marquette Law Review* and graduating in 1931. He was only 32 when he won an upset victory to become Milwaukee’s mayor in 1940. His qualifications, youth, and exuberant personality suggested that in coming years he would have a big impact in Milwaukee—and quite possibly beyond.

But shortly after the Pearl Harbor attack of December 7, 1941, brought the United States into World War II, Zeidler decided that the best way he could serve his country was to enter the service. He resigned as mayor and joined the Navy Reserve. He was assigned to a merchant marine ship, the *S.S. La Salle*. The ship left the Panama Canal Zone on September 26, 1942, loaded with war materials and headed for Cape Town, South Africa. It was never heard from again. German records after the war showed that a U-boat sank the *La Salle* on November 7, 1942, about 350 miles southeast of the southern tip of Africa.

Such commitment to service. Such sacrifice.

Zeidler was one of 12 Marquette Law School graduates or students who died in service during World War II. None was as prominent as Zeidler. All gave their lives for their country. Each should be remembered.

They are memorialized in a display on the fourth floor of Eckstein Hall. In addition to Zeidler, here are their names:

- Thomas Rudolph Evert, L’39, lieutenant, United States Navy Reserve
- William Francis Fale, L’41, sergeant, United States Army
- James Robert Fitzsimmons, L’18, lieutenant colonel, United States Army
- Donald A. Kelly, L’41, staff sergeant, United States Army
- Raymond William Kujawski, L’37, staff sergeant, United States Army
- Robert Hackett Mooney, L’44, ensign, United States Navy
- Robert James Nystrom, L’45, second lieutenant, United States Army Air Forces
- Emil William Siegesmund, L’39, lieutenant, United States Navy Reserve
- William Louis Smith, L’37, corporal, United States Marine Corps
- James Richard Stroebel, L’44, second lieutenant, United States Army Air Forces
- Allen Henry Thurwachter, L’40, lieutenant, United States Navy Reserve

FROM THE PODIUM

Joseph D. Kearney

Justice Antonin Scalia—*Ave Atque Vale*

After the death of Justice Antonin Scalia on February 13, 2016, the *Milwaukee Journal Sentinel* invited Dean Joseph D. Kearney to write a reflection. It appeared in the newspaper on February 21, 2016, and is reprinted here.

I was an unlikely law clerk to the late Justice Antonin Scalia. At the time of my interview in 1994, I was already more than five years out of law school and practicing law in Chicago. I told him the truth about my primary reason for wanting the clerkship: It would help me in other things that I hoped to do in the law—in particular, becoming a law professor. We all had learned in 1987 from Judge Robert Bork not to tell the other truth: It would be an intellectual feast. Justice Scalia’s own reasoning in hiring me was less clear, but it was evident that my study of Latin and Greek at a Jesuit high school and subsequently in college appealed to him.

I almost lost the clerkship before it began. On a trip to Washington, I went out for pizza with Justice Scalia and his then-clerks. He was dismayed when I declined any wine, stage-whispering, “Did anyone screen this guy?” His mood quickly brightened when he realized that this meant one less person with whom to divide the wine. Indeed, he openly mulled whether thereafter he should hire only beer drinkers such as me.

My clerkship itself came in Justice Scalia’s tenth year on the Court. He had worked out his

views of constitutional and statutory interpretation, doing much of that as a law professor at such places as the University of Chicago. And he was the justice who least needed law clerks. Anyone who has ever read more than one of his opinions knows that Justice Scalia had an inimitable style. Any law clerk seeking to emulate it would no doubt fall on his face. Yet we could be helpful, making suggestions, combing through the record, seeking to persuade him that some phrases were amusing, yes, but nonetheless should be omitted.

Justice Scalia’s extraordinary flair as a rhetorician—he is widely regarded as the greatest ever on the Court—was in stark contrast to his jurisprudence. He held a deeply modest view of the role of unelected judges in our democratic society.

To be sure, Justice Scalia believed in enforcing constitutional guarantees. People unhappy with his jurisprudence concerning the Second Amendment (the right to bear arms) must contend with the implication of their views for his similarly strong dedication to the principles of the Fourth Amendment, barring unreasonable searches and seizures, and the Sixth Amendment, involving the

Justice Scalia’s extraordinary flair as a rhetorician—he is widely regarded as the greatest ever on the Court—was in stark contrast to his jurisprudence. He held a deeply modest view of the role of unelected judges in our democratic society.

jury right in federal criminal trials. Many a defendant did or will receive the benefit of Justice Scalia's work—often prevailing over other “conservative” members on the Court—in recognizing individual rights. He twice provided the fifth vote to strike down under the First Amendment laws criminalizing flag-burning. This son of an immigrant was no proponent of flag-burning, but he saw it as protected speech.

At the same time, the open-ended clauses of the Constitution had been the source of much mischief, in his estimation. It was not merely the excesses of the 1960s and 1970s, where in a variety of cases the Court found rights not in constitutional text but in “emanations” and “penumbras.” In those cases, it often had been social policy that the Court was finding prescribed by the Constitution. It was also the *prior* excesses: In the decades before the New Deal, the Court wrote into the Constitution rights involving *economic* policy. This so-called “*Lochner* era” had pleased many Republicans because it obstructed much progressive legislation. The Court eventually yielded, sustaining most of Congress's and President Franklin D. Roosevelt's efforts to lead the nation out of the Great Depression. But well-educated lawyers know that it is a challenge to applaud the later set of cases (e.g., *Roe v. Wade*) while booing the earlier era. Judicial activism can run in either direction.

Justice Scalia wanted neither. He had a more circumscribed view of the role of the courts than the view generally prevailing in elite legal circles when he joined the Court.

He moved the law but often, too, did not prevail. An illustrative example was his dissent in 1996 from a decision that the government violates First



Archbishop Timothy M. Dolan of the Archdiocese of New York (now cardinal); Shirley S. Abrahamson, then chief justice of the Wisconsin Supreme Court; Justice Antonin Scalia; and Joseph D. Kearney, dean of the Law School, gather on September 8, 2010, for the dedication of Marquette University Law School's Ray and Kay Eckstein Hall.

Amendment rights when it rejects contracts because of the contractor's political statements. There was a long American tradition in which politicians rewarded only their friends with government contracts. Many thought it a bad tradition, and all sorts of federal and state laws, enacted through the democratic process, regulated or banned it. We may leave aside Justice Scalia's *policy* view concerning the extension or refusal of contracts (or employment) on the grounds of political patronage: For him the fact that for 200 years no one had thought the practice *unconstitutional* meant that the First Amendment challenge should fail.

Consider his words: “If that long and unbroken tradition of our people does not decide these cases, then what does? The constitutional text is assuredly as susceptible of one meaning as of the other; in that circumstance, what constitutes a ‘law abridging the freedom of speech’ is either a matter of history or else it is a matter of opinion. Why are not libel laws such an ‘abridgment’? The only satisfactory answer is that they never were.” This was just a warm-up to the general point: “What secret knowledge, one must wonder, is breathed into lawyers when they become Justices ▶▶

of this Court, that enables them to discern that a practice which the text of the Constitution does not clearly proscribe, and which our people have *regarded* as constitutional for 200 years, is in fact unconstitutional?" This would be his basis also for dissenting in the Court's same-sex marriage case. He decried the myth of "the Perfect Constitution": the belief that if something is undesirable public policy, it is necessarily for the courts through judicial review to ban it—as opposed to its being left to the people to address through democratic processes.

Among those who knew him and enjoyed his magnificent zest for life, any disagreement with Justice Scalia was focused on his reading of the law. And for the legal community at large, he was in important respects a teacher. This he will remain: As one former colleague, with a different jurisprudence, remarked to me, Justice Scalia is the one modern

judge whose opinions we can say confidently will still be read 50 and 100 years hence.

As for me, I already learned a great deal from him, including generally of the law and life. For example, I will always recall his telling a group of Marquette law students in 2001, "He who is careless in small things is presumed to be careless in large things." While I thus kept up with him over the years, I especially recall one of the last exchanges that I had with him as a law clerk. The Supreme Court library called me because I had its only unabridged Latin dictionary checked out, and Justice Scalia wanted it. When I brought it to him, he wanted to confirm the grammar of a Latin phrase that he had inserted into a dissent—the same reason that I had borrowed the book. He purported to be offended that I did not trust his Latin grammar, but I was unbothered. Hadn't he hired me for that reason? ■

Donald W. Layden, L'82

The Holocaust Education Research Center Honors Don Layden

The Nathan and Esther Pelz Holocaust Education Research Center (HERC) in Milwaukee, a program of the Milwaukee Jewish Federation, honored Donald W. Layden, L'82, this past fall for his dedication to HERC's work. These are Mr. Layden's remarks on that occasion.



Don Layden

Let me tell you some stories about why I am involved with the Nathan and Esther Pelz Holocaust Education Research Center. I am not the son or grandson of a Holocaust survivor. My story is a bit simpler.

My parents grew up in Park Slope in Brooklyn, New York. While they lived in the same neighborhood, they also lived worlds apart. They went to different schools, had different religions, and were from different

social standing. My grandfathers were both in the fur business: my maternal grandfather owned a retail store on the Lower East Side, and my paternal grandfather hauled the hides and dipped them in the lye chemical compound, which cured them for creating fur coats and hats that my maternal grandfather sold. They both died of industrial cancers from the industry they shared.

My parents met by chance and started to date and got married. Neither family was too happy with the arrangement, but each of my grandmothers embraced her new in-law as her own. Even as a child, it was easy for me to learn the lesson of the love of a parent overcoming intolerance and bigotry.

Growing up in Brooklyn, we saw my grandmothers regularly. Indeed, they both lived with us for a time.

One day my cousin was at our house and asked my maternal, Jewish grandmother why the Jews killed Jesus. She was indignant and quizzed my cousin on where he had heard this nonsense. He reported that one of the teachers in our Catholic grade school had taught it in class that day. In a rush my grandmother was out the door, telling my mother that she had a meeting with the pastor of the parish to set him straight. My grandmother was a force to be reckoned with, and, fortunately for the pastor, he was somewhat enlightened and immediately set out to correct the errant teacher spreading this hate-based message. Not surprisingly, the pastor and my grandmother became lifelong friends.

It was only as an adult that I fully understood my grandmother's actions. She told us then, and

repeated often, that intolerance, hatred, and bigotry could not be allowed to persist for even a moment.

My grandmother's family had emigrated from Russia in 1904, well before the pogroms of Hitler and Nazi Germany, but that did not mean that she was not deeply affected by the Holocaust. Her relatives all died in the camps—family members whom she never had the opportunity to meet. She represented the lessons of their death through her life—lessons she taught her children and grandchildren by the way she lived. For that I am grateful—and am committed to helping HERC continue to keep these lessons alive.

Thank you for tonight, and I look forward to working with my fellow honoree, Bruce Peckerman, and the board, so that HERC will have the resources to continue its mission. ■

John Gurda

"My Library"—The Evolution of a Milwaukee Institution

In October 2015, Marquette Law School hosted a conference, "The Future of the American Public Library," in partnership with the *Milwaukee Journal Sentinel* and with support from the Law School's Lubar Fund for Public Policy Research. (See the news article on page 4.) Milwaukee historian John Gurda was among those addressing the conference. His numerous books include *The Making of Milwaukee* and, most recently, *Milwaukee: City of Neighborhoods*. These are Mr. Gurda's remarks at the conference.

A public library was the very first place I was allowed to go without holding an adult's hand. I spent my early years in Milwaukee on S. 34th Street, not far from Jackson Park. By the age of five, maybe six, my parents gave me permission to walk from our little postwar prefab to the Layton Park branch library at 2913 W. Forest Home Avenue. The route took me past a bathtub factory, over a footbridge above the North Western railroad tracks, past Gilbert & Eileen's tavern with its wishing well out front, and finally to the cramped storefront library. The journey covered more than a half mile, uphill both ways (or so it seemed), and I made it so often that I must have worn out more than one pair of PF Flyers.

That was back in the 1950s, a time either genuinely safer or perhaps just less fearful than our

own; it's hard to imagine the same permission being granted today. I recall the Layton Park branch as a narrow, fairly spartan place—light in front and dark in back—but it had all I needed. I devoured stacks of easy readers and enough more-challenging fare to remain a member in good standing of the Billy the Bookworm Club.

Even before I'd outgrown Billy, my family had moved with hundreds of other south siders to suburban Hales Corners, and the Layton Park branch ►►



John Gurda

had moved to another small storefront, on 43rd Street and Forest Home Avenue. That remained my library through grade school and well into high school. It was there that I discovered, entirely on my own, fondly remembered titles such as *The Kid Who Batted 1,000*, *Kit Carson: Frontiersman*, *The Education of Hyman Kaplan*, and the rather wicked short stories of Roald Dahl. In those days before digital self-checkout, you had to write your library card number on a slip tucked inside the front cover of the book you were borrowing. I used my card so often that I'll go to my grave remembering 54-13940.

As an adult, my focus shifted to Milwaukee's Central Library. I've earned my living as a freelance historian for more than 40 years now, and no resource has been more important to me than Central, especially the collections in the Frank Zeidler Humanities Room. Without those collections, and without the librarians who keep them organized and accessible, I'd probably be teaching high school history or selling life insurance.

I tell the story of "My Library" not because the story is unique but rather precisely because it's not. Many of us, I suspect most of us, have always had a sharp sense of "my library," a strongly personal connection with a purely public institution, perhaps because what we do there is largely self-directed. We look back on the friendly librarian of our youth, or perhaps the grumpy one, and we look ahead to the next book, the next DVD, the next program. We recall the dizzying feeling that all this was ours for the borrowing, and we take for granted that it still is and always will be.

Reduced to its essential function, the public library is like a sort of curated Internet—without the ads, without the dross, without the sprawling anarchy. The library is an open door, carefully measured but generously proportioned, to the gathered knowledge of the world and the cultural output of our own

civilization—for everyone and for free. That makes it one of the greatest and most democratic institutions on Earth.

In Milwaukee's case, the institution dates to the city's infancy. In 1847, just one year after Milwaukee incorporated, a group of Yankee pioneers decided to start a lending library. It was no coincidence, in those pre-railroad days, that they organized in December, after winter had closed the shipping lanes and put Milwaukee literally on ice until spring. Starved for books, the group resolved to raise \$1,000 "before the opening of navigation" to make sure that the works of Edgar Allan Poe and Ralph Waldo Emerson would be in the holds of the first ships headed west from Buffalo.

The group called itself the Young Men's Association, and the founders' names include some that are still familiar today, luminaries such as Rufus King, Edward Allis, and the incomparable Increase Lapham. So-called regular members paid a two-dollar initiation fee, and graybeards older than 35 shelled out five dollars—about \$150 in today's currency. What they received for that sum (plus two dollars in annual dues) was unlimited access to a small but growing collection of books. Members could check out one large book, or two small ones, for a period of two weeks, with a one-week renewal privilege.

Using income from initiation fees, dues, and a popular lecture series, the Young Men's Association rented a succession of downtown rooms and began to build its collection. After two or three decades, however, the group's energy flagged. The Young Men were no longer young, interest in the lecture series had waned, and there was no longer adequate revenue to buy books in quantity. The collection became so tired that circulation plummeted.

At the same time, there was a rising tide of sentiment for a tax-supported system open to everyone,

“Reduced to its essential function, the public library is like a sort of curated Internet—without the ads, without the dross, without the sprawling anarchy. The library is an open door, carefully measured but generously proportioned, to the gathered knowledge of the world and the cultural output of our own civilization—for everyone and for free.”



Milwaukee's Central Library

VisitMilwaukee.com

not just young swells—now middle-aged swells—who paid dues for the privilege. The Chicago Public Library opened in 1873—part of that city’s dramatic rebuilding after the great fire two years before—and Milwaukee’s newspapers took up the cause. “If a library is a good thing,” the *Sentinel* declared, “and all of us believe it is, it is best as a public library.”

The breakthrough came in 1878, when the Young Men’s Association offered the city its collection of 9,958 books as the nucleus of a free library. The group had already shed its early Yankee cast. This being Milwaukee, nearly a third of the collection was in German. The city wisely accepted the offer. The association’s reading room on Milwaukee Street was remodeled, the first city librarian was hired (at \$1,200 a year, roughly \$30,000 today), and the newly public library reopened to a brisk business at 9 a.m. on July 8, 1878. The *Sentinel* saw it as evidence of higher civilization: “Few advantages of a city can be greater than those conferred by a public library, and it is altogether cheerful to see a disposition to patronize one so well manifested as in this case.”

Just two years later, its holdings swollen to 15,000 volumes, the institution moved to the second floor of the brand-new Library Block, at Fourth Street and Wisconsin Avenue. The reading room there was open to “all well-behaved persons” from 9 a.m. to 9 p.m. every day but Sunday, when the doors closed at 2 p.m. Unlike Milwaukee’s

saloons or private clubs, the room was an early bastion of gender equality. “A separate space is set aside for the exclusive use of women,” a library official noted, “without any prejudice against their making use of any other part of the room, if they see fit.”

But this was not the library as we know it today. The stacks were closed at first, and all books were retrieved by staff members. Soon, however, Milwaukee tried a bold experiment. Theresa West, the city’s head librarian in 1892, described it: “The Milwaukee Public Library . . . threw its reference shelves absolutely open to visitors, with simply the check of the presence of an attendant in the room.” It was, she wrote, “regarded as a somewhat radical and dangerous step,” but West noted proudly that only six volumes were lost in the first 10 years. Her hope was to some day “throw open the shelves of the whole library, for some hours of the day, at least, to any visitor.”

There was no card catalog to guide those visitors. In 1885 the library simply published a book listing the 35,000 volumes in its collection. The book was instantly out of date, of course, and the library printed an index of additions every quarter. In time those volumes filled an entire shelf, which must have been extremely frustrating to anyone trying to find information about Roman history or the habits of woodpeckers. ▶▶

“With unemployment nearing 40 percent by 1933, circulation skyrocketed—as always happens in hard times—but the budget went in the opposite direction. Funds were so scarce that enterprising librarians created makeshift ‘books’ by clipping serialized novels out of popular magazines and gluing them together.”

One thing oddly lacking by modern standards was popular fiction. In his annual report for 1879, the library director stated Milwaukee’s acquisition policy in no uncertain terms: “As to the poor, trashy, and ephemeral productions of novels which seem to be the delight of the vicious and vulgar, they should be rigidly excluded from our shelves, and this, I may safely say, has always been the policy of your board.” A decade later, the director was pleased to report that fiction had dropped from 59 percent of circulation to 48 percent in just four years. Librarians have long since decided that reading is better than not reading; Danielle Steele and Jackie Collins now sit on our shelves alongside Louise Erdrich and Margaret Atwood.

With pulp fiction or without it, Milwaukee’s collection continued to grow. By the early 1890s, the holdings of the Milwaukee Public Library (MPL) had mushroomed to 65,000 books, reflecting what Theresa West called “a catholic, yet scholarly taste.” The Library Block’s reading room was attracting 75,000 patrons a year, and space was soon at a premium.

The city decided to solve the problem by building a combined library and museum just a few blocks up the street, at what is now 814 W. Wisconsin Avenue. If Central Library looks like Chicago’s Museum of Science and Industry, it should. The Columbian Exposition of 1893, for which the Chicago building was erected, created a new vogue for the neoclassical, and Central Library is Milwaukee’s outstanding example of the style. The landmark opened in 1898, and it was universally hailed as a milestone of civic progress. Along with City Hall itself, built three years earlier, the library-museum was a bold and confident statement of Milwaukee’s place in the vanguard of America’s cities.

The museum took over the west wing, while the library occupied the east. The marriage flourished

through the first decades of the twentieth century, and there was an appealing synergy in the shared quarters. Patrons could see an actual mummy or a stuffed elephant on one side of the building and borrow a book about pharaohs or pachyderms on the other.

It wasn’t until the 1930s that MPL encountered any serious headwinds. With unemployment nearing 40 percent by 1933, circulation skyrocketed—as always happens in hard times—but the budget went in the opposite direction. Funds were so scarce that enterprising librarians created makeshift “books” by clipping serialized novels out of popular magazines and gluing them together. No sooner had the Depression ended than World War II began, and once again high demand was matched by scarce resources.

It wasn’t until the late 1940s that the smoke had cleared enough to see the real state of the system. Central Library had a great many virtues, but space was not one of them, especially when you consider that the library occupied only half the structure. By the mid-1950s, all books published before 1940 were in storage, and 15,000 eventually rotted beyond repair. The museum was expanding, too. The institutions were like twins developing in the same womb, and both displayed some rather sharp elbows as they grew.

The solution to the library’s space problem was a massive addition. No thought was given to historic preservation or even historical continuity. If you’ve ever wondered why there was so much architectural mayhem in America after World War II, the library’s argument for its addition speaks volumes: “There is more wasted, unuseable space in the rotunda, inner courtyard, ground floor, halls and high-ceilinged corridors than there is useable space for books in the central stacks.” What our parents saw as hugely

inefficient we now consider beautiful. Tours of Central are quite popular today, and they begin in that “unuseable” rotunda.

With the active support of Mayor Frank Zeidler, a rather utilitarian addition to Central Library, covering half a square block, became a reality in 1956. The

museum chafed a bit at having to wait, but that institution moved to a spacious new home across the street in the next decade.

The branches, meanwhile, had shortcomings of their own. Despite its scale and majesty, Central Library had never been a sealed-off fortress. The Milwaukee Public Library has always reached out aggressively to its patrons. For much of the 20th century, small collections—almost mini-libraries—were maintained in schools, factories, union halls, hospitals, even grocery stores. A system of genuine branches slowly took shape. The first was a stately building on 10th and Madison streets, erected in 1910, to serve the south side; today it’s a St. Vincent de Paul Society center. By 1950 there were 17 branches in all, only 3 of them built as libraries. The rest were makeshift quarters in rented spaces, including those Forest Home Avenue storefronts I patronized as a child.

Richard Krug, who had been library director since 1941, announced what he called a “new deal” for the branches. He planned a system of “regional” libraries within the city, each serving a population of about 60,000. Krug envisioned the branches as supermarkets of knowledge, with convenient locations, high visibility, and full service.

There were two problems: money, as always, and geography. Money was no particular obstacle at the high tide of postwar prosperity, but geography was. In order to serve the city most efficiently, Krug planned to close five branches, a rather risky strategy for someone whose budget was set by politicians. The affected aldermen howled, but Krug prevailed. By 1968, Milwaukee had a dozen branches, most of them new or extensively rebuilt. The buildings have changed, some radically, but their locations still conform to the



template adopted during Krug’s “new deal” more than a half-century ago.

MPL enjoyed a few decades of relative calm, but starting in about 1990, we entered rapids that have been roaring ever since. I say “we” because I joined the library board in 1993. In 2014, after ducking the job for at least 15 years, I became president.

The past two decades have been an interesting time to help guide the state’s largest system. There have been departures, from the circulating art collection to the Bookmobile to the card catalog. We said goodbye to paper cards in 1995 and went all-digital. I couldn’t begin to count the number of times I bloodied my cuticles pawing through those cards. Now, I suppose, we’ve traded torn cuticles for carpal tunnel problems.

But the larger story has been financial stress. Let no one doubt that these are challenging times for public libraries. We are in a period of diminished resources and widespread aversion to new taxes. In constant dollars, MPL’s annual budget has, from its high point in 1999, dropped nearly 24 percent. As a direct result, our total weekly service hours are down 18 percent from 2004, and our spending for materials dropped from 12 percent of the budget—our long-term target—to 6.6 percent in 2009, before rebounding to 9.3 percent today.

In 2003, having few other choices, we made the painful decision to close a branch library. That decision became an unexpected catalyst. Public outcry was so intense that we revisited the issue and ended up building Villard Square, a pioneering mixed-used development with a library on the first floor and “grandfamily” housing on the three floors above for grandparents raising their grandchildren. The mixed-use model saves money and strengthens community connections, a combination so powerful that it’s become the template for most of our future capital projects.

Villard Square is just one example of how MPL has responded creatively to the challenges it faces. Under Kate Huston from 1991 to 2006 and under Paula Kiely since then, the system has completed a ▶▶

glorious restoration of Central Library, installed one of the nation's first vending libraries, launched new programs ranging from Books 2 Go for preschoolers to Teacher in the Library for grade-school kids, and opened four new branches, including two mixed-use facilities, with two more on the way. We still have a great deal of lost ground to make up, but MPL is moving in the right direction.



89.7 WUWM Milwaukee Public Radio

There's an even larger question that touches libraries of all kinds and conditions. It's become the proverbial elephant in the room whenever two or more librarians sit down to discuss the future. The root of the word "library" is *liber*, which is Latin for "book." Books, however, at least of the paper variety, are a diminishing part of what libraries are all about. As we speed headlong down the information superhighway, as we go from books to bytes, what are the implications for the public library? What is our place in the digital age? When every smartphone is a data portal, when even the cheapest tablet allows you to read Tolstoy or study the Civil War, why bother with bricks and mortar?

American library historian Wayne Wiegand has answered that question eloquently in his book, *Part of Our Lives: A People's History of the American Public Library*. Drawing on historical precedents and contemporary studies, Professor Wiegand demonstrates that public libraries are still places where we learn, where we connect, where we find the guidance and resources to grow on our own.

But it's obvious that libraries have had to adjust. It's sometimes said that the nation's great passenger railroads died because they forgot they were in the transportation business. Instead of adapting,

they rode the rails to oblivion. Libraries aren't making that mistake. In Milwaukee, we're committed to providing our patrons with twenty-first-century library service where they live and how they want it. That means e-books, which have exploded from fewer than 12,000 in 2010 to nearly 135,000 today. That means access to electronic databases, which now number well over 100. And it means computers. MPL has 648 public-access computers in its system, including laptops, compared to 372 in 2005; that's a 75-percent increase in 10 years.

The Milwaukee Public Library has changed enormously since the days when a group of young men huddled around a woodstove in a forgotten hotel lobby to talk about books. It will continue to change in the years ahead—and more quickly than any of us can imagine. But it's the media that change, not the mission; it's the forms, not the philosophy. Libraries are one of the great constants in American life. Like its counterparts across the country, MPL has been "my library" for generations of grateful patrons.

As "my library," we play a multitude of roles. We are the level playing field. We bridge the

digital divide. We house the common wealth of our civilization. We provide for free what patrons cannot buy for themselves. We open the door to larger worlds for everyone, regardless of class or background. Along with the public schools, we hold a place at the very heart of American democracy. We stand as a beacon of opportunity for all who would see its light, a

gateway to riches for all who would enter in.

That is an exalted mission. It's one MPL has been pursuing for nearly 140 years now, and it's one we'll continue to pursue into a future whose technologies we can't begin to imagine, but whose needs for information, inspiration, and connection will be identical to our own. ■

Judge Diarmuid F. O'Scannlain

The Supreme Court and the Future of Religion in the Public Square

On October 8, 2015, the Hon. Diarmuid F. O'Scannlain, judge of the U.S. Court of Appeals for the Ninth Circuit, delivered the keynote address at the annual Red Mass Dinner of the St. Thomas More Lawyers Society of Wisconsin at the Milwaukee Athletic Club.



Judge Diarmuid F. O'Scannlain

The Red Mass, as we in this room know, is an annual tradition in which the Church marks the beginning of the judicial term by invoking God's blessing on the judiciary and on members of the legal profession. For those of us within the profession, it is a time to reflect on the

connection between our private faith as Catholics and our public work as lawyers. As we are well reminded by the Church, to live fully and truly—to flourish as God commands—that connection must be robust. Shortly after his appointment to the papacy, Pope Francis instructed that religion should not be “relegated to the inner sanctum of personal life, without influence on societal and national life, without concern for the soundness of civil institutions, without a right to offer an opinion on events affecting society.”

But, for many of us, our public lives often do exist with a certain degree of detachment from our private

faith. As legal professionals, we feel this detachment acutely. In the law, we are called to read, to interpret, to argue, and to shape civil rules and regulations, an enterprise conducted through the force of logic, intellectual rigor, and rhetoric, but typically not through appeal to religious values. In my particular work as a federal judge, even where such values may be implicated, their influence must be sharply constrained.

While law and religion are often apart in this way, thankfully the two are not usually at odds. I want to focus my remarks, however, on a Supreme Court opinion that recently has driven a wedge between the two and brought to our nation's consciousness the underlying tension between our ever-secular society and traditional religious values.

I
A

I am speaking, of course, of the United States Supreme Court's decision this past June in *Obergefell v. Hodges*. As I am sure many gathered here well know, in that case, a five-Justice majority of the Court held that the United States Constitution includes a fundamental right to same-sex marriage. For those, like me, who subscribe to an originalist understanding of our Constitution, this was a ►►

“As quickly as people of faith mourned the demise of religious values in the public square, opponents of such values celebrated the same.”

startling proclamation of an unenumerated—and previously unheard of—right. Even more, it was a bold assertion of power for a federal court to step into and to decide such a hotly contested political issue for the nation at large. Indeed, through their decision, five Justices of the Supreme Court directly nullified the democratic will of four states that had each chosen to define marriage traditionally—as a union between one man and one woman, the nearly universal understanding since our founding more than 225 years ago.

But I do not mean to focus my remarks on the *result* of the case, which I know will be welcomed by many, including possibly some in this room, as a matter of public policy. Aside from the specific outcome of the case, what was especially striking was the majority’s treatment of the conflict between the newly asserted right to same-sex marriage and the First Amendment rights of those who oppose such a practice on the basis of religion. The majority opinion acknowledged that marriage is “sacred to those who live by their religions,” and that same-sex marriage clashes with many religious beliefs. But the majority held that no state may *itself* adopt such “sincere, personal opposition” to same-sex marriage. The majority explained (with a notable degree of circularity) that it did not mean to “disparage” individual religious beliefs, but only to ensure that such beliefs not be invoked by a state to “demean[] or stigmatize[] those whose own liberty is then denied.” The Court emphasized that the First Amendment continues to protect believers’ rights to “teach the principles” of their faith and to “engage those who disagree with their view in an open and searching debate.”

Critically, the Court left unspoken what remaining freedoms people of faith may have left to object to the institution of same-sex marriage beyond simply

teaching against it. The widespread and immediate response was: What does *Obergefell* prescribe for the future of religious liberty in America?

B

That question resounded throughout the Court’s four dissenting opinions. The Chief Justice wrote that the majority’s focus on “teaching” and “advocating” religion left “[o]minously” silent the First Amendment’s guarantee of the “freedom to ‘exercise’ religion.” He warned that “[h]ard questions” will now be asked when believers “exercise religion in ways that may seem to conflict with the new right to same-sex marriage,” and bemoaned that “people of faith can take no comfort in the treatment they receive from the majority today.” Echoing concern over the “all but inevitable” conflict between religious exercise and the right to same-sex marriage, Justice Thomas warned that “the majority’s decision threatens the religious liberty our Nation has long sought to protect.” Justice Alito was even more pointed. He warned that the decision “will be used to vilify Americans who are unwilling to assent to the new orthodoxy,” and “will be exploited by those who are determined to stamp out every vestige of dissent.” He evoked a lonely fate for those who subscribe to traditional religious values: “[T]hose who cling to old beliefs,” he said, “will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.” Justice Scalia, who focused his own writing on other facets of the case, joined in each dissent and called the majority’s opinion a “threat to American democracy.”

These are powerful words from our nation’s highest court, and they were echoed immediately

in the public. The day the opinion came down, Rod Dreher, senior editor at *The American Conservative*, wrote that “[i]t is hard to overstate . . . the seriousness of the challenges [the decision] presents to orthodox Christians.” He opined that “[t]he fundamental norms Christians have long been able to depend on no longer exist.” The next day, Notre Dame Law Professor Gerard Bradley wrote that the Court’s decision would “inaugurate the greatest crisis of religious liberty in American history.” University of St. Thomas Law Professor Michael Stokes Paulsen suggested that *Obergefell* will “become the paradigm case of our age,” and may frame debates over “judicial power[] and over religious freedom” for decades to come. And many expressed fear for the fates of specific faith-based institutions, such as our country’s tens-of-thousands of religiously affiliated schools.

These concerns were well placed. As quickly as people of faith mourned the demise of religious values in the public square, opponents of such values celebrated the same. Most famously, two days after the *Obergefell* decision was announced, *Time* published an online column by Mark Oppenheimer, its title declaring, “Now’s the time to end tax exemptions for religious institutions.” Oppenheimer wrote that “the logic of gay-marriage rights could lead to a reexamination of conservative churches’ tax exemptions,” a measure he considered a “radical step,” but one “long overdue.” In the *Wall Street Journal*, William McGurn collected a laundry list of individuals and corporations that had already suffered similarly from their opposition to same-sex marriage—including Brendan Eich, who was forced to resign his position as CEO of Mozilla because of a \$1,000 donation to Proposition 8, the successful California ballot measure retaining the traditional definition of marriage; Catholic Charities, which has been forced to shut down adoption services in numerous states; and even local bakers, photographers, florists, and pizza-parlor owners who faced public scorn and civil prosecution for their refusal to assist in same-sex weddings.

II

From these early reactions, the future for religious liberty following *Obergefell* looks bleak.

But on this day of prayer and expectation for the legal community, I do not mean to leave you in despair. *Obergefell* represents, in many ways, a dramatic blow to religious exercise in our country. But it is not yet a fatal one. And as we look forward to life after *Obergefell*, we must keep in mind several critical limitations to the decision.

First, as a matter of black-letter law, the holding in *Obergefell* was actually rather narrow. In its own words, the Court held that “same-sex couples may exercise the fundamental right to marry in all States” and “there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.” To be certain, Justice Kennedy, writing for the majority, discussed in sweeping terms the “liberty . . . to define and express [one’s] identity,” and cases exploring the limits of that concept will undoubtedly arise. But for the moment, the Court has interpreted such liberty only to require state recognition of same-sex marriage. For those who would seek to engage in public discourse and to shape public policy, as Notre Dame Law Professor Rick Garnett explained, the *Obergefell* decision should not be seen as the end of *all* religious or moral justifications in lawmaking, ▶▶



but instead only as “the defeat, with respect to a particular issue, of *some*” religious arguments.

Second, in whatever future cases do arise—in the marriage context or otherwise—the First Amendment of our Constitution continues explicitly to protect the right to the “free exercise” of religion. That guarantee is among the most enduring and fundamental rights upon which our nation was built. Through it, the Supreme Court has long and consistently recognized that the Constitution requires not only acceptance but, in fact, public accommodation of religious belief and practice. As suggested by then-Justice Sandra Day O’Connor more than a decade ago, that right embodies a sphere of freedom that is needed to allow religion not merely to exist but also to flourish.

Obergefell, at least by its own terms, did not change this fundamental landscape of our Constitution, and we should not expect that judges in future cases will suddenly turn a blind eye to the guarantees of the First Amendment. It is telling that, in its own limited way, even the majority felt the need to acknowledge the continuing vitality of this right to religious liberty. Cases will—as always—continue to test the limits of this right as it runs headlong into other asserted constitutional rights. But we must remember that this critical constitutional backstop still serves to protect those of faith—like those of us in this room—just as it did before this June.

Third, and perhaps most important, the Supreme Court simply is not able—it has neither the authority nor the capability—to opine on the fundamental sanctity of marriage. The Court has announced that states as civil bodies must recognize and allow same-sex marriages. But the Court cannot define for religious individuals the true nature and meaning of the institution of marriage. This, of course, leaves the Church and its believers free to disagree with the

Court’s conception of marriage, as many have already done. But even more, the Court’s decision can say nothing of the dignity or worth of those individuals who do disagree with the notion of same-sex marriage. Justice Thomas expressed this point well in his dissent:

The government cannot bestow dignity, and it cannot take it away. The majority’s musings are thus deeply misguided, but at least those musings can have no effect on the dignity of the persons the majority demeans. . . . Its rejection of laws preserving the traditional definition of marriage can have no effect on the dignity of the people who voted for them. Its invalidation of those laws can have no effect on the dignity of the people who continue to adhere to the traditional definition of marriage. And its disdain for the understandings of liberty and dignity upon which this Nation was founded can have no effect on the dignity of Americans who continue to believe in them.

In short, the Court foreclosed one area of fierce political debate, but its decision cannot deny the worth of those who would disagree, and the Court did not drive their voices from the public arena.

III

With awareness of these critical limitations, as much as people of faith may disagree with the *Obergefell* decision, they should not resign themselves to defeat in its wake. The day after the decision, Professor Rick Garnett wrote that the looming question is “whether the majority’s reasoning is heard as a call for compromise with those who hold the view that lost, or instead as a catalyst to marginalize and discourage that view to the extent possible.” As

In short, the Court foreclosed one area of fierce political debate, but its decision cannot deny the worth of those who would disagree, and the Court did not drive their voices from the public arena.

“*Obergefell is a setback for religious values in the public square, but it will stamp out such values only if those who adhere to them allow it to do so.*”

we all await the answer to that question, people of faith should not marginalize their own voices. *Obergefell* is a setback for religious values in the public square, but it will stamp out such values only if those who adhere to them allow it to do so. The pro-life movement following *Roe v. Wade* is an instructive parallel: despite an unfortunate—in my opinion, wrong, yet binding in my work as a judge—ruling from the Supreme Court, the *Roe* decision did not end the abortion debate in our country. It changed the terms of that debate certainly, but if the past 40 years of the pro-life movement demonstrate anything, it is that people of faith may continue to have their voices heard and even to achieve policy victories in such a changed landscape.

I therefore urge those who believe deeply, faithfully that the decision is wrong: do not shrink from this moment. Resist the inclination, as has been advocated by some, to retreat from mainstream public life into smaller insular communities of shared values. In spite of *Obergefell*, there is still a welcome and needed place for religious values in our public square. And, as demonstrated following *Roe*, and has been suggested by my good friends, prominent natural law scholars Robert George and Hadley Arkes, due respect for the Supreme Court’s interpretation of law does not prevent people of faith from working publicly toward a different end. As Professors George and Arkes encourage, people of faith may still demand greater protection for their religious freedoms from our political leaders. They may still participate in debate to shape public policy, and they may still seek to build a civil society that protects and cherishes those fundamental truths they have learned through religion.

We live in an increasingly secular culture, and the public celebration of a decision such as

Obergefell is a sure sign that traditional religious values do not carry the same weight they once did. Even more, we must beware the expanding presence of secular bigots intolerant of religion, who would attack the rights of the faithful. In his recent visit to the United States, Pope Francis instructed (as reported in the *Washington Post*) that in this “world where various forms of modern tyranny seek to suppress religious freedom, or to try to reduce it to a subculture without right to a voice in the public square, . . . it is imperative that the followers of the various religions join their voices in calling for peace, tolerance, and respect for the dignity and rights of others.” That collective action will require courage in the face of the significant new adversity presented by *Obergefell*. But there is much to be lost if the faithful yield. Pope Francis has reminded us that religious freedom is not only a constitutional right but also, indeed, a human right. If that right is to have enduring force, people of faith must continue to engage politically and must continue to fight for respect and acceptance of religious traditions.

People of faith should therefore see this moment not as a cancellation of their values but instead as a catalyst for action. Professor George has asked bluntly: Who among “ordinary people—Protestants, Catholics, Jews, Mormons, Muslims, others—inspired by their faith [will] stand firm” against the “mob” that will attack their religious traditions? All people of faith—and Catholics in particular—should see the Supreme Court’s decision as a call to renew and to reinvigorate the connection between our personal religion and our outward, public lives. Previously, the Vatican’s Congregation for the Doctrine of the Faith has exhorted Christians not to “relinquish their participation” in the political spheres but instead “to seek the truth with sincerity and to promote and defend, by legitimate means, ►►

moral truths concerning society, justice, freedom, [and] respect for human life.” To do so, we cannot retreat to isolated enclaves. Our Catholic conception of the human good represents not only a *legitimate* contribution to public life but also a *necessary* one.

We must of course be mindful of the limitations that our constitutional system places on the particular force that religious values may carry within our various roles in the law. As a federal judge, I know these limitations well. But the Congregation for the Doctrine of the Faith reminds us that there remains “a diversity of complementary forms, levels, tasks, and responsibilities” for

faithful action in public life. In short, we must each contribute in our own way, according to our own abilities and to our own place in the profession. Within that profession, the Supreme Court answers difficult questions of our Constitution, and in so doing, shapes many of those roles for us. But the Court cannot alter our underlying calling as Catholics to participate meaningfully, deeply, and faithfully in the public sphere. I humbly suggest, therefore, that we take a decision like *Obergefell* as a wake-up call to reignite that mission in each of our lives.

Thank you, and God bless America. ■

Henry E. Smith

Nies Lecture: “Semicommons in Fluid Resources”

Henry E. Smith is the Fessenden Professor and director of the Project on the Foundations of Private Law at Harvard Law School. Professor Smith delivered Marquette Law School’s 2015 Helen Wilson Nies Lecture in Intellectual Property: “Semicommons in Fluid Resources.” The essay version will appear in the summer 2016 issue of the *Marquette Intellectual Property Law Review*. This excerpt is from the section titled “Managing Water.”



Henry E. Smith

Water law has occupied an important and yet ambivalent place in property theory. Water law is sometimes viewed as a challenge to conventional notions of property, especially those based around exclusion. Ironically, it is also used as support for such theories, at least when it comes to

the emergence of prior appropriation in the western United States.

Seeing property as the elaboration of separation and modularization in a system of complex interactions allows a different and more realistic account of water law.

Water is a fluid resource. It is a literal fluid, and this is reflected in water law. Water is notoriously hard

to delineate. In the formative period of water law, very rough measurement in terms of type and length of use was the best that could be done. Typically, measurement happens upon transfer (if allowed), in order to protect those with the right to return flow.

Let’s start with riparianism, which is the system obtaining in most of the United States and in England. Riparianism is based on reasonable use and thus can be analogized to nuisance. It is, therefore, clearly a governance regime. And, if anything, riparianism is moving further in that direction, as it is being subjected to a regulatory overlay.

Yet there is more to riparianism than pure governance. First, riparian rights are not open-ended. They are appurtenant to adjacent land. This gives them an exclusive character even beyond the closed community that has access. By being appurtenant to land, they become part of the modular package of rights in land and thus rest on the foundation of exclusion in land law. Under riparianism, water rights cannot be severed from riparian land, and

doctrines to prevent excessive fragmentation are required to police the rough proxy of adjacency to the watercourse, which defines access in this exclusionary regime. Further, water withdrawn from the watercourse can be used only on riparian land. Even some of the use-governance has a rough modular character, as where so-called natural wants such as drinking, household uses, and cattle raising have per se priority over artificial wants such as irrigation (in a nonarid climate) and power generation.

As with nuisance, riparianism involves evaluating conflicting rights and using rules of thumb to reconcile them. Often this is done in the course of deciding on an injunction. Equity courts have played a major role.

Let us turn to prior appropriation, which has received much attention from property theorists. Often it is taken as an example of the Demsetz thesis, in which property rights emerge when resources increase in value and externalities become worse. In arid climates, we thus get more “parcelized” water law, as exemplified in the famous case of *Coffin v. Left Hand Ditch Co.* (Colo. 1882). Professor Carol Rose has pointed out that the use of water in the East had more public goods characteristics than in the West, and this helped shape water law in the two areas. Evidence of parcelization comes from its system of priorities based on first diversion for a beneficial use, and its sometime transferability.

While it is true that prior appropriation does put in effort to define rights in water separately from land and in that sense is more exclusionary, upon closer look, prior appropriation is very much a governance regime, in keeping with the fluid character of the resource. First of all, rights are defined in terms of use, and even quantification is based on rough measurement of use. Prior appropriation does not give a right to all water diverted, but only so much as is consumed in the particular pattern of use at the time of diversion.

Because of high measurement costs, and the benefits of multiple use, water is difficult to separate and requires more emphasis on advanced forms of separation and governance

to contain strategic behavior. First of all, it is necessary to acknowledge that, in both use and transfer, there remain many important third-party effects. Partly this is the result of the desirability of multiple use. Strikingly, return flows are appropriable by downstream users. This probably allows for more thorough use of the watercourse at any given time but at the cost of making transfers more cumbersome. In a further governance aspect of the system, transfers are subject to the no-injury rule, which means that in a transfer the new diversion point and the new use cannot place a greater impact on downstream junior appropriators than the old one did. As with riparianism if not more so, prior appropriation is being overlaid with public regulation.

Unlike riparianism, organizational—or entity—property plays a large role in prior appropriation. Additional internalization is achieved by entity property. Mutuals and water districts allow for separation of a group or a watershed for separate legal treatment. They promote modules of an extended sort. Within these overall modules, there is separation of function inside the entity, in terms of management and use. Water entities, especially mutuals, make intra-entity transfers of water much smoother than corresponding external transfers. Water districts mix entity property and public functions.

Finally, equity has played a major role in prior appropriation law. This is expressed in the full arsenal of equitable principles, such as maxims and defenses, when courts consider injunctions. Courts can also draw on equitable apportionment doctrine to solve particular problems of conflicting rights in interstate contexts. Apportionment is a classic example of the second-order solution to problems of complex conflicting rights.

And equity courts had historic jurisdiction over custom, which was a source of early prior appropriation water law.

In both riparian and prior appropriation systems, private and public rights interlock so tightly that it makes sense to see them as different versions of semicommons. ■

CLASS | NOTES

1963

William M. Graham received the Judge Robert Smith, Jr. Humanitarian Award at the Annual Red Mass on October 3, 2015, at St. Joseph Church in Libertyville, Ill., sponsored by the Justinian Society of Italian-American Lawyers and Judges of Lake County. He retired in June 2015 after 52 years of practicing law.

1968

Frank J. Daily has been named chair of the Wisconsin Judicial Commission, the official body charged with responsibility for investigating and prosecuting allegations of misconduct or disability on the part of Wisconsin judges and court commissioners. He is a retired senior partner and chairman emeritus of the national products liability trial practice at Quarles & Brady, Milwaukee.

1972



Michael Hupy presented a \$50,000 check to the Milwaukee Justice Center. He is pictured with Milwaukee Bar Association Foundation President Francis W. Deisinger (left) and Mary Ferwerda, L'11, executive director of the Justice Center.

1975



Janine P. Geske, now retired as distinguished professor of law at Marquette University, was honored at the Niagara

Foundation's "Peace and Dialog Award Ceremony" in Milwaukee, where she received the organization's Commitment Award.

1980



Gary M. Ruesch, a shareholder with Buelow Vetter Buikema Olson & Vliet, Waukesha, Wis., was the 2015 recipient of the

George Tipler Award for Distinguished Service in School Law. Presented at the annual meeting of the Wisconsin School Attorneys Association, the award recognized outstanding advocacy on behalf of Wisconsin public schools.

1982

Donald W. Layden was honored at the Nathan and Esther Pelz Holocaust Education Resource Center's "A Night to Remember" for his dedication to the Milwaukee center. (See text of remarks on page 46.)

1983

Paul T. Dacier was honored by the New England Legal Foundation in Boston with the John G. L. Cabot Award. This award is conferred annually on an individual whose work reflects a steadfast commitment to the advancement of free enterprise principles, in both courtrooms and public discourse. Dacier is executive vice president and general counsel at EMC Corporation in Hopkinton, Mass.

1985



Maxine Aldridge White was chosen as one of Milwaukee's "Most Influential People" by *Milwaukee Magazine*. She has been a judge in

Milwaukee since 1992. In 2015, the Wisconsin Supreme Court appointed White as chief judge of the Milwaukee County Circuit Court. She is the first African-American chief judge in the Wisconsin court system.

1986



Richard V. Poirier was chosen as the new CEO of Church Mutual Insurance Co., a national provider of insurance services to religious

organizations and schools. He joined Church Mutual as vice president—claims in 2011 and was promoted to chief operating officer that same year. ▶▶

A Lifelong Passion for Education

Important ideals were ingrained in Paul Bernstein when he was a youth in Shorewood, Wis., bordering the city of Milwaukee.

Ideals such as fighting for social justice. As a high school student, Bernstein joined in open-housing marches in Milwaukee led by Father James Groppi, and he tutored students in the central city.

Ideals such as making continual learning a core part of your life. Dedication to learning ran deep in his family and in his upbringing. “The pursuit of education is perhaps the most important value I have,” Bernstein said.

One place where the two ideals came together was Marquette Law School.

The love for learning first had led Bernstein to the University of Chicago, where he received both undergraduate and medical degrees. After advanced medical training at hospitals in Chicago, he returned to Milwaukee, where he became a prominent cardiologist. He has been on the staff of Aurora St. Luke’s Medical Center since 1983. Among a long list of leadership roles at the hospital, he formerly headed its cardiology practice.

Bernstein’s love for learning continued long after college and went well beyond medical pursuits. While maintaining his medical practice, he returned to the University of Chicago to earn a master’s degree in liberal arts when he was 41.

His commitment to social justice led him to become involved in a medical clinic serving large numbers of low-income people on Milwaukee’s north side. For a while, Bernstein felt the clinic was making a positive impact. But then the business side of the clinic became unstable, the whole endeavor went downhill, and the clinic closed.

Bernstein came away from the experience thinking that many of the low-income patients he saw were not getting a fair deal on a variety of fronts in life. He thought if he became a lawyer, he might be able to combine that training with his medical expertise and help such people even more.

That thinking led to him becoming one of the more unconventional students at the Law School. He enrolled as a part-time student. He said he remembers reading cases in between heart catheterizations. After six years, he completed law school in 2007.



Bernstein said he loved the experience. He found law school “deeply stimulating and intellectually demanding.” He learned a lot, not only about specific subjects but also about the world, he said. He also said that he met people who continue to inspire him, such as Janine Geske, now retired as distinguished professor of law.

As much as he remains enthusiastic about law school, he eventually realized that his notion of formally combining law and medicine would not work for him. To be sure, he has used his law degree in some roles in his medical practice, such as serving on the hospital’s credentials and executive committees. But Bernstein’s professional focus has continued to be his medical practice.

He describes himself as “basically a doctor who was deeply enriched by the experience” of becoming a lawyer. More broadly, he said, he has used his legal education as part of his continuing personal development, based on his values.

A yacht? Other luxury possessions? Those aren’t things that motivate Paul Bernstein. He may be a doctor and a lawyer, but his primary motivation was in place long before he trained for either of these roles. He wanted to be a learner all his life, and he wanted to put that learning to use helping others. Those are both goals that he has achieved. ■

1988

Scott R. Letteney has been promoted to city attorney in Racine, Wis. He previously served as deputy city attorney. Letteney, a retired United States Air Force lieutenant colonel, has been the municipal judge for the Town of Geneva since 1999.

Robert Jaskulski, shareholder and managing partner of the Waukesha office of Habush Habush & Rottier, was selected as the Wisconsin Association for Justice's Robert Habush Trial Lawyer of the Year.

1990

Donald Gallo has been named a co-leader of the environmental litigation team at Whyte Hirschboeck Dudek. A shareholder in the Milwaukee office, he is a member of the firm's real estate practice group.

1994

Nina M. Jones has become executive director of the University of Wisconsin–Washington County Campus Foundation. She has worked with many nonprofit organizations in the Milwaukee area, including the Bel Canto Chorus and the Milwaukee Repertory Theater.

1995

Todd J. Schneider has joined Strauss & Malk, a Chicago law firm, as a partner. His practice is

concentrated in estate planning, trust and estate administration, charitable planning, and business succession planning.

Jennifer (Pabreza) Sielaff was named president of the Wisconsin Association for School Personnel Administrators. She is director of personnel, administrative, and legal services for the School District of South Milwaukee.

1998

John E. Hedstrom has taken a position as vice president, policy and advocacy, for the National Association of Charter School Authorizers. He works from his home in Santa Clarita, Cal.

1999

Joseph T. Miotke has been elected chairman of Project Lead the Way (PLTW) Wisconsin's statewide leadership team. PLTW partners with middle schools and high schools to ignite students' ingenuity, creativity, and imagination. He is an attorney at DeWitt Ross & Stevens, in the firm's office in Brookfield, Wis.

2001

Mark J. Andres has become a member of Miller McGinn & Clark, in Milwaukee. He practices in the area of estate

planning, elder law, and tax planning.

SUGGESTIONS FOR CLASS NOTES may be emailed to christine.wv@marquette.edu. We are especially interested in accomplishments that do not recur annually. Personal matters such as wedding and birth or adoption announcements are welcome. We update postings of class notes weekly at law.marquette.edu.

2002

Byron B. Conway, a shareholder with Habush Habush & Rottier's Green Bay office, has been elected a Fellow of the Wisconsin Law Foundation. He is a past president of the Brown County Bar Association.

2003



Lydia J. Chartre recently became co-leader of the condominium and home

owners association law team at Whyte Hirschboeck Dudek. She works in the firm's offices in Milwaukee and Madison. She also has been granted membership in the College of Community Association Lawyers.

2004

Sharon M. Horozaniecki is now the managing attorney in the compliance services division of Wolters Kluwer Financial Services, Saint Cloud, Minn.

Andrew J. Bezouska has joined DeWitt Ross & Stevens in its employee benefits, labor and employment, tax, and corporate practice groups. He is based in the firm's Madison office.

Martin C. Kuhn has been named a shareholder in the law firm of Jeffrey S. Hynes & Associates, and the firm has changed its name

to Hynes & Kuhn. It is based in Wauwatosa, Wis. Kuhn will continue to focus on all aspects of labor and employment law.

2005

Danielle M. Bergner has rejoined the Milwaukee office of Michael Best & Friedrich as a partner, serving as co-chair of the real estate practice group.



Sara E. Dill spoke at the Legal Challenges of Modern Warfare Conference at The Hague in

January, discussing her work at Guantánamo and with the military commissions and the United Nations. She is a partner in Sara Elizabeth Dill Law Offices, based in Miami and London.

2006



Ray H. Littleton was appointed chair of the rules and calendar committee for the State Bar

of Michigan's Representative Assembly. He is an associate at Foster Swift Collins & Smith in Lansing, where his practice areas include insurance litigation, commercial litigation, general litigation, and employment/labor defense.

Devan J. Brua was promoted to vice president—compliance and risk for Spinnaker Support in Greenwood Village, Colo. Spinnaker provides companies with support and consulting services for their software investments.



Sara B. Andrew has joined the Milwaukee firm of Becker, Hickey & Poster after practicing with

her father, Louis J. Andrew, L'66, in Fond du Lac for nine years. Her practice consists of real estate, estate planning, and family law. She is the past president of the Fond du Lac County Bar Association.

Garet K. Galster, together with **Melissa S. Hockersmith**, has formed the intellectual property law firm of Smith Keane. The firm, located in Hartland, Wis., is a full-service intellectual property firm.

2007



Steven M. DeVougas, an attorney in the Quarles & Brady product liability practice group, has been

elected chair of the City of Milwaukee Fire and Police Commission. He was appointed as a commissioner in September 2013. >>

Relevant Lessons from a Career Beginning

If timing is everything, then Jennifer Kratochvil had cause for concern in launching her legal career. Kratochvil completed Marquette Law School in the spring of 2008 and had been hired the previous fall to work at Mayer Brown, a large international law firm based in Chicago. She wanted to live in Chicago and work on complex financial transactions.

One week after she started, the huge Lehman Brothers financial firm declared bankruptcy. The financial world entered a powerful tailspin. Business transactions such as the ones on which Kratochvil expected to work all but came to a halt—and, soon, law firms were among those laying off people.

“It was certainly an interesting time to start a practice,” Kratochvil recalled understatedly. How did she respond? “You had to find a way to make yourself relevant,” she said. “You needed to put yourself out there.”

That meant going to lawyers in the firm, offering to help with whatever they needed. It meant learning new things and working with different types of clients and many different people within the firm. It took developing relationships with mentors. It entailed doing good work (“It sounds so simple,” she said with a wry sigh). It involved spending slow days focused on things like studying the Uniform Commercial Code (UCC), telling yourself, “I’m really going to understand this section of the UCC.”

Almost eight years after the Lehman collapse, Kratochvil is well established at Mayer Brown—and, in fact, doing much the kind of practice she envisioned originally. She primarily represents lenders, but also does borrower-side work, on



financing transactions; this includes drafting and negotiating loan agreements, collateral documents, and other transaction documents for deals ranging from a few million dollars to more than a billion dollars. She has worked on general lending transactions, acquisition financings, insurance finance, debt restructurings, and other transactions that are not so easily categorized. Her experience working on a broad range of deals is a result of her willingness to help and contribute where needed, and she takes those experiences and applies what she learned from them to new transactions as she continues to develop her practice.

A typical day at work? “I don’t know that there is one,” Kratochvil said. During the week she was interviewed, she had worked full steam on a deal with a short deadline. Then, suddenly, the deal was off. And a different client called about one of

its customers, which was in default on a loan. Some days, she said, the to-do list just gets longer, and it feels like nothing is getting checked off. On other days, deals in fact close.

She also regularly does pro bono work and enjoys mentoring junior associates, which includes preparing and teaching training sessions for junior associates at Mayer Brown.

Outside of work? Kratochvil plays the piano and golfs a bit, but you're a lot more likely to find her reading. Both nonfiction and fiction appeal to her.

Kratochvil grew up in a small city in Nebraska and went to Creighton University in Omaha, where she graduated with a degree in finance. "I'm not really a risk taker," she said. But when she was offered

admission to Marquette Law School, she accepted without ever visiting Milwaukee. She knew that Creighton and Marquette, as Jesuit universities, had similar philosophies, and she wanted to go somewhere outside of Nebraska. "I just sort of took a leap and did it," she said. Marquette turned out to be a good fit for her. Not only did she thrive generally, even serving as editor-in-chief of the *Marquette Law Review*, but she also especially enjoyed practical aspects of her education.

The crisis atmosphere that shaped Kratochvil's first experiences as a lawyer in practice has faded. But, she said, it taught her a lot about how banks and the financial world work. One legacy: She learned to do more to factor into any deal "what happens in the downside scenario."

And she learned a lesson of continuing importance: Make yourself relevant. ■



Patrice B. Childress has been elected to the partnership of Beck Redden, Houston, Tex., where she has been an associate

since 2007. Her practice includes a diverse set of clients in the energy, legal, business, and real estate sectors.

2009

Charles R. Stone has joined Cadwalader, Wickersham & Taft's Beijing office as an associate.

2010

Andrea S. Pleimling has joined the southwest Florida law firm of Goldstein, Buckley, Cechman, Rice & Purtz, where she focuses her practice on personal injury law, personal injury protection, and civil litigation.



Jason K. Roberts has been promoted to senior consultant with Thomson Reuters Tax and Accounting, Lake Oswego, Ore.,

where his responsibilities include consulting and providing guidance on matters related to value-added tax determination and compliance.

2012

Jennifer J. Montalvo was honored at Mount Mary University's distinguished alumnae awards ceremony. An attorney at the nonprofit Centro Legal in Milwaukee, she received the Tower Award: Young Alumna. ▶▶

Professor James Ghiardi:

REVERED, FEARED, BELOVED FOR DECADES



“He was the stuff of which legends are made.” That’s how Aaron Twerski, L’65, a nationally renowned expert on tort law, described Professor James D. Ghiardi, who was a professor or professor emeritus at Marquette Law School for almost 70 years. Ghiardi died on January 18, 2016, at age 97.

“He was intellectually challenging, witty, and so obviously in love with the

material that he was infectious. His passion for the law was transmitted to legions of law students,” said Twerski, now a professor at Brooklyn Law School and formerly dean of Hofstra Law School. “Professor Ghiardi was my inspiration.”

Ghiardi was a member of the Marquette Law School Class of 1942. After service in the military during World War II, he began teaching at the Law School. He had other important roles—serving in 1970–1971 as president of the State Bar of Wisconsin and as the longtime head of the Defense Research Institute, a national think tank for defense lawyers in cases involving insurance and personal injury litigation. But he was, foremost, a law school teacher, who was feared, revered, and loved, oftentimes by the same people at different points in time. He remained active in the life of the Law School until the past year.

Professor Michael McChrystal, L’75, recalled on the Law School’s faculty blog, “Jim Ghiardi was larger than life.” McChrystal characterized his first exposure to Ghiardi. “He was intimidating, commanding, and inspiring in the first-year torts course, where he could make 160 students squirm in unison. He could also inspire truly extraordinary levels of class preparation (i.e., serious study of the law).”

McChrystal summed up the Jim Ghiardi he came to know well: “Powerfully effective teacher. Widely respected scholar. Incisive lawyer. Manager of lawyers. Leader of the bar. Lawyer for the university. Leader of the faculty.”

Janine Geske, L’75, former Wisconsin Supreme Court justice and now retired as distinguished professor of law

at Marquette, said, “Although he was extremely tough on students, I learned that his rigorous approach to legal education was based on his deep desire to prepare his students to be high-performing lawyers. He expected Marquette lawyers to be extraordinary attorneys. . . . His loyalty to the Law School and its alumni was truly unparalleled.”

Professor Ed Fallone said, “Jim Ghiardi was demanding (of both students and his colleagues). It is true that his demeanor could be fearsome, but he was also very giving of his time and his advice. He mentored countless Marquette lawyers and law school faculty members over many decades. In some ways, Professor James Ghiardi was Marquette Law School during large parts of the twentieth century.”

Fallone said, “I always understood Jim’s gruff manner as a form of a challenge. It was his way of asking his colleagues in the law, ‘Are you giving your very best effort to this profession?’”

In 1971, then-Dean Robert F. Boden, L’52, wrote of Ghiardi: “Few are more zealous in their loyalty to the University and to the profession. Few also have the industry and capacity for work that manifests itself every day in Professor Ghiardi’s vigorous and devoted attention to the responsibilities which he has assumed in the Law School and in the many other related activities which he has undertaken.”

Professor John Kircher, L’63, retired from teaching at the end of 2015. Recounting his career, he recalled Ghiardi as “my teacher, my mentor, my faculty colleague, my second father, and my friend.”

Ghiardi was the son of Italian immigrants and grew up in Michigan’s Upper Peninsula. He received an undergraduate degree from Marquette University in 1940. While serving in Europe during World War II, he met an American nurse who was caring for soldiers. Jim and Phyllis Ann Ghiardi were married in Germany after the war ended. They had three daughters. Phyllis Ghiardi died in 2012 at 91.

Following the death of Professor Ghiardi, Dean Joseph D. Kearney wrote, “The loss of Jim Ghiardi now diminishes us, but his work and life magnified us—and as a legacy will continue to do so. *Requiescat in pace.*” ■

Katharine M. Marlin has taken a position as underwriting counsel for First American Title–National Commercial Services, Milwaukee.

Sabrina R. Gilman, senior counsel at Emerson Process Management, was recently interviewed for the Association of Corporate Counsel online international *Docket*.



Heather D. Mogden has joined the Milwaukee office of Hall, Render, Killian, Heath & Lyman, the largest health care–

focused law firm in the nation.

2013

Ariane C. Strombom was named co-leader of the international transactions team at Whyte Hirschboeck Dudek. She is a member of the corporate and finance practice group and the technology law and emerging companies teams.

2014



Emil Ovbiagele is an associate in the Milwaukee office of Wilson Elser Moskowitz Edelman & Dicker, where his areas of concentration are

construction, insurance, and employment litigation.

Matthew J. Jann is an associate in the corporate and real estate departments at Glaser Weil Fink Howard Avchen & Shapiro in Los

Angeles, focusing on the areas of corporate, real estate, and entertainment law.

2015

Mario D. Falsetti has joined the Milwaukee office of Deloitte Tax as a tax consultant.

Laura L. Ferrari has joined the Milwaukee office of Whyte Hirschboeck Dudek, where she is a member of its human resources law practice group.

Melissa J. Fischer has joined the Groth Law Firm, Brookfield, Wis., which specializes in multiple areas of personal injury law.

Angela B. Harden is now a member of the Milwaukee office of Whyte Hirschboeck Dudek, where she is in the litigation practice group.

Mitchell D. Lindstrom has joined the business law practice group of the Milwaukee office of Quarles & Brady.

Rachel E. Mather has joined Quarles & Brady's business law and real estate practice groups in Milwaukee.

Katheryn A. Mills has joined Godfrey & Kahn's labor, employment, and immigration practice group.

Katherine E. Metzger has joined Studinski Law, a personal injury law firm in Plover, Wis.

Keith Reese-Kelley has joined Ryan Kromholz & Manion, a Brookfield law firm, as an associate. His practice includes all aspects of intellectual property law, with an emphasis on litigation and dispute resolution.



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Public Policy and American Drinking Water

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Eckstein Hall
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For more information about the conference, contact David A. Strifling, director of the Marquette University Water Law and Policy Initiative, at david.strifling@marquette.edu.