

What Does—and Should—a Judge Do Today?

A few years ago, after one of our distinguished lectures, which draw to Eckstein Hall so many engaged members of the profession, one attendee, not an alumnus, said to me, “Eckstein Hall is the center of the legal profession in this region.” This was a high compliment, but I largely demurred. For me, the nearest state courthouse will always be the heart of the legal profession anywhere. It is the place that symbolizes justice, and to which, as a society, we want our fellow citizens to resort, whether via the criminal law or through civil litigation.

And at the center of the courthouse, and of the profession, are judges. Their work is, accordingly, an important focus of legal education. Not simply in procedural courses, such as various of my own upper-level offerings, but also in first-year courses in Contracts, Criminal Law, and Torts, we study what



judges do. All familiar with law school require no elaboration on how this is true throughout the curriculum. The centrality of judges figures in other aspects of our work at Marquette Law School, helping explain, for example, our annual Hallows Lecture, which a faculty colleague (Professor Michael O’Hear) some years ago characterized to me “as one of the

many things the Law School does to validate public service in the eyes of our students, as well as to promote respect for the office of judge.”

It is thus natural that the *Marquette Lawyer* magazine often features and examines the work of judges. Sometimes we present it (or them) almost unmediated, as at the end of this issue, which boasts a conversation between one of my colleagues, Professor Nadelle Grossman, and the Hon. J. Travis Laster, an especially thoughtful jurist (and, more concretely, vice-chancellor in Delaware). Other times we offer an analysis: Examples include, several years ago, our featuring a symposium convened by my colleague, Professor Chad Oldfather, concerning the role of judicial law clerks, and, more recently, our engaging with the state’s bench and bar concerning the remarkable decline in the incidence of civil jury trials across the country, including Wisconsin.

This issue’s cover story inquires whether the role of the state trial judge (if the term is still apt) has been changing and, if so, what one might make of any trends. Our focus is not traditional civil litigation, where at least since Professor Judith Resnik’s famous 1982 article in the *Harvard Law Review*, “Managerial Judges,” there has been considerable discussion of the changing role of judges. Rather, in this instance we consider, in particular, “problem-solving courts” and the interest on the part of many Wisconsin trial judges in what they term “better outcomes.”

Better outcomes would not, historically, have been considered the focus of judges, whose great traditional office has been to deliver *judgments*. The mundane details of satisfaction of a judgment, or its execution, let alone its down-the-road effects, have not been thought to make up the essential work of the judge entering the decree. Indeed, in a broad sense, we have even suggested that judges should be indifferent to some such things: *Fiat justitia, ruat caelum*, you know.

So our cover story proceeds critically but uncritically. We seek to identify and help explain a phenomenon, even as we claim no great insight, certainly at this institutional level, into whether the phenomenon is, overall, a good thing or a bad one. And we invite your own observations, as alumni, other members of the Wisconsin bench and bar, judges and academics across the country, and others. On occasion, we have even run in the magazine a letter to the editor, reacting to a story. Without doubt, the changing role of the judge is, in important basic respects, an *empirical* question. So we will welcome your own experiences and observations (joseph.kearney@marquette.edu or alan.borsuk@marquette.edu).

In all events, we offer you herewith the latest *Marquette Lawyer*, with its glimpses of our students, the profession, and the larger society. Thank you for spending some time with it and us.

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