

Dean Joseph Kearney “encourage[d] all of us always to recall that law is a human endeavor.” Despite frantic predictions that generative AI is about to make lawyers and judges obsolete, every aspect of our legal system is deeply and utterly human. Contracts are, at bottom, efforts to anticipate future disagreements between humans and to try to avoid those disagreements. Lawsuits and trials are efforts to resolve disagreements between humans in a way that doesn’t involve maiming or killing each other. Wills and trusts and guardianships help humans take care of other humans and themselves. You get the idea. Because the legal system is a human endeavor, it must contain the diversity—meaning the variety, difference, and variation—of humanity itself.

My answer to the question I’ve asked myself is *yes*, the “firsts” matter to the legal profession—are crucial to the legal profession—because each “first” brings the profession closer to its full, human potential and makes more likely its institutional survival. All of us—not just women, but all members of the legal profession—have benefited from Lavinia Goodell’s “first” and from the many firsts that followed. I have used the word *diversity* this evening; I use it cautiously, knowing in this historical moment that it can be understood to mean everything from virtue signaling to unfair preferential treatment based on immutable characteristics. In this historical moment, there is debate over some of the methods used to achieve diversity. But *diversity* as biologists and ecologists use it—meaning variety, difference, and variation—is, as has been said, the one true thing we all have in common. It is our protection against extinction, our path to perpetuity. Protecting or growing the diversity achieved by these “firsts,” these pioneers, these trailblazers, is not a favor, or a luxury. It is necessary for the legal system’s survival.

Happy anniversary, Lavinia Goodell—and thank you. ■

Hon. Cynthia M. Davis

The Legacy of the Law Review Experience: Building Character as Well as Learning Skills

This is an edited and excerpted version of remarks delivered by Hon. Cynthia M. Davis, L’06, judge of the Milwaukee County Circuit Court, at the annual *Marquette Law Review* banquet on April 5, 2024. A longer version appears as the endpiece in the final issue of this past year’s law review (Volume 107). As a student, Davis served as the editor-in-chief for Volume 89 of the journal.

Exactly a month ago, I had the pleasure of having lunch at the Tory Hill Café, here in Eckstein Hall, with Markus Johnson, Cody Linday, Dallas Humphries, Emily Juneau, and Grace D’Souza. As I was walking back to the courthouse after lunch, I felt uplifted in a way I hadn’t been expecting. Heading into the lunch, I had expected to meet, of course, extremely intelligent, ambitious, and curious students, all eager and optimistic as they prepare for graduation. But what I was not anticipating was the instant connection I felt with each of them simply by virtue of having shared this experience we call law review. We immediately became immersed in conversation that nerdy law review members from different eras could share—and only such individuals. I mean, who else can include “the proper use of the em dash” in a social conversation? It is amazing how that little law review bible, otherwise known as *The Bluebook*, can bring people together so profoundly.

That lunch conversation got me thinking some more. What, I asked myself, makes law review a truly unique and bonding experience, even for individuals almost two decades apart from one another in the experience? From the outside perspective, law review seems pretty straightforward: a bunch of students must select articles to publish, memorize *The Bluebook* forward and back, check the citations to make sure they support what the author is saying, and edit the articles, checking for spelling, proper spacing, grammar, usage, etc. (including, of course, the proper use of that em dash).

From the inside perspective, however, law review is so much more. Being a part of the *Marquette Law Review* profoundly changed my life because of the educational and relational opportunities it presented. And let’s be real here. For type A personalities, which most members and editors are, the whole law review experience can be a stress-inducing, anxiety-ridden one. Yet the law review experience improved both my legal research skills, by introducing me to sources I had no idea existed, and my writing skills, by requiring me to read and edit the works of successful legal scholars. And publishing my own student comment is what gave me the confidence to continue writing and publishing after law school.

Furthermore, law review taught me time-management skills, discipline, and, above all, integrity. As every member knows, cite-checking articles for

publication is a long and tedious job. With hundreds of cites to check, it was hard to rise above the temptation to skim over cites to speed up the process. However, the dictum, “character is who you are when no one is watching,” always kept me on the straight and narrow.

While law review taught me many valuable legal and technical skills, the more important benefit of law review is the relationships I formed. I appreciate the friendships I made with other members and editors, along with the ability to be mentored by the 3Ls when I was a 2L and to do the same for the 2Ls the next year. I value the ability to have gotten to know certain professors on a different level. For example, I will always be grateful for Professor David Papke and his support as the faculty advisor, as well as for the relationship I developed with Dean Joseph Kearney. The dean mentored me, and I am forever appreciative of the great interest he took, and continues to take, in the *Marquette Law Review*. I also cherish the lifelong bond I developed with Christine Wilczynski-Vogel, associate dean for external relations, events, and facilities, due to the proximity of our offices in Sensenbrenner Hall and the countless times we conversed as I walked past her office during after-hours.

I still have Volume 89 of the *Marquette Law Review* proudly displayed, like a trophy, on my bookshelf at home. There is a reason for that. Being on law review is not for the faint of heart. The prestige of being on law review is a well-deserved honor because behind every volume of the *Marquette Law Review* are countless hours of meticulous (and sometimes lonesome) work completed by its dedicated members and editors. To answer the question I posed to myself, it is for all of these reasons that the law review experience bonds current and past members. I am grateful to all of you, editors and members of Volume 107, for upholding and continuing the

tradition of excellence of the *Marquette Law Review*.

This somewhat long introduction brings me to what I want to talk with you about this evening. I decided on a theme of practicality and to offer you some advice as you prepare, whether it be this year or next, for your life as a Marquette lawyer. I use “Marquette” as an adjective intentionally, because as a graduate of this law school, you are not going to be just any lawyer. What sets this law school apart from the average law school is its integration of Ignatian values and the principle of *cura personalis*—care for the whole person—into its education. It is with that specific principle in mind that I offer you the following four tips.

Tip Number 1: Be present and be an active listener—in other words, listen to understand, not to respond.

This is a lesson that was ingrained in me during my three and a half years as a treatment court judge, as I have explained publicly before. You are most likely familiar with the concept of restorative justice. Treatment courts include elements of restorative justice. For those who may be unfamiliar with the term, the basic gist of the approach of a treatment court is that individuals who have been charged with a crime are able to stay out of jail or prison upon being accepted into the program, where they agree to follow through with treatment, take all prescribed medications, maintain sobriety, get a job, find stable housing, and restore relationships.

As a judge in the treatment courts, my main role was to hold participants accountable. The worst-case scenario was that I used the hammer of a short jail sanction when participants were not adhering to the program. But the most effective and main way to hold people accountable was through positive reinforcement and, specifically, the technique of motivational interviewing.

The technical definition of motivational interviewing, as given by the International Conference



Hon. Cynthia M. Davis

on Motivational Interviewing, is a communication style that balances active listening with advice giving and that thereby empowers individuals by helping elicit their purpose, significance, and ability to change. In layman’s terms, it means that the facilitator’s job is—mainly—to shut up, listen, and be curious and respectful about what makes a person tick. The concept of motivational interviewing seems fairly commonsensical, but you’d be surprised how bad we are at it. For active listening is simply not something we as a society are accustomed to doing. Especially as lawyers, we are trained to be one step ahead, to anticipate the opponent’s argument, and to attack it before it gains any momentum. While there is still a time and place to apply such skills, sometimes this adversarial approach is simply not as effective as the active listening approach.

As clichéd as it may sound, I urge you to remember that the best present you can give to another is your presence: in other words, your full, undivided, phone-free attention. What I have learned is that, at the end of the day, most people just want to feel that they have been heard and validated. I have witnessed firsthand, during my time in the legal profession, the profound impact that a lawyer can have on a person's life. Don't take for granted your role or your ability to make people feel that they matter. It can change lives.

Tip Number 2: Don't play small and do forgive yourself. I like this piece of advice because it's the reason I am a circuit court judge today. When faced with the opportunity to apply for an appointment by the governor to be a judge, I initially backed down and played small because, even though it was my dream job, the mere thought of applying for this position brought me entirely out of my comfort zone. Even though I was blessed with a tremendous amount of support and encouragement, the doubts, fears, and insecurities were so strong that they were all I could hear in my head, telling me what a fool I would be for even *thinking* I could be a judge. (At the time, I was 35 years old—an age that I believed many would think was too young to be a judge.) Even though deep down I knew I could do the job, I was afraid of what others might think of me. Fortunately, in a moment of clarity, I decided to set aside those fears, get out of my comfort zone, and apply for the position. I am so happy I did.

Interestingly, there is a psychological term that has been coined for this self-limiting behavior. Psychologist Gay Hendricks, in his book, *The Big Leap*, coined the term "Upper Limit Problem" to explain the phenomenon of self-sabotage as the brain's way of ensuring that we stay within our safe zone. A sympathetic commentator (Brianna Wiest in *Forbes* magazine) has explained that "what happens with your 'Upper Limit' is that you literally have a

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tolerance cap for how much happiness you will allow yourself. It backs up the idea that often, what we are seeking out in life is not happiness, but comfort."

So my advice to you is to be aware of this Upper Limit Problem and get comfortable with being uncomfortable. Believe in yourself, speak up on things that matter to you, take that class that sounds interesting to you, suggest a new idea at a meeting, and go for that dream job or promotion. I guarantee you will never feel ready. Sometimes, you really do just have to do it.

Tip Number 3: Maintain perspective. In candor, I changed this phrasing about three times. Initially, my wording was "establish boundaries," which I changed to "practice self-care" and then to "find work-life harmony." I landed on "maintain perspective" because it encapsulates all of those ideas and more.

As a Marquette lawyer, having come to appreciate that the law is not only a learned profession but also a helping profession, you undoubtedly will become quite involved both in your paid work and in volunteering your time and expertise in the service of others, whether that be through taking on pro bono work, serving on the board of nonprofits, or finding other active involvement in your local bar and other community organizations. I applaud such dedication to your work and community involvement, but you need to be mindful of what you take on, lest you burn out.

I want to warn you that it can be easy in our profession to become extremely involved and dedicated to our work. The work can be rewarding but also addicting if you let it. This dedication is laudable, but when taken too far, it can produce a somewhat myopic view of life, where work problems seem really huge and everything else—including family, friends, and other important relationships—gets ignored. Try to be conscious of when you get to that point, and then take a step back to gain a broader perspective. Chances are that you are burned out if you are at that point and that you need to take some time to refill your cup. That may sound selfish, but you can't follow my first piece of advice of being fully present and actively listening to others if you are tired and depleted.

Tip Number 4: A last tip. I am going to make my fourth and final tip short and sweet. Remember my earlier quote—"character is who you are when no one is watching"—and let it guide your actions in all you do. Remember that. It will probably haunt you when you are tired and want to take the easy way out, but this quote has saved me a number of times, as it did during my time on law review. Your reputation in the legal field is everything and precedes you in all you do, so do not do anything to jeopardize it. If you don't remember anything else from this speech, remember this: Do the right thing. ■