

MARQUETTE LAWYER

FALL 2025

COURTS OR COMMUNITY CONVERSATIONS?

**A Seventh Circuit Judge
Reflects on Article III,
the First Amendment, and
Civic Discourse Today**

**Insights on Community Life from
the Marquette Law School Poll**



Hon. Michael Y. Scudder

ALSO INSIDE

**Sharon Dolovich on the Lot of Correctional Officers
Better Curricula, More Success for K-12 Teachers?
Dean Kearney on the ABA and Experiential Learning
Boyden, Chisholm, Hull, McMullen, Speta, and Wynn**

Marquette Law School Math

Legal education + public programs = civic leadership

Mike Gousha was the premier television news anchor in Milwaukee when he announced in 2006 that, though not retiring, he was giving up the anchor seat and that line of work. A few months later, Marquette University announced that Gousha was joining Marquette Law School. I was a reporter for the *Milwaukee Journal Sentinel* then and was assigned to write the story. I asked the obvious question to Dean Joseph D. Kearney: “Mike’s not a lawyer. He’s not going to teach. What’s he going to do?”

He’s going to pioneer a public policy initiative at the Law School, Kearney said. He’s going to develop, convene, and host programs such as newsmaker interviews, conferences, and candidate debates. The Law School has been good at teaching people to be lawyers, but it has operated largely within its own walls or those of the profession, Kearney said. The new effort might make the Law School a crossroads for level-headed, serious programs on major matters for the broad community.

Boy, has it ever done so. Nearly two decades later, there has been a long list of impressive and successful programs on law, politics, education, water and the environment, public safety, and much more. As the *Milwaukee Journal Sentinel* put it in 2011, shortly after the opening of Eckstein Hall, Marquette Law School has become “Milwaukee’s public square.”

But the question I asked in 2006—three years before I left the newspaper and joined the Law School’s public policy initiative—is still worth considering. What kind of match is this, educating people to become lawyers while running programs about things that often don’t intersect directly with the core mission of a law school? To give a specific example, the Marquette Law School Poll has been a huge success since it was launched in 2012. To say (correctly)



Alan J. Borsuk moderates a conference at Marquette Law School on May 8, 2025.

that it is the largest polling project in Wisconsin history and the premier way to understand what Wisconsinites are thinking doesn’t even begin to get at the national reach, even significance, of the poll. But why is a law school running a political polling operation?

The short answer is: Because good civic leadership comes in a variety of flavors and the Law School has become good at serving several of them. The main dish remains educating students to be lawyers. Important side dishes include both the vibrant Office of Public Service, involving law students in volunteer efforts such as pro bono work, and the school’s curricular fieldwork placements. This menu is further enriched by the efforts of the public policy initiative launched in 2006; these have grown to include a cadre of us in what is now named the Lubar Center for Public Policy Research and Civic Education. (By the way, no law student tuition money is used to support the Lubar Center or the poll.)

Yes, we’re distinctive. We’re not aware of any other law school in the country that offers a public policy initiative along these lines. But I suggest that Marquette Law School is a good and worthwhile home for all of these efforts, and I point to this issue of the *Marquette Lawyer* as evidence of that.

Consider the E. Harold Hallows Lecture at the Law School, delivered on March 3, 2025, by Judge Michael Y. Scudder of the U.S. Court of Appeals for the Seventh Circuit. The cover story of this magazine is an edited text of Judge Scudder’s lecture on the role of “standing” in bringing cases before federal courts. But Scudder goes beyond that to consider whether communities, rather than courts, should be the venue for settling more issues. That led us to bring together Scudder and Professor Charles Franklin, director of the Marquette Law School Poll, to discuss the state of civic engagement in America and to ask Franklin for a summary of recent poll questions on civic involvement.

Put it all together (as we do on pages 6 through 23) and you have a strong example of the equation that makes Marquette Law School vibrant: legal education plus public policy work equals civic leadership. And throughout this magazine, there is much evidence of how the formula is succeeding, with insights on legal education, legal scholarship, public service, and public policy. The recipe for Marquette Law School is distinctive—and successful. ■

Alan J. Borsuk

Senior Fellow in Law and Public Policy

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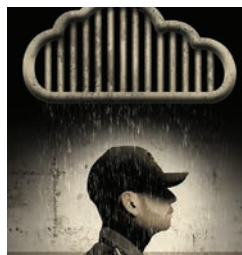
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MARQUETTE
UNIVERSITY

LAW SCHOOL

Three New Faculty Members Quickly Make Themselves at Home

Joining the Marquette Law School faculty is not a homecoming for three new professors. But it feels like that to each of them—just ask them.

“It felt like home to me,” said Jacob Hamburger, describing his initial impressions of the Law School and Milwaukee. He grew up in the Chicago area, and Milwaukee feels both familiar and new. “I’m very excited by the unique culture of the city,” he said.

Felicia Caponigri has roots in South Bend, Indiana, although she has also lived in Italy and France. She said that when she came for an interview at Marquette, “I felt so connected” to the people and to Eckstein Hall itself. “It is symbolic how light it is,” she said of the building. “And, by the way, the students were incredible” during her visit.

What attracted Karen Sandrik? “Largely just Marquette,” she said. The Law School, with its emphasis on student experiences and preparing students to be practicing lawyers, aligns with her professional goals, she said, and Milwaukee offers a good fit for her, her husband, and their six-year-old son.

Karen Sandrik: Strong commitment to law school learning—and students’ personal lives

Karen Sandrik tells students to think of a piece of paper as they envision what they need to do in law school. The paper has a large central space. But it also has a vertical line creating a margin on the left side. The main part of the page symbolizes how she expects her students to work hard. But the margin symbolizes how they also need space and time for other parts of their lives.

“It’s really easy for students to lose themselves in law school,” she said. “I want students to go all in.” But, she tells students, “I need you to have enough margin in your life that you don’t go off the page. You need some balance.”

Sandrik aims to do that in her own life. She said she is a highly competitive person. “I love working,” she said. But she also loves having dinner with her family, outdoor activities, and early-morning runs.

Sandrik grew up in Florida and received her

undergraduate degree from Mississippi State University, captaining the women’s soccer team; she also played on the U-23 U.S. women’s soccer team. After receiving her law degree from Florida State University, she practiced at Troutman Sanders (now Troutman Pepper Locke) in Atlanta. Since 2012, until this year, Sandrik has been on the faculty of Willamette University School of Law in Salem, Oregon, where she also served as associate dean for faculty. In the spring of 2025, she was a U.S. Global Fulbright Scholar in Slovakia. Her academic research centers on “the intersection of patent law and commercial law, with particular attention to how commercial law principles—especially contractual frameworks—influence innovation policy and the broader ecosystem of innovation outcomes.”

Sandrik is teaching Contracts to first-year students this fall. “First-year courses are so special,” she said. “I love being part of the students’ professional journeys in a way that professors were—and remain today—part of mine.”

She said she was looking to move to a law school with “a great track record of scholarship” and a practice-oriented program for students, and the Midwest appealed to her because she has extended family in the region. She said she saw a notice of the opening at Marquette and immediately contacted Professor Chad Oldfather, chair of the faculty appointments committee. “Put me in, coach,” was and is her basic message.

Jacob Hamburger: Immersed in the legal, political, and human aspects of immigration

Jacob Hamburger is a cool-headed lawyer whose primary professional interest is one of today’s hottest subjects: immigration law. His interest started before current events put immigration at the front of nationwide attention. In part, it arises from his experiences living in other countries, including France, and his affinity for people from all over the world. His interest also is bound up with the importance of the subject and the fact that, as Hamburger views it, “there’s a lot of capacity to make a difference.” Immigration issues have a legal framework, a political context, and a human element, and Hamburger focuses on all three.

While immigration law itself is primarily a

federal matter, Hamburger has a keen interest in how state and local governments become involved with immigration issues. He wants to work with the immigration legal community in Wisconsin and, more broadly, in addressing needs of people in Milwaukee and beyond.

Hamburger has an undergraduate degree from Columbia University, a master's degree in philosophy from École Normale Supérieure in Paris, and a law degree from the University of Chicago Law School. He worked for Legal Aid Chicago before joining the academic world. He was a visiting assistant professor of law at Cornell University in Ithaca, New York, before joining the Marquette faculty.

Hamburger's courses include first-year Civil Procedure and a seminar on immigration federalism. "Each subject we teach in law school is incredibly complex," he said. "I see my role in the classroom as offering a starting roadmap. The most rewarding part is seeing students take that map and make it their own—or toss it out entirely as they discover new paths."

His advice to law students generally: "Push yourself to ask big questions. Study, read, and think deeply. This may be the last time in your career when you can focus entirely on learning."

Felicia Caponigri: How law shapes culture and culture shapes lives

Felicia Caponigri loves dinner parties, fashion, art museums, Italian culture and cuisine, connecting with people of all kinds—the list could go on, given her energetic personality and many interests.

Unifying themes among her interests include the importance of what Caponigri calls "cultural property" and how people pass things of value to others.

That means Caponigri is enthusiastic about teaching courses ranging from Trusts and Estates to Property to a seminar in fashion law. The courses align with her interest in how the law can help people deal with what they find valuable. She seeks to "examine how culture shapes intellectual property rights, and how intellectual property rights, in turn, shape access to culture."

Caponigri describes herself as "proudly from South Bend, Indiana." That said, her family moved to Italy when she was six, and her life has been influenced by living in both the United States and Europe. As a young girl, she noticed the differences between how people dressed between Indiana and Italy, prompting her over time to consider how identity and dress are connected. Her undergraduate work at the University of Notre Dame included



studying art and cultural heritage in Paris and in Florence, Italy. Her interest in culture and fashion took her to both law school at Notre Dame and a Ph.D. in analysis and management of cultural heritage at the IMT School for Advanced Studies in Lucca, Italy.

Her continuing pursuits include a podcast called "A Fashion Law Dinner Party with Fashion by Felicia." What does she like about dinner parties? They are a good way to bring together multiple guests to talk about different subjects and to enjoy different foods. "You have dinner with someone," she said, "and you open up very naturally."

Caponigri said that joining the Marquette faculty appealed to her because of the reputation of the intellectual property program, the collaborative and supportive faculty, and the Jesuit mission of Marquette. The Midwest location, close to some of her family, was also a factor. And Milwaukee's Italian assets, such as Gloriosi's Italian Market and the Peter Sciortino Bakery, have been a plus. Her interests outside of work? "You can find me in an art museum." ■

(From left) Karen Sandrik, professor of law, and Felicia Caponigri and Jacob Hamburger, assistant professors of law, are new members of the Marquette law faculty.



COURTS OR COMMUNITY CONVERSATIONS?

Article III of the Constitution stands as the guardian of free speech and democratic self-governance, helping ensure that the general hard work of sorting out problems remains for us as a polity.

BY HON. MICHAEL Y. SCUDDER

Thank you to Marquette Law School for the honor of delivering this year's Hallows Lecture. I am delighted to be here, at the alma mater of my chief judge, the Hon. Diane Sykes—a superb jurist and a great leader.

I give this lecture nearly seven years after joining the federal judiciary, at a time of deep political division in our country, and as someone with a deep appreciation for the law of federal jurisdiction. My observations from my time on the court, my affinity for this particular doctrine, and my sense of our nation's current divisions combine to inform the content of my remarks concerning Article III standing doctrine as the guardian of free speech and democratic self-governance.

I want to begin by describing an appeal the Seventh Circuit decided about a year ago, in March of 2024.

Framing the Issue: Parents and Schools in Eau Claire

In 2021, here in Wisconsin, the Eau Claire Area School District developed and issued what it termed “Administrative Guidance for Gender Identity and

Support.” This guidance, as its name implies, embodies the school district's policy and direction to member schools encountering students with questions about their gender identity. In its own

words, the policy sought to provide schools with “guidelines” and a “resource” to follow when addressing questions and requests for assistance from students or parents on matters of gender identity.

The administrative guidance acknowledges the difficulty and sensitivity of issues relating to gender identity and, by its terms, recognizes that some students may “not [be] ‘open’ at home for reasons that may include safety or [a] lack of acceptance.” It was for that reason that, in the guidance, the district tells principals and school counselors that they “should speak with the student first before discussing a student's non-conforming



Hon. Michael Y. Scudder is a judge on the U.S. Court of Appeals for the Seventh Circuit. This is a lightly edited version of the E. Harold Hallows Lecture, delivered at Marquette University Law School on March 3, 2025, and titled “Article III Standing as the Guardian of Free Speech and Democratic Self-Governance.” The lecture will appear as a longer article in the *Marquette Law Review*.

Illustrations by Traci Daberko

or transgender status with the student's parent or guardian."

In implementing the guidance, schools may complete what the policy calls a "Gender Support Plan." Here, too, the guidance states that "school staff, family, and the student should work together" to prepare individual plans. The school district committed to providing parents with a copy of any support plan developed for their children.

A group of parents came together, formed an association called Parents Protecting Our Children, and challenged the school district's policy in federal court in Madison. The association brought its suit under Section 1983, the well-known federal statute providing a cause of action against municipalities and state officials for violations of federal rights. In *Parents Protecting Our Children v. Eau Claire Area School District*, the association alleged that the administrative guidance violates its members' substantive due process rights as parents under the Fourteenth Amendment as well as their free exercise of religion rights under the First Amendment.

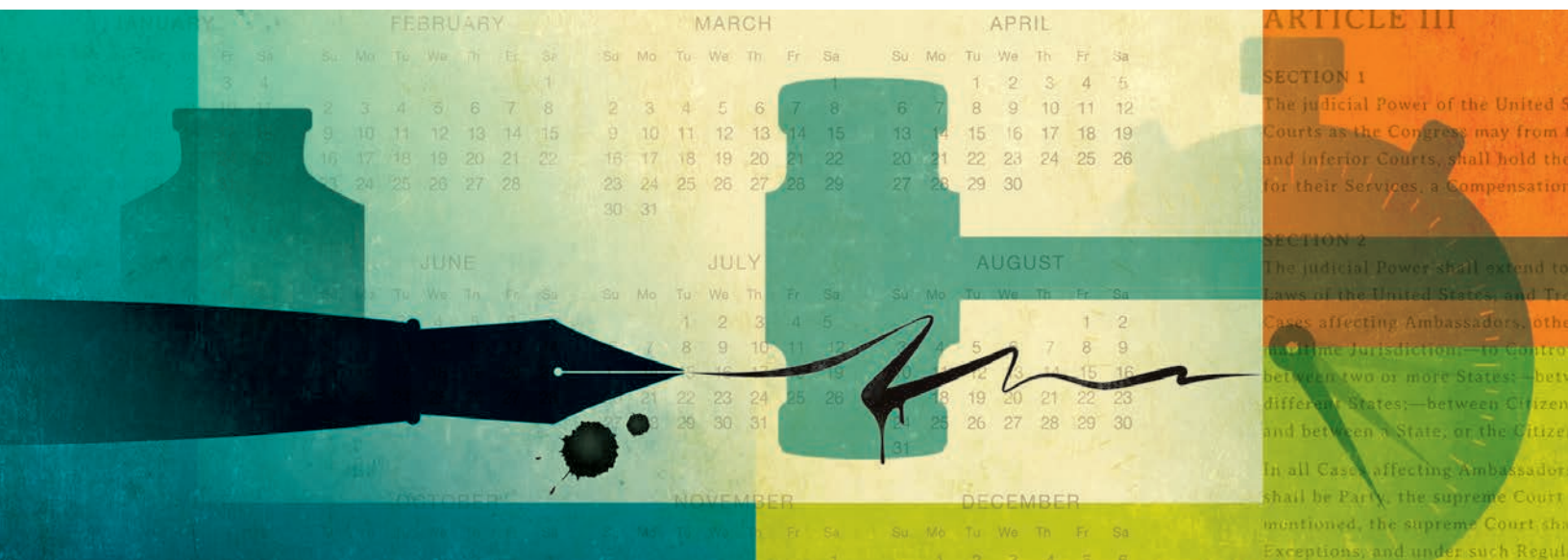
The association acknowledged that it brought its claims not in response to any experience any parents had with the school district's implementation of the guidance but, instead, as a pre-enforcement facial challenge. The central allegation was that the new policy would operate not only to sow secrecy and mistrust between parents and their children but also to displace the rights of parents by allowing school officials to make major life decisions for their children.

The complaint asked the district court for a broad remedy: to declare the school district's policy unconstitutional in all of its possible applications and to enjoin its use in the Eau Claire schools.

The district court dismissed Parents Protecting's complaint for lack of standing, and in 2024 the Seventh Circuit affirmed. By way of full disclosure, I was on the Seventh Circuit's three-judge panel and authored the court's opinion.

Agreeing with the district court, the Seventh Circuit concluded that the association lacked Article III standing because, in the words of our opinion, "nowhere does the complaint allege that even one of the association's members—any particular parent—has experienced an actual or imminent injury attributable to the Administrative Guidance or a Support Plan." And without such allegations, the court reasoned, the association presented no case or controversy within the meaning of Article III of the Constitution, leaving the district court without subject matter jurisdiction. The district court's only choice was to dismiss the complaint.

In affirming the dismissal, the court offered a few observations pertinent to today's lecture. Our opinion observed that Parents Protecting's complaint, while plainly brought in good faith and rooted in genuine concerns about potential applications of the policy, contained no suggestion that any parents had approached the school district or any school administrator to discuss plans for implementing the administrative guidance. The court instead saw the lawsuit as coming, as our opinion put it, "as the ink was still drying" on



the new policy, and reflecting what seemed like an effort “to pull a federal court into a range of complex and often emotional challenges on matters of gender identity, where the right policy recipe is not yet clear and the best answers are sure to come in time—through the experiences of schools, students, and families.”

In these circumstances, the court saw Article III’s case-or-controversy limitation on federal jurisdiction as leaving it no choice but to “stay on the sidelines” and to await, if the day came, a concrete dispute about a specific application of the administrative guidance.

Believing our view to be mistaken, *Parents Protecting* sought review by the Supreme Court. The Court declined, but three justices dissented from the denial of certiorari, with one of them (joined by another) explaining his view that the appeal warranted the High Court’s consideration.

So there you have it—a controversial, socially divisive issue, which an associational plaintiff brought to federal court seeking broad pre-enforcement relief; a court of appeals affirming a dismissal for lack of Article III standing; and three Supreme Court justices expressing interest in reviewing the decision.

Along with the law professors and practitioners here in Eckstein Hall this afternoon are many law students. If I paused and randomly called on a few of you to tell me what issues you see in a case such as *Parents Protecting Our Children*—and don’t worry, I’m not about to do so—I bet you would nail it. Whether you believe the Seventh Circuit got the decision right or wrong, I expect many of you would say the appeal raises hard questions about the competing interests between parents and schools and implicates structural considerations of federalism. And a real legal eagle would tell me to be more careful with word choices in describing *Parents Protecting* as a “case” because, after all, the absence of Article III subject-matter jurisdiction means there is no capital-C “Case” within the meaning of the Constitution.

Those observations would be right, but I wonder how many of you would go another step or two and see the parental association’s lawsuit as implicating the role of free speech in our constitutional design—or, to put the point in broader terms, as implicating the relationship between the First Amendment and Article III’s case-or-controversy requirement. That is the issue I want to explore in this lecture.

[T]he court saw Article III’s case-or-controversy limitation on federal jurisdiction as leaving it no choice but to “stay on the sidelines” and to await, if the day came, a concrete dispute about a specific application of the administrative guidance.

While the *Parents Protecting* case provides a helpful example to frame our discussion, my broader observations today extend well beyond the decision—to considerations that have been on my mind for a while about the relationship and role of federal courts and free speech in our constitutional democracy.

Article III as a Structural Limitation on Federal Courts

Allow me to set forth some background common to most, if not all, perspectives on this broader question. Maybe some of this legal foundation will help those of you about to stare down a federal courts exam in the coming weeks.

An Article III Primer

Article III of the Constitution extends the federal “judicial Power” to particular categories of disputes. In this way, the federal courts—from the Supreme Court to all “inferior Courts” that Congress chooses to create, including the one I serve on—are courts of limited jurisdiction. Unlike state courts of general jurisdiction, federal courts must ensure the presence of a case or controversy to act. While our courtrooms are public and open to all, our dockets cannot accept all comers: the Constitution limits us to resolving concrete disputes between adverse litigants—“Cases” or “Controversies,” as Article III calls them.

The justiciability doctrines of standing, mootness, and ripeness, and the related prohibitions on resolving political questions and issuing advisory opinions, give effect to this limitation. Today’s law students learn standing doctrine by reading cases like *Lujan v. Defenders of Wildlife* (1992) and committing to memory the three elements of

what the Supreme Court has called “the irreducible constitutional minimum of standing.” This is the requirement that a plaintiff allege (and in the course of litigation establish with evidence) that they have suffered an injury—a concrete and particularized harm that is actual or imminent, not hypothetical or conjectural—traceable to the defendant and capable of being redressed through a favorable judicial ruling.

Scores of other cases, such as *Allen v. Wright* (1984), tell us that the “law of Art[icle] III standing is built on a single basic idea—the idea of separation of powers.” And this structural principle of separation of powers, the Supreme Court emphasized in *Buckley v. Valeo* (1976) and other cases, “was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787.”

I worry that too many today, foremost non-lawyers, hear descriptions like these as poetic and lofty—idealistic and aspirational, not relevant or practical. For others, I worry that talk of structural constitutionalism—separation of powers and federalism, in particular—invites nothing more than bumper sticker-level labeling and categorizing, with only so-called judicial conservatives being interested in such ideas and so-called judicial liberals more focused on individual rights.

If I can lodge one request with the law students here today, it is to resist these categorizations. Standing is not a conservative invention any more than a belief in federal courts as protectors of individual rights is a liberal invention. Characterizations like those are reductive, empty on many levels, and tend to force foundational elements of constitutional law into binary, mutually exclusive categories. A dialogue limited

to, if not insistent on, “liberal” and “conservative” compartmentalization breeds skepticism and cynicism about law and the proper role of the courts in our constitutional democracy.

Precedents Determined by Law, Not Partisan Labels

Allow me to emphasize the point by returning for a few minutes to the *U.S. Reports*. And let’s start with the Supreme Court’s 1992 decision in *Lujan v. Defenders of Wildlife*. The Court held that environmental groups lacked standing to challenge a federal regulation on the ground that it violated a provision of the Endangered Species Act. In law school and many times since, I have heard *Lujan* dubbed an anti-environmental conservative triumph for the Rehnquist Court.

I have heard much the same about *Clapper v. Amnesty International* (2013). The plaintiffs were a group of human rights lawyers concerned that the government, as part of conducting electronic surveillance pursuant to the Foreign Intelligence Surveillance Act, would monitor their phone calls with their clients. The Court held that the lawyers, who did not actually know whether the government was monitoring their calls, had not alleged an injury, actual or imminent, under Article III. Many seem to label *Clapper* as a win for conservatives and national security and a loss for liberals, privacy, and civil liberties.

By those measures, I think the same observations apply to *Los Angeles v. Lyons* (1983)—a must-read for all law students, in my view. *Lyons* is difficult, as everyone reading it empathizes with its plaintiff, Adolph Lyons. A simple burned-out taillight led to a Los Angeles police officer pulling him over and placing him in a chokehold that left him gasping for air, spitting up blood, and blacking out. And the LAPD, at the time, had a history of subjecting African American men like Mr. Lyons to these types of chokeholds. So Lyons invoked Section 1983 and sued the city, seeking not only compensatory damages for his injuries but also declaratory and injunctive relief to bar the LAPD’s future application of chokeholds.

The justices had no difficulty concluding that Lyons had Article III standing to pursue money damages, but a majority held, over vigorous dissent, that he lacked standing for equitable relief. It reasoned that he could not establish a likelihood of future injury—of being subjected to another chokehold by the LAPD. The Court’s dismissal of

Standing is not a conservative invention any more than a belief in federal courts as protectors of individual rights is a liberal invention.

Lyons's request for injunctive relief, I have often heard it said, marked a victory for "law and order" and a loss for civil rights.

As you might expect, and as the Court observed in its opinion, the LAPD's use of chokeholds resulted in "major civic controversy" with "a spirited, vigorous, and at times emotional debate"—with people speaking up and voicing their concerns and perspectives about local police tactics. From what I can tell, the police department sought to quell the concerns by imposing a moratorium on the use of chokeholds—without any federal court ordering it to do so.

Applauding or criticizing *Lujan*, *Clapper*, and *Lyons* as conservative wins and liberal losses might make good sound bites, but, in my respectful view, that labeling misses the true mark and risks the ideological pigeonholing of law. The more complete and compelling view comes from seeing the decisions as structural, as giving effect to Article III's limitation on the exercise of judicial power to "Cases" or "Controversies." To borrow a phrase, let's be more concrete and particular. *Lujan*, *Clapper*, and *Lyons* show federal courts requiring the presence of an injured party, or someone facing an imminent risk of injury, before passing on often-difficult legal questions.

Recent Decisions Leaving Some Issues to Other Branches of Government

If I have not convinced you, allow me one more chance. Two opinions from the Supreme Court's last Term may help persuade you.

Consider first *Murthy v. Missouri* (2024), a case in which the plaintiffs—two states and five individual social media users—alleged that federal executive branch agencies and officials pressured online platforms to enforce their content-moderation policies against speech that many would regard as ideologically conservative, including, for example, criticism of vaccine mandates. These plaintiffs sought a broad injunction to limit executive branch communications with the platforms. But the Supreme Court concluded that the plaintiffs' alleged injuries were not redressable because they stemmed from the independent actions of the platforms—third parties not before the court. Article III's standing doctrine, the Court emphasized, prevented a federal court from exercising oversight over a coordinate branch of government—the executive branch—in such circumstances.

Next consider *FDA v. Alliance for Hippocratic*

Medicine (2024), often referred to as "the mifepristone case." As you can probably guess from the case's shorthand name, it involved the Food and Drug Administration's approval of an abortion-inducing drug. The Court did not reach the merits, instead concluding that the plaintiff doctors and medical associations lacked standing to challenge the FDA's approval of mifepristone. Since the plaintiff doctors were not prescribing, and did not have to prescribe, mifepristone, what the plaintiffs were really seeking to limit was the authority of other physicians—non-parties to the lawsuit—to legally prescribe the drug. To permit the lawsuit to proceed, the Court worried, would risk giving any citizen standing to challenge any government action deemed objectionable, rather than presenting those objections to, as the Court put it, "fellow citizens including in the political and electoral process."

For reasons obvious to all, many headlines cast *Murthy* and the mifepristone case as liberal wins and conservative losses. Do not sign me up for that view. The Court resolved both cases not on the merits but, instead, on jurisdictional grounds rooted in structural reasoning.

If you are jotting down the cases I have mentioned and keeping score of the winners and losers, the winner sure seems to be structural constitutionalism. One broad takeaway is that Congress, the executive branch, and state and local government—not federal courts—are the proper outlets through which to address these issues and, by extension, resolve grievances. Put another way: I think it is too shallow, if not misdirected, to put these cases in win-loss columns based on what we perceive as conservative, liberal, or some other ideologically measured outcome.

Is my sample set too limited and perhaps a bit cherry-picked? That's fair at some level. Can't outcomes be explained along multiple dimensions? Yes, that too is fair. Am I trying in these thoughts to offer a unifying theory of all of Article III standing law? No, definitely not. I view my point as more limited—to observing that structural constitutionalism best explains all or at least major portions of these significant standing decisions.

Article III's Structural Limitation, Democracy, and the Role of Speech

By no means am I the first to consider these issues. Lots of ink has been spilled on Article III's case-or-controversy requirement and its structural implications within the Constitution's broader

design. Law journals are loaded with insightful commentary, and I am grateful for the opportunity that this lecture has provided me to break away from my daily diet of reading briefs morning, noon, and night. The academy has a lot to offer judges, and for that I am thankful.

As part of my brief foray into the academy today, I want to offer my own perspective on a structural dimension of Article III standing doctrine. It is present between the lines of some court decisions and much commentary but not express on the surface.

Social Controversy

Let's go back to the beginning and the Seventh Circuit's decision in *Parents Protecting Our Children v. Eau Claire Area School District*.

To read the decision is to see the social controversy underpinning the parent association's claims challenging the Eau Claire School District's gender identity policy. You might see the case as a "culture war" dispute taken to federal court—a postcard example of litigation raising difficult and socially divisive questions about parenting and gender identity in public schools.

In no way should you hear one ounce of criticism in anything I am saying. To the contrary, and as the Seventh Circuit emphasized in its opinion, *Parents Protecting* clearly brought its claims in good faith and out of genuine concern about the administrative guidance and how local schools may implement it. And so, too, was it clear that the school district promulgated its policy to avoid its member schools getting caught flatfooted or making mistakes on delicate and difficult subject matter.

In explaining why *Parents Protecting* lacked Article III standing, the court offered a few observations apt to my coming points. Nowhere in the complaint or any of the parties' briefs did the court see, as our opinion observed, "an[y] indication that any of *Parents Protecting*'s members asked the School District about how it plans to implement the Guidance." Instead, the lawsuit leveled a pre-enforcement challenge to the district's policy, urging the federal district court to declare the policy facially invalid—root-and-branch unconstitutional in every possible application. Yet facial invalidation of a law, the Supreme Court has emphasized, is highly disfavored and, as our opinion saw it, "especially so where, as here, the relief sought implicates a local policy and weighty principles of federalism."

By way of contrast, just last month, the First Circuit grappled with a very similar gender-identity

policy, except that the lawsuit was brought by two parents challenging a concrete application of the policy to their child. Nobody disputed that the parents had standing, and the court resolved the case on the merits.

The Seventh Circuit's *Parents Protecting Our Children* decision, I would submit, is about a federal court trying to stay in its lane, about taking care to insist on a concrete dispute between adverse litigants, about making sure the right parties are present before reaching the merits of legal questions of substantial consequence, and about considering whether the proper parties are seeking the proper relief.

The Practicality and Respectfulness of Article III

Consider a few of the questions that would have taken center stage had the Seventh Circuit concluded in the Eau Claire case that the association of parents *did* have standing and, from there, had reached the merits of their constitutional challenges to the administrative guidance:

- Do principles of substantive due process—and the right to parent in particular—preclude local school districts from even attempting to provide guidance to principals and counselors on how to address matters of gender identity?
- If the answer is "no" (that is, if there is no complete legal bar), do schools have any discretion in extraordinary circumstances to consider the safety of a student in determining whether and when to communicate with the student's parents about these issues?
- On the other hand, if the school district's policy is constitutionally problematic on its face, what principles should guide the necessary analysis of the law's tailoring?

Permit me to say that these are hard questions and ones a federal court ought to be hesitant to wade into unless and until an imminent or concrete injury and a challenged application of the gender identity policy present themselves in a complaint.

In Praise of "The Tortoise"

So Article III's case-or-controversy requirement worked to return these difficult questions to the Eau Claire Area School District—and, even more specifically, to the district's school board, which meets in public and permits school officials, parents, and other interested parties to raise questions and share perspectives. It is in this very practical way that Article III promotes democratic

deliberation and federalism by channeling questions and concerns about potential applications of a local policy—and perhaps sound suggestions for modifying, clarifying, or even repealing it—back to the meeting room from which it emerged.

This is how Article III's limitation on the exercise of federal judicial power leaves policymaking, and the difficult line-drawing it often entails, to the exercise of free speech. Speaking up, objecting, and sharing perspectives with those who differ from us is how we understand, persuade, and, often, find common ground where agreement seems beyond reach.

If that framing is too idealistic in today's times, I would hope skeptics would at least recognize that the alternative—permitting very difficult legal questions to come to federal court based only on a showing of a genuine worry—casts a vote of little confidence in the role that speech can play in finding solutions, or perhaps tolerable compromises, to some of the most divisive questions of our day. And even if these culture-war lawsuits should not be viewed as a vote of confidence in federal courts as the ultimate decision makers, they put great pressure on principles of restraint designed to allow democratic processes—whether at the national or local level—to offer answers and outlets for persuasion and compromise in the first instance.

Our constitutional design envisions constitutional answers coming in slower-paced increments than contemplated by pre-enforcement facial challenges like the one *Parents Protecting* lodged against the Eau Claire policy. It is not happenstance that the architect who designed the Supreme Court, Cass Gilbert, thought the tortoise an appropriate decorative and symbolic feature for the building's design. In the same way that tortoises move slowly, sometimes the law develops best when principles, doctrines, and answers emerge with time and, I might add, with more speech and dialogue helping to bridge social divides. Pre-enforcement facial challenges, by contrast, often result in expansive injunctions that apply in one fell swoop—the sort of forward-looking policymaking that is best left to the more democratic branches.

The premature injection of a federal court's decision-making authority into a matter of state or local importance risks not only chilling free speech but also painting with too broad a brush. The Eau Claire School District may elect to navigate the delicate issue of student gender identity in a manner that completely differs from even the

The premature injection of a federal court's decision-making authority into a matter of state or local importance risks not only chilling free speech but also painting with too broad a brush.

next town over, let alone the next state. And that's the point. Federalism both permits and promotes the adoption of different solutions to the same challenges. And over time, states, local governments, and school districts, operating as “laboratories of democracy,” as Justice Louis Brandeis coined the phrase more than a century ago, might arrive at the best solution. But where a federal court intervenes with no case or controversy to resolve, our constitutional structure does not operate by its federated design.

Do not hear me to be questioning all pre-enforcement or facial challenges. Far from it. Take, for example, the overbreadth doctrine, which allows challenges to a restriction on speech not as applied to a particular plaintiff, but because the restriction may apply to others in ways that limit or chill protected speech. If that sounds at odds with my description of the rules for Article III standing, thank you for staying awake because, yes, overbreadth doctrine in some ways is an exception to those rules.

So why have an overbreadth doctrine? Foremost because the law wants to protect and promote speech, and it will allow what otherwise might seem like a premature lawsuit to achieve that end. Overbreadth doctrine's remedy—declaring a statute facially invalid—returns the ultimate question to lawmakers, promoting the judiciary's proper role. So overbreadth doctrine, too, is structural in this way.

Parents Protecting Our Children v. Eau Claire Area School District is not an aberration in federal courts today. In conducting my own research, I found many cases of federal courts receiving

pre-enforcement and often facial challenges to federal, state, or local policies on a range of matters fitting the culture-wars label—restrictions, for example, on school policies regarding sexual orientation, the content of libraries, course offerings, vaccine mandates, and student-loan forgiveness programs. I am not suggesting one or another particular lawsuit on these topics is problematic, inappropriate, or not justiciable. Rather, I am observing from my experience thus far on the Seventh Circuit that culture-wars litigation is a reality in our times.

Racing to Courthouses Rather than Resorting to Speech

I am curious why these culture-war disputes find a federal courthouse more attractive than discourse and dialogue. No doubt many factors explain the observation.

Some of you surely are thinking the answer is obvious. Dialogue on issues such as gender identity, library collections, and public school course offerings leads to dead ends and stalemates, if not shouting matches—literally or electronically—between mutually exclusive perspectives. Genuine dialogue, many reactions may run, is so very scarce in America today.

Part of the reaction I get. Yesterday's image of the public square—Norman Rockwell-like gatherings of people coming together to discuss, debate, and find common ground on questions about local affairs—seems absent, if not unrealistic for many. Pause and ask yourself the last time you experienced anything like that. I bet your list is short.

So much of our communication today does not occur in groups of any kind, much less with members of our communities. Quite the opposite: Most of our interactions occur when we are communicating alone—each of us by ourselves sending and receiving information on our phones, tablets, and computers. Look around the next time you are in a coffee shop, restaurant line, airport lounge, or riding the bus, and notice how many people have their heads buried in a screen. I would plead guilty to that observation many times over.

It is not a point of criticism here. I am more highlighting the magnitude of the challenge upon us, as people, as communities, and as a nation, for the role and path of speech in providing the recipe for answering today's most difficult, socially divisive questions.

Robert Putnam's Work

In preparing for this lecture, I learned that similar observations, made by many others, spawned an entire area of study on the decline of civic engagement, community connectedness, and social discourse in the past several decades. Harvard political scientist Robert Putnam seems to have minted many of these observations in *Bowling Alone: The Collapse and Revival of American Community* (2000)—a book I have had a hard time putting down.

Putnam focuses on the social isolation and fragmentation that has gripped much of the United States—our limiting communications to those with similar views, and our hesitancy, if not unwillingness, to form social connections with those holding different ones. Bowling, Putnam observed, has remained popular, but with many no longer joining a team or league and instead preferring to bowl alone—much like the declines we have seen in people attending religious services, or joining the Rotary Club, the Scouts, or a card club. This trend has resulted in a loss of what Putnam calls “bridging social capital”—which has manifested itself in less democratic participation, among other negative consequences.

From my own perspective, we see this loss of bridging relationships, if you will, in many unfortunate ways today. Communicating so much less in-person and so much more electronically with one another has brought with it the incivility we see in today's discourse. Too many people write things in a text and a post that they would never say to someone in person.

Stepping back and thinking more broadly about the state of speech today, I have a hard time seeing much reality in Justice Oliver Wendell Holmes's famous metaphor—the marketplace of ideas. Justice Holmes invited us to see the exchange of ideas in a democratic society as a marketplace where speech comes together in ways that allow facts to disprove lies, good ideas to win out over bad ones, understanding to clarify confusion, and tolerance to defeat intolerance. Justice Holmes viewed speech as occurring within settings—the community square, the meeting hall, the local diner, or a neighbor's living room—where bridging social capital, as Robert Putnam would put it, was being built and deposited. Don't get me wrong: I want to see speech in those terms, but I'm doubtful the marketplace of ideas metaphor has much reality in today's socially isolated times.



To my mind, it seems much more accurate to see ourselves as living and communicating in many different marketplaces. And, if there is utility in adhering to the analogy, I would go a step further. I tend to think that most of us have created our own marketplace, where we communicate and, by and large, define what speech enters and what speech gets transmitted and pushed out. Indeed, we might even think of those marketplaces as little fishbowls that we confine ourselves within and populate as we choose—with our own news favorites, our own messaging feeds, and our own groups of friends and followers.

Once again, my observation is not all criticism. Indeed, I think a lot of this comes from necessity. Today's internet age, at the risk of understatement, is not like yesterday's town square. It's more like a massive ocean—full of more water than we can grasp or measure, always producing waves and storms, and leaving us feeling adrift. Our shopping carts, to add yet another metaphor, feel overloaded and the market too big, too packed, and open too many hours each day, leaving us not sure how to participate.

Those practical realities, at least as I see them, help explain why many create fishbowls or echo chambers: they are easier and safer. But we achieve this tolerable equilibrium for ourselves by limiting speech—putting ourselves into a space where our ability to stay afloat comes from reducing the range of information and perspectives we consume. The frequent result, then, is skepticism, cynicism, and at times what seems like tremendous mistrust of not just public officials but also fellow parents and

neighbors. Bridging divides, brokering compromise, and striving for middle ground seem bygone.

A Road Ahead

Let me try to bring all of this together with some observations I have come to since joining the federal judiciary and hearing appeals like the one presented in *Parents Protecting Our Children v. Eau Claire Area School District*.

By limiting the judicial power to the resolution of cases or controversies, Article III empowers Congress and the president at the national level, and it leaves matters closer to home to state and local governments. This is how we structured our democracy, with the Constitution creating a limited role for the federal judiciary. Fulfilling that responsibility is not about preferring the right lane or the left lane—and definitely not about promoting or pursuing any particular outcome—but about resolving only concrete disputes between adverse parties. Keeping the federal judiciary in its designated lane promotes democracy by limiting the authority of the least democratic branch to weigh in on concerns better reserved for law and policymakers and, by extension, “We the People” through our speech.

Oftentimes, of course, parties in federal court can establish standing—alleging and showing concrete and particularized injuries—and the judiciary will find itself smack in the middle of a matter of great social controversy and consequence. That comes with our job as judges. To restate the point in legal terms, federal courts—the Supreme Court has emphasized—

By staying in their lane, federal courts leave certain matters to us as people to resolve in the first instance.

shoulder a “virtually unflagging obligation” to “exercise the jurisdiction given them” by Congress.

Let us not doubt that general precept. But recognizing an obligation is not the same as knowing whether it exists in a particular set of circumstances. Indeed, in preparing my remarks today, I learned that the *Parents Protecting* decision itself generated ample commentary, with some people thinking we got it right and others thinking we did not. I will leave it to each of you to decide where you stand on the decision. (And, yes, the pun was intended.)

My own takeaway is to reinforce what I see as a relationship between Article III’s case-or-controversy limitation and the role of speech in our constitutional democracy. By staying in their lane, federal courts leave certain matters to us as people to resolve in the first instance. Many times the resolution comes through the roles played by elected representatives—selected by us as voters based on the issues facing our nation, states, and local communities. Yet at other times we can and should voice our perspectives more directly—by attending city council, school board, or any number of other policymaking meetings. By attending and speaking up, we exercise a right that our Constitution not only protects but—as a structural matter—sees as essential to the operation of our democracy.

It misses the mark, in my respectful view, to see a judicial decision like *Parents Protecting Our Children* as misapplying a conservative legal doctrine—Article III standing—to deliver a loss to an association of conservative parents genuinely concerned about the promulgation and potential implementation of a liberal gender-identity policy. The decision is better seen as a court respecting Article III’s limitation and leaving, at least for the time being, questions about applications of the policy to ongoing dialogue—including robust questioning—in school board meetings or one-on-one meetings with principals or counselors.

Another observation may rush to mind for some of you. I very much sense that some people may feel the biggest challenge today to be not so much

individuals speaking up as getting policymakers to listen, empathize, and show a willingness to find common ground. That, too, may be right, for there is no doubt that our democracy is as complex as the challenges facing it in today’s times. But one thing I believe for certain: the solution cannot be to give up on speech altogether.

Is the path forward easy or comfortable? Not by a long shot. Culture wars are very real, and the concerns underpinning them often challenging and emotional. Perhaps what most concerns me is how we, as people in today’s times, tend to approach them—not by leaving our self-selected echo chambers and engaging with each other on a new idea or maybe just enough to find a tolerable solution or compromise. And if we do leave our fishbowls, I worry that our first instinct is to race to a federal courthouse, shortchanging the prospect of speech as a means through which to effect change in our democracy. We can make that choice, but Article III’s case-or-controversy requirement may leave a federal court with no choice but to stay on the sideline.

My modest hope for this lecture is no more than inviting you to see the limited role for federal courts reserved by the Constitution as explaining why, at times, answers to hard questions must come through speech—by using our voices to press for change or compromise. In the end for me, then, it is about reinvigorating our sense of community, attending the local meeting, and engaging in respectful and informed dialogue. That’s the recipe we endorsed in 1789, and the one we need to reinvent in 2025 by investing in relationships to bridge our many divides.

Let me restate the invitation in terms more near and dear to Marquette Law School. The namesake of today’s lecture, E. Harold Hallows, served as chief justice of the Wisconsin Supreme Court and a beloved law professor at this great school for almost 30 years. As I read the tributes to Chief Justice Hallows published after his passing, what stood out most was not this or that about his jurisprudence or scholarship, but an observation about how he lived his life—fully engaged. As a practicing lawyer and public citizen in Milwaukee, he played an active role in local, state, and national bar associations, he participated in public conversations about court organization and law reform, and he engaged in a range of civic, charitable, and religious organizations.

Hallows used his talents—and, importantly, his voice—to shape and better his community. Let this great example inspire us today. ■

Poll Results Illuminate American Civic Life

Marquette Law School Poll Shows Who Participates and How Much.

BY CHARLES FRANKLIN

Let us begin by recalling a famous dictum from 1840: “The political associations which exist in the United States are only a single feature in the midst of the immense assemblage of associations in that country. Americans of all ages, all conditions, and all dispositions, constantly form associations If it be proposed to advance some truth, or to foster some feeling by the encouragement of a great example, they form a society.” — Alexis De Tocqueville, *Democracy in America*, Vol. II, Sec. 2, Chap. V.

That was then.

In *Bowling Alone*, published in 2000, Harvard University political scientist Robert Putnam highlighted the decline in group membership and activity in the United States in the latter half of the 20th century.

And in a sequel to *Bowling Alone*, Putnam and Shaylyn Romney Garrett demonstrated that the extensive civic associations Tocqueville found in the 1830s had become far less common by the beginning of the 20th century. Specifically, in *The Upswing*, published in 2020, Putnam and Garrett documented low levels of group memberships in the early 1900s and the dramatic rise of associations over the next 50 years, before the declines found in *Bowling Alone*. The hopeful message was that a rise of associations could happen again. Americans may yet rediscover the value of civic organizations.

In March 2025, the Marquette Law School Poll took a look at elements of civic participation

in the United States today. Membership in some types of associations is quite limited, while there is greater participation in other groups. Here we look at levels of membership, who participates, and the relationship of membership with opportunities to influence local policymaking.

Membership

Among a national sample of 1,021 American adults, just 6% say they are members of (“belong to”) “a business or civic group such as Rotary, League of Women Voters, Masons, or Junior League.” Some 13% say they are members of “a neighborhood association, block group or club, or any group dealing with other local issues.” And 28% say they do volunteer activities for organizations in some way.

To combine the data on membership of this sort (a civic group, neighborhood association, and performing volunteer work for an organization, to restate

them in brief), 34% of American adults are engaged in at least one association or activity. We will refer to them as “members,” or call this “membership,” in the discussion below.

We will let one other form of membership stand by itself here: regular participation in religious services. The ubiquity of places of worship provides near-universal access to an extent that more secular organizations may not. Thirty percent say they attend religious services at least once a month, with 20% attending a few times a year and 51% attending seldom or never.

Actions

Interaction with neighbors is another form of civic activity. Thirty-five percent talk with their neighbors at least a few times a week, rising to 76% if speaking at least monthly is the measure.

Overall, 37% of adults say that on at least one occasion they have attended a “local school meeting, such as the PTA or PTO,” and this percentage rises to 47% among those with school-age children.

A similar percentage, 35%, say they have attended a city council or school board meeting, a rate that rises from 24% for 18–29 year olds to 44% among those 60 years old or older.

And aspirationally, 72% say they would work with neighbors to keep a local elementary school

open, and 83% say they would work to keep a fire station open.

Expectations of others

Trust in the federal government has declined steadily since the 1960s. In this March 2025 national poll, 23% say they trust the government all or most of the time, with the majority, 63%, saying only some of the time and 14% saying they never trust the government.

There is somewhat more confidence in getting a fair hearing from a local school board, city council, or county board, with 51% who say they would get a fair hearing, while 49% don't think they would.

Trust in people is somewhat higher, with 57% who say most people can be trusted and 43% who say people can't be trusted.

Who is more likely to join?

College graduates are more likely to be members of an association (45%), including volunteering (as noted above), than are people without a college degree (28%).

Black respondents are more likely to be members or to volunteer (44%) than are white respondents (33%) or Hispanic respondents (30%). This advantage in Black participation is related to greater church attendance and associated volunteering, but it persists for secular civic organizations not directly connected with churches.

Homeowners are also a bit more likely to be members of associations (36%) than are renters (30%).

Perhaps surprisingly, there is little difference in association membership by age. Among those 18–29, 33% are members, as are 35% of those 30–44, 31% of those 45–59, and 35%

of those 60 and over. This lack of correlation with age also holds for each of the types of membership: civic organizations, neighborhood groups, and volunteer activities.

Having school-age children is related to only a slight increase in membership, 37%, compared to 32% for those without children at home.

Church attendance has a strong relationship with membership in secular groups, as we've defined it above. Those who attend church at least monthly have a membership rate of 57%, while those who attend a few times a year have a 32% membership rate and those who seldom or never attend have a 21% membership rate.

Some of this is likely connected to volunteer activity that is church-related. Frequent church-attenders have a 49% rate of volunteering, while those who seldom or never attend volunteer at only a 17% rate. However, those who attend often are also more likely to be members of civic organizations and of neighborhood groups than are those who seldom attend.

Membership and opportunity to influence local government

Members are more likely to attend school meetings, such as the PTA or PTO, with 50% of members attending versus 31% for non-members. Forty-seven percent of those with school-age children have attended such meetings, while 34% of those without school-age children have done so.

Fifty-one percent of members have attended school board or city council meetings, compared to 26% for non-members.

As for expressing willingness to work with neighbors to keep

the nearest elementary school open, 79% of members say they would, while 69% of non-members would. There is little relationship of membership with expressing a willingness to work to keep a nearby fire station open, with 85% of members and 82% of non-members saying they would.

Those who are members of associations are considerably more likely to think they would get a fair hearing from the school board or city council, 60%, than are non-members, 46%.

Those who are members show higher levels of trust in other people, with 65% saying that most people can be trusted versus 52% among non-members.

Conclusions

This one survey cannot tell us whether civic memberships (in associations, organizations, etc.) have begun to reverse the decline Putnam found in the second half of the 20th century. We find that about one-third of adults take part in civic associations of some kind, and no doubt a more specifically expansive list of associations would increase this percentage. But we also find that for certain demographic groups membership passes the 50% mark. Membership in civic organizations is also associated with opportunities to influence local government and a greater anticipation of a fair hearing from school boards and city councils. Whether the current level of civic membership is historically high or low, it is clear that membership opens pathways (including, not least, the perception of pathways) to influencing local decision-making. ■

Charles Franklin is professor of law and public policy and director of the Marquette Law School Poll.

Connectivity (We Don't Mean Wi-Fi)

A Dialogue on Whether the Social Cohesiveness of Communities Has Been Weakened by Changing Times, Technology, and Values.

Judge Michael Scudder of the U.S. Court of Appeals for the Seventh Circuit and Professor Charles Franklin, director of the Marquette Law School Poll, are both observers of the dynamics of American civic life. Put them together for a dialogue conducted both in person and by email, growing out of Judge Scudder's Hallows Lecture, and you have a lively discussion on how Americans are and are not connected when it comes to their communities, how things have changed, and where involvement in community life is headed. This is an edited text of their exchange in July 2025.

Judge Scudder: So many people today observe that we are living in divided times. It is hard to disagree, especially if we limit our focus to our nation's greatest challenges. But these times are not America's first experience with division and controversy. Your national polling data show that 40 percent of people polled identified as neither liberal nor conservative, considering themselves, rather, to be "independent," or "other," or to have "no preference." Do the data suggest that we may perceive more division than exists? Is there a way to capture with more granularity where people perceive or experience division? What kinds of issues are ones on which people are less likely to engage with others to hear new ideas or to remain open to compromise?

Professor Franklin: By some measures, we are more polarized over politics than in the second half of the 20th century. Voting patterns, for example, show much less crossover or split-ticket voting than there was 50 or 75 years ago. But by other measures, there is less division than one might think. In 2024, for example, 37 percent of people we surveyed in a national sample described themselves as politically moderate, with a total of only 22 percent describing themselves as either very conservative or very liberal.

But people see the opposite party as far more extreme than they see themselves: Among Democrats, only 13 percent describe their party as very liberal, but 69 percent of Republicans see the Democratic Party that way. Likewise, 27 percent of Republicans see the Republican party as very conservative, whereas 65 percent of Democrats see the GOP that way. Our division is partly perception.

There are still an awful lot of people toward the middle, rather than a society divided into polar opposites. But what has changed pretty clearly over the last 20 or 25 years is that the parties are a bit more homogeneous. So if you're looking at Democrats, you're going to find that a lot of liberals have now sorted themselves into the Democratic Party. Conservatives are sorted into the Republican Party.

So it's a sort of paradox that we're socially more divided but that, in terms of opinions on specific issues or even broad ideology, we do still have a pretty centrist country that leans a bit to the left or a bit to the right. It's a minority, on just about every issue, in which you see people genuinely at polar extremes.

When new policies emerge, or issues have not been topics of intense public debate, voters often show less division, but once party leaders divide on the issue, and communicate those divisions to voters, then polarization increases. In our recent polls of Wisconsin, we found bipartisan support and less partisan division on funding for special education, cell phones in the classroom, allowing citizens to place initiatives on the ballot, election (rather than appointment) of state Supreme Court justices, legalization of marijuana, mental health services in schools, and education standards in the state. Of course, there are other issues for which the partisan divide is deep, such as taxes for schools and expanded Medicaid benefits for new mothers. And partisan divisions are enormous when it comes to feelings about the president or the governor or issues most closely associated with those political leaders.

Scudder: Some of my family members think of themselves as fairly centrist. And I think of them as fairly centrist. But I'm also highly confident that they would tell you that these are the most divisive times ever in the history of the United States. And even if they may tack only a little bit right or a little bit left, I also think that they would say, "I think the other side's crazy. There's no way ever that I'm going to go to some meeting to talk to those people."

Franklin: That perception that the other side is so far away from you makes compromising much less possible. I do think we see this greater polarization in Congress in particular, but you see it in most state legislatures as well, where those legislative bodies don't seem to engage in the same level of bargaining, compromise, horse trading that we saw in the 1950s, '60s, '70s, '80s. It wasn't that we didn't have intense partisan disagreements then. I mean, certainly look at the civil rights and anti-war movements of the '60s—that was a lot more violent than our basic situation today. But if legislative parties can't bargain with each other and instead it's simply a matter of who can get the 51st vote, the one-vote majority, then we are seeing less of the classic deciding how to cut the cake and more of a divide over even what kind of cake to bake. And that, I think, does discourage people from participation, it does discourage them from thinking that Congress or their legislature can work.

SPEECH IN DIVIDED TIMES

Scudder: Drawing on the work of John Stuart Mill and others, Justice Oliver Wendell Holmes invited us to see the exchange of ideas in a democratic society as a marketplace where speech comes together in ways that allow facts to disprove lies, good ideas to win out over bad ones, understanding to clarify confusion, and tolerance to defeat intolerance. Justice Holmes viewed speech as occurring within settings—be they the community square, meeting hall, local diner, or a neighbor's living room—where bridging social capital, as Harvard political scientist Robert Putnam would put it, was being built and deposited.

Don't get me wrong: I want to see speech in those terms. But I'm doubtful the marketplace of ideas metaphor has much reality in today's socially isolated times, especially where so much communication occurs online within self-selected echo chambers. What can you tell me from the polling data?

Franklin: In our personal lives, there remains considerable conversation about political matters.

Among family and friends, 66 percent say they talk about politics once a week or more often. But this drops to 38 percent who talk that often with coworkers, a rate that seems to have declined in recent years. That's important for the notion of bridging social capital because the workplace brings people of more divergent views together in a way that family and friendship groups seldom do. Avoiding potential conflict at work may be good office policy, but it reduces exposure to a range of views among people who have other things, such as occupations, in common.

In our Wisconsin polling, we have found 32 percent who have said, in one of our surveys or another, they have stopped talking about politics with someone because of disagreements. When conversation does occur, 47 percent say that they encounter about an equal mix of liberal and conservative views, while only 16 percent say their conversations are almost all liberal or all conservative.

SEEKING ALL OR NOTHING

Franklin: Of course, disagreement is endemic to the human condition. So we shouldn't have a Pollyannish view about this. But when we have disagreements that could involve some compromises and trade-offs, I think elected bodies—whether you think of it as a city council or a school board or a legislature—have, at least in principle, the ability to make the trade-offs between the sides. You know, you want this sidewalk widened, but how about if we widen it to 12 feet instead of 15 feet? Or what do we do about this neighborhood and how to improve the sidewalks there? There are things where you could imagine negotiations leading to something that leaves everybody at least partially satisfied. But where is the incentive to do that? Those sorts of trade-offs become less attractive if we think we can just get everything we want.

Scudder: Do you think that, as people, we are less understanding, less tolerant of, less willing to embrace just the inherent messiness of democracy? Do you view us as embracing less that some issues are just messy and that, to find the right sum of compromises, there is going to be some anxiety? You know—that there's going to be some emotional toil, it's going to be hard work. I think the low level of willingness to do this hard work is especially discouraging.

Franklin: If I'm absolutely convinced that my opponent is dug in and will never agree to a good-



Judge Michael Scudder (left) and Professor Charles Franklin.

faith compromise on something, that drives a lack of willingness to see if we might together find something that we hadn't seen before.

Scudder: Do you think we're at risk of younger generations just having not even experienced the willingness to do that?

Franklin: Yes.

INCIVILITY

Scudder: For all its promise and value, today's internet age seems to be a major contributor to the observation that we have lost some of our civility in relationships with others. Too many people write things in a text message or post that they would never say to someone in person. Dialogue on issues like gender identity, library collections, and public school course offerings leads to dead ends, stalemates, if not shouting matches—often electronically—between mutually exclusive perspectives. We are having a hard time living by the age-old truth that it's often better to bite your tongue than to deliver a sharp-edged message. And it sure seems that the degree and prevalence of incivility contribute to our unwillingness to engage with others on controversial, divisive subjects.

Franklin: "Flame wars" are as old as the internet. In emails even from the 1970s to community bulletin boards in the 1980s to Twitter in the 2000s, electronic communications have shown a remarkable ability to bring out our worst. The modern performance art of trolling others on social media and organized campaigns to push a point of view and attack other views have made lack of civility a serious issue and help drive people further into polarized views. I think the best we can say is, "Go back and read the newspapers of earlier ages." The papers of the 1850s, or for that matter of the 1780s, contain a tremendous amount of partisan vitriol. Robust debate now isn't always as

high-minded as the Lincoln–Douglas debates, but it pretty well never has been.

TRUST

Scudder: Your survey question that asked whether, generally speaking, the polled person believes that most people can be trusted reveals one of the biggest gaps between young people and older people, with only 40 percent of those ages 18–29 stating that most people can be trusted, compared to 75 percent of those 60 and older. I wonder if part of this is a result of less coming together in public spaces, less opportunity for bridging divides. The same question divided other demographics as well: 49 percent of those making less than \$30k think most people can be trusted, compared to 70 percent of those making \$100k or more; 45 percent of those with less than high school education believe most people can be trusted, compared to 66 percent of those with a post-grad/professional degree.

Your observation that individuals under 45 who are constantly online are a bit more trusting than their counterparts who are online less frequently might be a source of hope for the future. While the internet is often understood as a place of great division and disunity, it does hold the capacity to bring individuals together who may be very unlikely to interact face-to-face—so long as we break out of our fishbowls (or echo chambers) and stay open to hearing other perspectives.

Franklin: It's a worrisome finding that the young are much more likely to say that people can't be trusted—a finding with ramifications for possible social engagement and organization. As you say, but to state it "in reverse," from the distrust angle, among adults under 30, 60 percent say most people cannot be trusted, compared to 25 percent of those 60 or over.

CIVIC ENGAGEMENT

Scudder: How does today's younger generation define civic engagement? When I think of my own adult children, I am far from sure they would identify with, or know anything about, many of the organizations often mentioned in *Bowling Alone* and similar scholarship. Might a biking or swimming group, a morning coffee group, or a book club qualify as a new form of civic association where, as Dr. Putnam would put it, bridging social capital is being built?

Franklin: To be sure, there are newer social activities that have some of the bridging qualities that Putnam discusses. Some of these lack the formal organizational characteristics of Putnam's past groups, but may nonetheless provide opportunities for developing connections among heterogeneous individuals. The bad news is that studies of time use over recent decades show we are spending more time at home and less time in the community with others outside our families. Face-to-face connections are crucial, and they cannot be easily replaced by social media connections.

Scudder: It concerns me that the idea of actually meeting to resolve a culture-war issue almost seems a fictional option—one from the town of Mayberry in the TV show from the 1960s, but not today's America. My concern is the product of my own experience: In-person discussion, especially when dedicated to resolving a challenge or offering a perspective on a difficult issue, seems much more fruitful and effective. But I am not sure that today's younger generation would agree, as face-to-face meetings and dialogue are not their norm.

I've thought, on balance, the internet age has added much more value to our individual and collective life than its added burden or cost. So in no way would I want to turn the clock back. What I do perceive is that the internet is like an ocean of information, and it's relentless. And that the way that you avoid drowning is to self-select into your own fishbowl, into some little corner, and, as a result, you don't get exposed to a lot of diverse information and diverse perspectives. There's more speech than ever, but the marketplace is so flooded.

Franklin: I think that that element of self-selection in what we read, what we watch, is a big driver of separation, or can be, whether it's polarization or simply not being exposed to arguments on other sides. I think the beauty is that if you're interested in something, even an esoteric

something, there are almost certainly some places out there where people are doing relatively serious writing and thinking and talking about that. But it competes in this huge cacophony.

I think the best thing about the modern electronic media is that it has opened opportunities for vigorous debate, not in 140 or 280-character tweets but in the new longer-form opportunities, initially blogs and now Substack. That short bursts on social media offer less reasoned argument should not distract us from the abundance of far more serious discussion and argument on these long-form opinion websites.

That we have those places for debate does not mean we are likely to resolve differences there. At best, the marketplace provides a range of competing ideas. Resolution, I think, requires institutions that can hear debates and have some ability to make authoritative decisions—school boards, city councils, legislatures, even courts. Representative elected bodies have the ability to create compromises and provide trade-offs that may not make any side entirely happy but that give some incentive for solutions that take seriously the various sides of an issue.

Remember the old line from then Speaker of the House Tip O'Neill in the '80s: "All politics is local." Now it seems like all politics is national. And the national divisions are sharper and more ideological and certainly more partisan.

Scudder: So many younger people don't have a baseline for having face-to-face social relationships. Their baseline is virtual. And I think we've yet to see any strong evidence that virtual relationships can replace face-to-face relationships.

Franklin: They tend to be tenuous. They tend to be easily broken. Ghosting is an example of how you can just cut people off. That's much harder to do in face-to-face relationships. It's not that these social media don't provide some ways to connect. But it tends to create these very weak links between people rather than links that help them overcome conflict or help them connect to do something more substantial, whether that's fundraising for a charity or actually taking some sort of social action.

Scudder: If you go back to the *Bowling Alone* book and Dr. Putnam's scholarship, he talks so much about "bridging social capital." There is a limitation in a virtual environment about the capability of *bridging* social capital. The Rotary Club and the Kiwanis Club and all of that are ways of coming together around a common cause,

and there's a social element to it. And the social element is what is facilitating the development of the bridging social capital. You might not even be conscious of it. There is just a distance, if you will, an impersonalization, a lack of personalization, in the virtual environment.

THE LOSS OF LOCAL NEWS SOURCES

Scudder: The Marquette Law School Poll data show that 72 percent of adults say they would work with neighbors to keep a local elementary school open, and 83 percent say they would work to keep a fire station open. I love this finding, but it raises a concern about the effects of a troubling trend. So many of us have moved away from consuming information in the first instance at the local level. In her recent book *Ghosting the News*, journalist Margaret Sullivan reported that more than 2,000 local American newspapers have shuttered since 2004, leaving scores of communities with no local news outlet—creating what she and others have aptly termed “news deserts.”

I witnessed a form of this two years or so ago, when my hometown newspaper, *The Journal Gazette*, in Fort Wayne, Indiana, announced it would no longer publish a Sunday paper. This bothered me and left me feeling a sense of loss. I had read the Sunday *Journal Gazette* for years; doing so kept me informed of what's happening in a community I still identify with as home. And I very much believe that consuming all variety of news through local, trusted lenses and from regional perspectives has a way of unifying and engaging people within communities. Local newspapers create common information ground. Sullivan captured the point well by observing that, “when local news fails, the foundations of democracy weaken.” Isn't local news the medium through which neighbors would learn about the pros, cons, and considerations informing the proposed closing of a local school or fire station?

Franklin: I share your sense of being sorry over the loss of local newspapers. In our Wisconsin poll, we find that 50 percent say local news outlets are very important to the well-being of their community. However, only 28 percent say they follow local news very closely. And for newspapers, a grim 23 percent say they subscribe either in print or online. This is not to say people lack sources of local news. Local TV is the source of most news for 30 percent, and newspapers are the main source for 28 percent. Increasingly people turn to social media for local news, 22 percent, which is perhaps filling a void left by the decline of newspapers, though

without the professional news gathering and editing of traditional media.

We find that those who pay more attention to local news are more likely to know if reading test scores are rising or falling in their community, how school enrollments are changing, and that they're more aware of water-quality issues involving PFAS, or “forever chemicals,” in their town.

On our neighborhood Facebook page, I hear of things that are going on, the annual tulip festival or the annual play that the neighborhood puts on. But what it doesn't do is provide the systematic coverage of your community that newspapers do, with a state or city government reporter or a city education reporter or a city business reporter.

Scudder: Do you think there's anything to fill that gap?

Franklin: I don't see it on the horizon yet.

DECLINING CIVICS EDUCATION AND CIVIC ENGAGEMENT

Scudder: My impression is that our country's education system has shifted away from meaningful instruction on civics, choosing to instead place the emphasis on math and literacy curriculum. Pew Research Center, for example, reported in 2023 that fewer than 60 percent of Americans could name a right guaranteed by the First Amendment. I wonder if the decline in civics education has any relationship to the decline we see in civic engagement. A person who does not appreciate how our democracy is supposed to function, one might think, is less likely to see the value in attending a city council meeting or voting in a local election—resorting, instead, to shouting matches on social media platforms. Democracy can be messy and frustrating, all the more so when we are uninformed. What, if any, connection do you see between civic education and civic participation?

Franklin: Education is strongly related to civic participation, but it isn't clear that this is because of civic education per se in the curriculum. National polls that ask “civics test” questions often find large majorities getting it right on broad constitutional questions, but this percentage drops considerably on more specific details. So “freedom of speech” is very widely known as a constitutional principle, but which amendment says so is less familiar—similarly with a number of other legal principles. I will say that, since the Founding, citizens have been less than perfectly informed, with limited time for politics and participation. Yet for 250 years, we've managed to muddle through. I expect we will continue to do so. ■



HOW PAYING ATTENTION TO
CORRECTIONAL OFFICERS
WILL HELP US UNDERSTAND
THE HARMS AMERICAN
INCARCERATION CAUSES.

NO WALKING AWAY

BY SHARON DOLOVICH

I want to talk with you about correctional officers—a.k.a. “COs.” In particular, I’m going to lay out some of the harms COs experience as a result of their work. My aim is for us to think together about how broadening our lens to take account of those harms may help clarify the moral character of American carceral practice.

COMING TO CONSIDER CORRECTIONAL OFFICERS

Features of American prisons can make it hard to see that COs pay a considerable price for doing the job we ask them to do. Sharing how I came to recognize that COs are among the casualties of the system may also help you to understand this.

So how did I get here? Why COs? I’ve only recently started thinking about prisons and punishment from the perspective of COs. This may seem strange, since I’ve spent the past 25 years thinking, writing, and teaching about prisons and prison law. But if there has been one question guiding my work, it has been what the state owes the people we incarcerate. And when this is your framework—when you are thinking about what the state owes its prisoners—you’re not typically thinking about COs.

Or if you are, you’re not thinking about them especially sympathetically. Those who know something about prisons won’t be surprised to hear that the agencies that run our carceral facilities routinely fail to satisfy the state’s duty of care toward the people we incarcerate. Over the years, I’ve found myself looking closely at many of the worst conditions that people endure in

our prisons and jails: solitary confinement, physical violence, sexual violence, excessive force, grossly inadequate medical care, untreated mental illness, and all manner of dehumanizing treatment. True, you can’t think about all this without also thinking about COs. But from this vantage, it can be hard to think about them favorably, because the way prisons operate, whenever a person is put in solitary or subjected to force or denied access to medical care, the harm is always being inflicted directly, personally, at ground level by individual COs.

The problem compounds when you teach the constitutional law of prisoners’ rights, as I do. The structure of these cases is adversarial, and the COs are always on the side of reducing prisoners’ constitutional protections. So when you read these cases, you are pretty much always reading about COs who have personally inflicted serious harm on people in their custody, yet who are insisting on the justifiable and fully constitutional nature of their own conduct.

All this is to say: when you are in this conceptual universe, it can be hard to feel warmly disposed toward those who wear the uniform.

Now, even so, I was always very aware of the fraught and difficult position correctional

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Photo by Annabel Adams/UCLA Law

There is no way to sugarcoat this: studies uniformly find the average life expectancy of American COs to be only 59 years, a full 19 years shorter than the national average of 78 years.

officers occupy. Over the years, I've often made the point that COs are in a tough position: that we rely on them to do a job that is difficult, thankless, and often dangerous; that they work in volatile and sometimes violent facilities; and that they are often understandably afraid while they are at work. I've said all this many times, and I meant it. But it was hard to resist the pull of the us vs. them framing that shapes prison life, and easy to fall into being only minimally sympathetic to the experience of prison staff.

That was before. Then I started talking to COs. Really talking. And more importantly, really listening. This development came about somewhat unexpectedly. In 2022, I launched an empirical study on sleep deprivation in prison. The plan was to interview two groups. First, I would interview people who were formerly incarcerated and recently released from custody, about their experiences of trying to sleep in prison, the obstacles to getting enough sleep inside, and how being sleep deprived affected the quality of their lives and the operation of the prison more generally. And second, I would interview people currently working as correctional officers, about their experiences of shift work and mandatory overtime, about when and how much and how well they sleep, and how not getting enough sleep affects their physical, psychological, and emotional health and quality of life outside the prison, as well as their ability to do their job.

I've now done over 80 interviews with people all over the country—almost 40 with formerly incarcerated subjects and more than 40 with COs. And over the course of the CO interviews, I found myself finally able to fully see the humanity of the people who play this role—and the suffering they experience just because they do the job we ask them to.

I did the interviews on Zoom, which allowed me to talk to people all around the country. These were long conversations—they averaged about an hour and 40 minutes. One CO interview was 3 hours and 20 minutes. For a group that is famously taciturn, most of the people I talked to had a lot to say, much of it extremely personal. And although the focus was on sleep, sleep turned out to be a window into the full experience of being a correctional officer.

Honestly, I was not prepared for just how much pain and suffering I would hear about in the CO interviews. My interviews helped me see that we can't fully understand the harms incarceration inflicts and what it means for a society to rely so heavily on imprisonment as a policy strategy without taking account of the experience of the

roughly 350,000 people working as COs in the United States right now.

To be clear, there is no doubt that prisoners suffer considerably more from incarceration than COs. But this doesn't need to be a competition. Suffering is suffering, and if we are going to be able to fully reckon with the implications of our collective enthusiasm for locking people up, we need to face it all. This means taking seriously the impact not only on those we lock away but also on those we ask to carry the keys.

THE WORK OF CORRECTIONAL OFFICERS AND ITS TOLL

Let us now consider what the work of a CO entails and the toll it takes on those who do it—and on their families. Take first some of the key comorbidities of the CO role. Studies consistently show that correctional officers are disproportionately likely to experience depression, suicidality, and post-traumatic stress disorder (PTSD). They also seem to rely more heavily on alcohol, and they die relatively young. I'm going to drill down a little on each of these, with the goal of driving home that this is a population that is seriously suffering. On each point, there is much more supporting evidence than I mention here or will even be able to cite in the law review version of this lecture.

First, depression. According to several studies, the rate of depression among COs is roughly three times the national average, with 26–30 percent of American COs reporting symptoms of depression. One study surveyed 3,800 Connecticut COs about symptoms known to correlate with depression. It found that roughly 25 percent of participants reported “a lack of emotional responsiveness,” 20 percent reported “an inability to find pleasure in anything,” and 13 percent reported feelings “of hopelessness and/or worthlessness.”

Then there is suicidality. National studies have found that COs are about 40 percent more likely than the national average to die by suicide. Wide variance across states suggests that the national numbers may cloak an even more serious problem. In New Jersey, COs die by suicide at 2.5 times the rate in the state in general; in California, at 4 times the overall rate; in Massachusetts, at 7 times the national average and at almost 12 times the suicide rate in the state as a whole. In the Connecticut CO survey, 3 percent of respondents reported thoughts of ending their lives at least once a month, and an additional 6 percent reported such thoughts at least once or twice in the previous six months.

As for PTSD, studies show extremely elevated rates among people who work in prisons. One study found a PTSD rate among COs of 34 percent. By way of contrast, the estimated rate of PTSD among Vietnam vets is 30 percent. Other studies found somewhat lower rates of PTSD among COs, ranging from 19 percent to 26 percent. But even these lower numbers are still striking, given that the national rate is around 3 percent. To some extent, the PTSD findings may reflect the high proportion of COs who are ex-military. But to judge from my interviews, they are also a function of the deeply distressing and traumatizing experiences that are part and parcel of the work itself.

Alcohol use is a tough issue to get a handle on, for a variety of reasons. Studies vary widely in how they measure and define alcohol use/overuse; and, again, COs in general are pretty tight-lipped about what they experience. Still: one study of 335 COs in two northeastern prisons reported that 11.1 percent consumed 15 or more drinks per week, more than double the national rate. And in a study of 4,300 California COs, almost 28 percent self-reported that they sometimes or often consumed six or more drinks at a sitting.

Then there is early mortality. There is no way to sugarcoat this: studies uniformly find the average life expectancy of American COs to be only 59 years, a full 19 years shorter than the national average of 78 years. And they know it. In my interviews, it was heartbreaking to hear people talking matter-of-factly about how they don't expect to live long into retirement. One person reported being told in the academy that "the average age that COs die is around 59 years old." And right now, he said, "the eligible age to retire is 55, so they tell us, 'for those four years after retirement, live your best life, because you're probably gonna die.'"

There is also evidence that COs are more likely to suffer from anxiety at greater rates than the population as a whole. And, of course, I've gone through these conditions one at a time. But we should also expect significant interaction effects among these various comorbidities, which will only deepen and exacerbate the harm.

To pose my go-to question: What is going on here? By way of answer, let's consider what we are asking of those we rely on to do this work.

When the state decides to incarcerate, whether pretrial or as punishment for crime, the people marked for this treatment are removed to locked facilities. They cannot leave. They are forced into



close quarters with strangers. They have no control over their environment or their lives, and they depend on prison officials to meet virtually all their needs. The institutions where they live are typically ugly, crowded, volatile, and frequently violent. People who are incarcerated are themselves likely to be angry, resentful, scared, depressed, frustrated, and traumatized.

To make this system function, we need people who are willing to serve as COs. Those who fill this role have direct contact, every day, with those locked up in the facilities where they work. They thus have front-row seats to just how much suffering is experienced every day by those who are incarcerated.

Think about what this means. Every day, when they go into work, COs are seeing, up close and personal, the untreated medical needs, the untreated mental illness, the isolation and alienation from loved ones, the boredom, the fear, the physical violence, the sexual assault, the self-harm, and the desperation experienced by the people we lock away. And when individuals suffer harm in custody, it is COs themselves who are most often immediately responsible. COs are the ones who carry the keys, who enforce the prison rules, who lock people in solitary, who gatekeep access to medical and mental health care, who have a license to use force and often do.

Imagine if, every day, when you went to work, this was how you spent your time. It is hard to think this experience wouldn't corrode a person's mental health, not to mention their moral compass.

And it is not only the COs themselves who pay a price for the work they do. Their families also disproportionately suffer, both from divorce and from higher than average incidence of domestic violence.

If COs were to fully face the scale of prisoners' suffering, they could well experience a threat to what we might call their moral integrity.

How are COs supposed to manage such a profound threat to their self-regard and moral psychology? One way, observed criminologist John Irwin, is that COs can choose to "embrace the view that prisoners are moral inferiors who deserve their state of reduced circumstances."

But this narrative of dehumanization, and the moral blinders it enables, can never function perfectly. Ultimately, it is obvious that the people we lock away are fellow human beings, who suffer and feel pain and despair just like the rest of us. So this is the tricky moral position COs are in, day after day: needing, for their own moral survival, to believe that the incarcerated people surrounding them, whose painful conditions of life they are directly responsible for, are not truly full human beings like themselves, when it is obviously the case that prisoners are in fact human. My strong sense is that, along with all the traumatic experiences to which COs are regularly exposed, this moral quandary and the deep emotional conflict it creates help explain the raft of mental health challenges that COs wrestle with.

In my interviews, one theme that came through loud and clear was that no one grows up wanting to be a CO. They do it for one reason only: for the money. The salary and benefits COs earn make it possible for them to provide for their families and to bring home far more than in most cases they otherwise could. Prisons in particular tend to be in rural areas, where there are few opportunities for people without college degrees to make a decent living. When the COs I spoke to referred to other local employment options, they mostly mentioned Walmart or working in warehouses, where the pay is usually far worse and the benefits are often nonexistent.

So they sign on as COs, agreeing to do what author Eyal Press calls "dirty work" in exchange for the chance of six-figure salaries, pension, and benefits. But there is a cost to this choice. Press defines dirty work as work that, though "solving various 'problems' that many Americans want taken care of," leaves those who do it "stigmatized and shamed." This is work that, in Press's characterization, elicits "disgust" from society writ large, and both this societal judgment and the workers' own knowledge of what they are called upon to do each day saddle them with "moral

burdens and emotional hardships," including "stigma, self-reproach, corroded dignity and shattered self-esteem."

And it is not only the COs themselves who pay a price for the work they do. Their families also disproportionately suffer, both from divorce and from higher than average incidence of domestic violence. In the interests of space, I won't be able to get into the data here. For now, I'll just note that these two issues force us to consider that, when COs leave for the day, they may be bringing some of the toxicity of the carceral environment home with them.

It is possible that higher than average rates of divorce and domestic violence among COs may reflect the personality and general orientation of those who take the job. But I think this explanation is too quick and easy. It fails to take seriously the likely effect of asking people to spend their days wielding virtually unchecked power over fellow human beings in a dehumanizing environment.

Among other things—and this brings us back to their families—COs while at work get used to ordering people around and to getting irritated and annoyed at the people who are constantly asking them for things. And once this becomes your orientation, it isn't as if you can easily slough it off once you get home. I heard this a lot in my interviews. Here's how one CO put it:

"You try your best to separate it—work is work, home at home. But then I'll catch myself barking orders at my girlfriend like she was an inmate. And there's been times when she's turned to me and said, 'I'm not one of your inmates. Stop talking to me like that.'"

Needless to say, this kind of disposition makes it hard to maintain the kind of trusting, loving, mutually respectful relationship that sustains a marriage.

My sense, moreover, is that these same dynamics also help explain the elevated rates of domestic violence in CO households.

Where does all this leave us? I have been trying to convey two main points: First, COs are vulnerable to a host of deeply troubling comorbidities, as are their families. Second, these pathological dimensions of the experience are no accident, but are instead directly produced by the character of the institutions in which COs spend their working hours.

To be sure, not every CO suffers from every condition I've mentioned. Some few fortunates who wear the uniform may well avoid them altogether.

But occupational hazards do not become irrelevant just because they do not impact 100 percent of the people who do the job. If a given workforce disproportionately experiences serious pathologies, attention must be paid.

WHY WE MIGHT NOT CARE— AND WHY WE SHOULD

I invite you to consider with me, from two directions, the question of why we should care about COs at all. Let's begin with the reasons some might think we shouldn't especially care about the harms COs disproportionately experience as a result of their work.

REASON 1: *COs chose this work, and they get paid well for it. And if they don't want the job, they can just quit.*

We've already seen that people who take this job do it because it is the best pathway available to financial security for themselves and their families. To frame this decision as simply a matter of individual choice is to display an almost willful refusal to recognize the way structural economic forces well beyond individual control can compel people to take on work they would strongly prefer not to do, precisely because they know it will take a real toll on their mental and physical health. They sign up for it anyway because they feel they have no real options.

We are, I hope, long past thinking that serious occupational hazards are of no moral moment because those who face the dangers agreed to take the job.

REASON 2: *COs often abuse their authority and do bad things to people in custody. When prisoners experience violence or other harms, it is often at the hands of COs or because COs didn't care enough to keep them safe. And now you want us to care about them?*

My answer here is simple: Why yes, in fact I do. It is certainly true that COs too often abuse their authority. The *Federal Reporter* is full of cases recounting brutal and unwarranted violence and egregious failures of care by COs against prisoners. Yet the fact that some COs inflict serious harm on the incarcerated does not justify indifference to the suffering that they themselves experience.

Of course, when people do bad things, there should be a way to hold them accountable. But membership in society's moral circle should not be restricted only to those we happen to like or who never transgress.

For me, the defining moral imperative of

collective life is the universal recognition of shared humanity. And that moral imperative obliges us to affirm the humanity—and recognize the suffering—even of people who have done wrong. This means we are not off the hook for the harms COs suffer just because some (or even many) people who work as COs abuse their power over those in their custody.

REASON 3: *The incarcerated have it worse.*

Anyone who knows anything about prison knows this to be true. Of course, people who are incarcerated have it worse than COs—way worse. But as I have said, this is not a contest. The point is not to rank suffering but rather to develop a more complete picture of the human toll of our national obsession with imprisonment. Such a picture must include the toll incarceration takes on those who work as COs.

So I arrive at the affirmative case: the reasons we should care about the CO experience, even granting that prisoners have it worse. First and most obvious is the fundamental moral imperative: COs are human beings. If there is reason to think there is real suffering here, we cannot look away. We are obliged to bear witness and to do what we can to change the conditions that expose the people who do this work to so many toxic effects. We are, in short, morally compelled to care.

I know some may be unmoved by the idea of a shared moral obligation toward COs and are, perhaps, more concerned that those we incarcerate are treated humanely. For those in this group, there is a second, more instrumental reason to take seriously the multiple comorbidities COs experience: when COs are depressed and traumatized and sleep deprived, they are unable to do the job we need them to do. And as a result, people in prison wind up experiencing worse conditions and worse treatment than they would if COs were fully capacitated.

There is something of a shared confusion over the nature of carceral punishment. People often seem to think that the scale of a criminal penalty is determined by the sentencing judge. Yes, once a person is duly convicted, judges decide (within the statutory range) the length of time that a person will spend in prison. But COs substantially shape the actual punishment people experience, in the way they do their job and how they interact every day with those inside. And the more traumatized, and incapacitated, and exhausted, and on edge that COs are, the harsher a facility's conditions of

COs are human beings. If there is reason to think there is real suffering here, we cannot look away. We are obliged . . . to do what we can to change the conditions that expose the people who do this work to so many toxic effects.



confinement will be. To put it simply, if prisons are going to be safe and humane places to live, they must be safe and humane places to work.

This brings me to the third reason why we should care about COs. Or maybe better put, this is a reason we are obligated to care. In this country, at this very moment, almost 2 million people are living under lock and key in a vast national network of carceral facilities. How vast? In the United States, there are more than 6,100 prisons, jails, and detention centers. And every one of them is crammed full of human beings who are in many cases experiencing unimaginable pain, suffering, and degradation. Whatever each of us may feel as individuals about this situation, we are all culpable for its existence.

And the culpability extends still further, because prisons and jails do not run themselves. At present, as already mentioned, there are almost 350,000 correctional officers in the United States. These people are doing work that we need them to do to feed our commitment to imprisonment. And in exchange for a living wage and benefits, they are playing a role we know full well is disproportionately likely to leave them depressed, anxious, addicted, traumatized, suicidal, and sleep-deprived, not to mention shamed and humiliated.

Here is not the place to run through the policy changes that may make some positive difference to COs' daily experience or the considerable obstacles to making those changes. But this is a policy conversation we absolutely need to have—and we

also need to be prepared to follow where it leads. It seems plain that seriously considering how to make the role of CO less destructive for those who do it will point us toward the need for a dramatic rethinking of the extent of our national reliance on the practice of imprisonment.

ACCOUNTING FOR THE SUFFERING OUR SYSTEM INFLICTS

I want to close by considering how focusing on the harms COs experience by virtue of their work can shed new light on the cruelty, futility, and morally compromised nature of the practice and help us to see more clearly what exactly incarceration is.

Let's begin with a puzzle: Incarceration brutalizes everyone it touches, while largely failing to achieve the purposes it claims to serve. So why does it persist? And why does the United States continue to be so enthusiastic about it? Here's one answer: there is a vast gulf between the political constituencies enthusiastic about putting people away and the daily reality experienced by those who live and work inside.

Ever since I started talking to COs, there is an image I can't get out of my mind. Out there, dotted across the American landscape, in places that are out of the way and hard to reach, are thousands of locked facilities full of people we call prisoners, who are never allowed to leave, and people we call staff, who—as they will tell you themselves—are doing life on the installment plan. They also cannot really leave, at least not for long.

Imagine for a moment just one of these places. Let it stand in for all of them. This place is surrounded by barbed wire and high walls. It is crowded full of people. Some of them are prisoners. Some of them are staff. Everyone is trapped. And everyone inside—incarcerated and CO alike—is suffering. No one, whether CO or prisoner, has the space or the resources they need to heal, to recover, to get right with themselves. Everyone is just trying to survive. As a result, life inside is brittle and unstable and full of conflict.

Meanwhile, out here, the rest of us go about our lives and scarcely give a thought to the sites of trauma and suffering we call prisons and jails. If we think about them at all, we congratulate ourselves for making the tough policy decisions that keep society safe. The notion that mass imprisonment keeps us safe is frankly a delusion. But we get to

indulge that delusion at the expense of the millions of prisoners and hundreds of thousands of staff who are forced to live daily with the toxic effects of what is really just the fever dream of people who have no real idea what our enthusiasm for imprisonment actually entails every day for flesh and blood humans.

For some readers, all this may call to mind Ursula le Guin's short story, "The Ones Who Walk Away from Omelas." Omelas is a beautiful city, full of happy, joyous people. It is free of guilt and strife and as far from wretched as it is possible to be. You might ask: how do they manage it? Alas. In a basement somewhere in Omelas, there is a small, dank, dirty room. And locked in this room there is an innocent child, who despite their innocence is kept naked and starved and abused and denied light and kindness and care and everything else that makes life worth living. It is only because this single, tormented child lives this cruel and painful existence that the citizens of Omelas can live the charmed life they all enjoy. If the torture of this child were to stop, the spell would be broken and the ordinary sorrows of human life would immediately swamp all the goodness and grace that currently define life for everyone else in the city. Everyone in Omelas knows this. Some people in Omelas are sometimes distressed by the cruelty, but for the most part, just about everyone finds a way to make peace with it.

To me, what this story captures perfectly is the massive gulf—the utter disconnect—between the daily miserable experience of those we lock away and the rich daily lives of those people in whose name the suffering is being inflicted (i.e., all of us).

Some might object that America is nothing like Omelas. In Omelas, the tortured child is completely innocent, whereas the people we incarcerate are generally guilty of crimes. Or else they have given us probable cause to think they are. Or they have come here illegally, warranting (we say) their administrative detention.

It would take a whole other lecture for me to explain why I think this way of seeing things, of justifying our massive carceral enterprise, is both profoundly misguided and does not survive scrutiny. The familiar justifications do not hold up. But even assuming the justifications held and even assuming the brutality of American carceral practice could be justified as to those we incarcerate, this effort to distinguish us from Omelas carries a fatal flaw, which we are now fully equipped to see.

Le Guin's story, it turns out, has a blind spot: she makes no mention of the individuals on whom the people of Omelas depend to keep that child locked away. Yet someone has to superintend the arrangement. Someone has to fill the food bowl and the water jug. Someone has to be the one to rattle the door and "come in and kick the child to make it stand up" for the occasional visitors who come by, and to lock the door again on the way out.

For Le Guin, and for the people of Omelas, there is no justifying the incarceration and brutal treatment of the innocent child. So there is no need even to notice the cruelty inherent in forcing some members of society to be the ones to operationalize a plainly brutal practice.

What about us? In our collective imagination, we have thoroughly justified our brutal carceral practice and totally naturalized the idea of locking people away in dank, dark basements full of trauma and violence. We have blinded ourselves to the cruelty we are daily manifesting toward those we incarcerate. As a result, it may only be once we stop to focus on the human toll on the people upon whom we depend to make the system run that we can really, fully see the true moral character of the whole enterprise.

In every society, there are going to be morally unpalatable jobs that still need doing. But those of us who benefit because others do that work don't get to just pretend it isn't happening. We are obliged to look squarely at the suffering that is being endured on our behalf, to do what we can, first to understand it, then to mitigate it as much as possible. And if we're lucky, in the seeing of what we may otherwise have pretended away, we might come to understand in a new light something true, if admittedly ugly, about the moral foundations of our shared world. In this case, what we might newly see is that every carceral facility is a hermetically sealed site of trauma and suffering experienced by everyone inside, not only the incarcerated but also the staff.

Le Guin's story, interestingly, is called "The Ones Who Walk Away from Omelas." It closes by describing those citizens of Omelas who can't accept the bargain, and so they walk away. We don't have that luxury. So the least we can do is to be clear-eyed about the moral implications of our choices. At a minimum, this demands a full accounting of the suffering that others must endure thanks to our own seemingly unquenchable thirst for imprisonment, including those others we pay to do our dirty work. ■

This place is surrounded by barbed wire and high walls. It is crowded full of people. . . . Everyone is trapped. And everyone inside—incarcerated and CO alike—is suffering.

RIPPLE EFFECT

With law students actively participating, the Water Law and Policy Initiative is building a strong record of shedding light on major issues.

Sometimes, gritty realities are no more than that, gritty. But they also can be central to valuable and ambitious work.

Gritty. Valuable. Ambitious. Those are good words to capture Marquette Law School's Water Law and Policy Initiative, which in the fall of 2025 is marking its 10th anniversary. The initiative grew from the sturdy roots of the Law School's previous commitment to offering courses introducing students to water law. Then in 2009, a conference sponsored by the Law School on the future of Milwaukee as a hub of water technology and economic development helped demonstrate the school's ability to galvanize attention to water issues more generally.

Yet the key date was 2015, shortly after the new president of Marquette University, the late Michael R. Lovell, issued a general call for the university to become more deeply engaged in studying and helping solve the world's water problems. The Law School responded. In particular, David A. Striffling joined the full-time faculty and became director of the school's newly denominated Water Law and Policy Initiative.

This was no mere rebranding. Professor Striffling has led an expansion of the program's work to include a roster of conferences in Eckstein

Hall on important water law and policy issues, collaboration with other experts at Marquette University and beyond, receipt of major external grants to support research, and publication of the resulting scholarship in academic journals. In aspects of its work, the Water Law and Policy Initiative has had an affiliation with the Law School's Lubar Center for Public Policy Research and Civic Education since the center's creation in 2017.

Yet at the heart of the water work, Striffling says, has been the Law School's academic program—i.e., educating law students. For example, the Water Law and Policy Initiative's work has created a series of cutting-edge research and writing opportunities for about 60 law students during the past decade. "What we've accomplished would not have been possible without them," Striffling said. And the students have learned a great deal.

Reflecting on his experience as a student researcher, Bryce Ebben, L'25, said, "My coursework and research have helped me understand the technical complexities of water governance and its broader societal impacts." Ebben sees this learning as "connecting directly to environmental permitting and due diligence," which are part of transactions he has already seen in practice. He credits his water-related coursework and research with "sharpening my ability to analyze regulatory frameworks, engage with technical science-law intersections, and understand the



institutional dynamics that shape environmental decision-making.”

Jacob Dalton, L’24, also worked on water policy issues as a student, coauthoring an interdisciplinary paper with Striffling and an engineering student related to the use of nanotechnology in drinking water treatment applications. Their paper subsequently appeared in the *Georgetown Environmental Law Review*. “The water law research I conducted broadened my horizons into topics I had not had any exposure to before,” Dalton said. “Learning early in my career not to artificially limit the parameters of my research has helped me develop strategies to approach legal issues.”

Let’s briefly go back to the adjectives at the start of this piece to consider the Water Law and Policy Initiative’s record.

Gritty: Tackling important issues in water use and policy requires you to deal with matters such as sewage and cow manure. The initiative has done this gritty work with academic rigor, good thinking, and a continuing focus on evaluating public policy.

Valuable: In working to shed light on major issues facing not only Wisconsin but the nation, the initiative has been awarded or has partnered in more than a dozen different grant awards totaling nearly half a million dollars. The range of sources for the awards has included the federal government and has

enabled Striffling to collaborate with other researchers from around the nation. Conferences at the Law School have addressed subjects such as drinking water quality, the impact of the Great Lakes Compact, reuse of water, and the sometimes-differing interests of agriculture and environmental protection.

Ambitious: Striffling, who is a credentialed engineer as well as a lawyer, has worked with both professional associates and law students to address a long list of complicated and sometimes controversial issues. Name a forefront issue in water policy, and Marquette University Law School’s Water Law and Policy Initiative has been more than willing to engage with it.

Professor David Striffling (left) meets in his office with students involved in the Law School’s Water Law and Policy Initiative, including Nigel Blake and Alana Borman.

Two recent conferences at Eckstein Hall provide instructive examples of this work.

Resolving the Tension Between Agriculture and Water Quality

Wisconsin is known for both its invaluable array of water resources and its heritage as an agricultural powerhouse. While the connection is obvious, these two aspects of the state's identity also can be in tension with one another. The federal government's most recent National Water Quality Assessment concluded that agricultural runoff is the leading cause of adverse water-quality impacts on rivers and streams, as well as the third-leading cause for lakes. On March 18, 2025 (coincidentally, National Agriculture Day), the Water Law and Policy Initiative convened a program to help illuminate a path forward for agriculture and water to coexist. The speakers at the event delivered a generally hopeful message anticipating improved cooperation among farmers, affected citizens, the conservation community, and state and local governments.

The event's keynote speaker, Marin Skidmore, focused on Wisconsin dairy farms and presented the findings of her team's study of the effectiveness of local (county-level) regulations targeted at controlling nonpoint source pollution from these farms (pollution, that is, that doesn't come from a single discrete source such as a pipe). As explained by Skidmore, assistant professor in the Department of Agricultural and Consumer Economics at the University of Illinois Urbana-Champaign, nonpoint source pollution by definition consists typically of diffuse runoff across

broad landscapes. In the case of agriculture, that runoff may carry with it fertilizer or manure that has been applied to farm fields, and it will deposit those pollutants in surface waters.

More specifically in Wisconsin: Skidmore, a native of the state, acknowledged that agriculture is a major economic and cultural force in Wisconsin, yet noted that it also often creates serious water-quality problems resulting from the "enormous nutrient [manure] output coming from dairy production." That can impact recreational activities and even public health, she said. The pollutant load can cause hypoxia, or "dead zones," in surface waters and, in some Wisconsin communities, can contaminate drinking water supplies with elevated levels of nitrates and bacteria. This has led to substantial community opposition to large-scale "concentrated animal feeding operations"—defined by state law as a feeding operation with 1,000 "animal units" or more—in some parts of the state.

Skidmore and her team set out to find a way to test Wisconsin's efforts to manage the pollution's impacts while maintaining an industry so important to the state. Nonpoint source pollution is exceedingly difficult to control. It isn't well regulated under federal or state laws, including the Clean Water Act, Skidmore said, partly because "we don't have a reliable way to map and quantify the amount of pollution coming from one single farm." As a result, policymakers can't use traditional regulatory tools such as command-and-control regulation, pollution taxes, or a cap-and-trade system.

But there is hope, Skidmore

said, because "Wisconsin is innovative." Its leaders have tried solutions that other states haven't. Skidmore cited the state's farmer-led watershed groups, farmland preservation program, and water-quality trading program as examples. But the program that especially captured the attention of Skidmore and her team was the state government's decision to delegate the option to regulate manure management to county governments—an approach unheard of in other states. The delegation was intended not as a substitute for state authority but as a complement or addition to it. Perhaps the counties could serve as "laboratories of democracy" for the state, in the same way that the states have sometimes done for the federal government, in the famous (Brandeisian) phrase.

So what happened when counties got involved in writing and enforcing local manure management ordinances? By comparing many different county ordinances—and the resulting water-quality benefits (or lack thereof)—Skidmore's team found that some aspects of the ordinances had a measurable impact on water quality. The most significant positive impact resulted from adding a requirement that farmers prepare a "nutrient management plan." That effectively means a plan for the rate, timing, and method of nutrient application to farm fields. If farmers fine-tune those variables, they can dramatically reduce pollutant runoff to surface waters, Skidmore said, because a lot of the pollution problem comes from nutrient overapplication above what the crop needs. That leaves the

The speakers at the event delivered a generally hopeful message anticipating improved cooperation among farmers, affected citizens, the conservation community, and state and local governments.

excess nutrients vulnerable to precipitation-induced runoff.

Brian Weigel, the deputy administrator for the Division of External Services at the Wisconsin Department of Natural Resources (DNR), noted at the Eckstein Hall conference that state governments sometimes have been caught in the middle of struggles among farmers, affected citizens, and environmentalists. “There are myriad opportunities for change,” he said, but nothing will happen until the various factions move forward together. DNR is trying to do its part, he said, by developing an office of agriculture and water quality with two goals: trying to communicate effectively with stakeholders and connecting with governmental partners in neighboring agricultural states to explore best practices for science and policy. But, he said, society and culture need to change, with consumers demanding more sustainably produced food, in order to really drive reforms.

“Farmers are the original environmentalists,” because they see firsthand the impacts of pollution on nearby drinking water sources, said Jason Mugnaini, executive director of Government Relations at the Wisconsin Farm Bureau, a nonprofit organization based in Madison. Mugnaini predicted that the farm community in the state will soon enter a time of transition, with farmers open to new conservation practices in part because of government-funded incentive programs. He conceded, though, that some farmers are reluctant to seek compliance assistance because of concerns over enforcement actions they fear might result.

Sara Walling is the director of the Water and Agriculture Program at Clean Wisconsin, an environmental advocacy group that has often squared off in litigation with agricultural interests over water-quality concerns. At the conference, Walling emphasized the need for a collaborative approach that includes both farmers and affected citizens. “We recognize that there are a lot of farmers out there who are very interested in doing what they can to change the impacts they are having on water quality,” she said.

Will Water Reuse Come to the Midwest?

A different issue was the focus of another conference at the Law School: the rising trend toward “water reuse” in arid parts of the country and, increasingly, in humid East Coast climates as well.

Existing drinking water sources are under increasing strain from overuse, climate change, and other threats. Water recycling, also known as water reuse, may play a significant role in creating the sustainable cities of the future. The federal Environmental Protection Agency has defined water reuse as the process of harvesting water from a variety of “used” sources, such as municipal wastewater, industrial process or cooling water, stormwater, agricultural runoff, and return flows; treating it; and reusing it for beneficial purposes.

Already, millions of people around the country are being “asked” to drink recycled water, which arrives to them in one of two ways: through an indirect process, in which treated wastewater is discharged to an environmental buffer such as

groundwater or surface water and is later taken into the water distribution system, or through the direct pumping of treated wastewater into the water distribution system without an environmental buffer. At the spring 2024 event in the Law School’s Lubar Center, several experts discussed the history and future of such technologies, debating whether they are likely to emerge in Wisconsin or, instead, to remain generally limited to drier climates.

Noted author and journalist Peter Annin drew on his book, *Purified: How Recycled Sewage Is Transforming Our Water* (2023), to describe the significant water crisis facing many parts of the country. Annin cited only two realistic options for “new” water supply—desalination and reuse. Water reuse is the far more sustainable option, he said.

Annin discussed a number of historical case studies involving efforts by communities to introduce recycled water into their water supply portfolios. Some were successful (Orange County, Calif.), others less so (neighboring San Diego County, at least at first). But Annin explained that careful examination of the U.S. Drought Monitor reveals that water shortages are a problem even outside the arid West. Thus, water-reuse projects have been implemented or at least tried in more humid parts of the country, too, including Norfolk, Va., and Tampa, Fla., among other places.

In reviewing the lessons learned from all these efforts, Annin identified several keys to successful implementation of water-recycling projects. These included reliable technologies to ensure public safety, rigorous

State governments have sometimes been caught in the middle of struggles between farmers, affected citizens, and environmentalists. “There are myriad opportunities for change,” said Brian Weigel of the Wisconsin Department of Natural Resources.

monitoring of the water produced, and effective strategies for communicating with the public.

In Wisconsin, at least so far, such technologies are more a matter of interest than necessity. “Nobody recycles water because it’s cool,” said Theera Ratarasarn, a panelist reacting to Annin’s presentation. Ratarasarn is chief of the Public Water Engineering Section for the Drinking Water and Groundwater Program at the Wisconsin Department of Natural Resources. Instead, he continued, they do it because they have no other choice. In Wisconsin, by contrast, “everywhere you look, you find water,” Ratarasarn said. So recycling isn’t yet necessary here. In fact, it likely would run afoul of a Wisconsin legal requirement that the public drinking water supply come from “the best available source practicable.” As a result, Wisconsin regulators are more concerned about other pressing issues such as PFAS, lead, and nitrate pollution.

Another panelist, Rachel Havrelock, professor of English and director of the Freshwater Lab at the University of Illinois at Chicago, observed that most people are accustomed to “single-use water,” and this view drives societal discomfort with water recycling. In fact, she said, water recycling more closely emulates nature and the multiple-use water cycle. In most places, she said, there is already de facto water reuse, with treated wastewater returned to surface water and soon thereafter reclaimed for drinking water treatment a short distance away. She cited a “groundwater emergency” in many parts of the Midwest, including Waukesha, Wis., and

Joliet, Ill. “Water reuse is part of climate change adaptation,” Havrelock concluded, and the “legal world is absolutely vital at this juncture” to regulate the practice.

Research on Water Reuse

On a research track parallel to the public outreach reflected in the just-described conferences, the Water Law and Policy Initiative has undertaken two different grant-funded projects dealing with various aspects of water reuse from a more national perspective. Third-year law student Thais Marques, who has conducted research in one of the projects, sees broader benefits. “My experience as a student researcher on water law has made me a more confident professional and has allowed me to dive into a rich field with both environmental law and practical problem-solving,” Marques said.

One of Strifling’s papers, later published in the *Washburn Law Journal*, undertakes a comprehensive exploration of the water-reuse process, reviewing technical, sociocultural, and regulatory barriers to its broader implementation. The article explores the technical underpinnings of water reuse, examining a variety of possible technologies.

That’s just the beginning. The article then reviews some of the available water-reuse technologies deployed in existing projects around the world, covering a variety of commercial, industrial, municipal, and residential applications and identifying advantages and disadvantages in these contexts. Next, the piece moves to the sociocultural barriers to water reuse, analyzing,

in turn, concerns about public health and safety, adverse public perception, lack of knowledge about the process, and simple distaste. Finally, it examines the regulatory regimes in several states, as water-reuse regulation is typically a matter under the control of individual states. These include the arid states of Arizona and California and the comparatively water-rich states of Minnesota and Wisconsin. The effort is to discern best practices for governing this emerging technology.

Strifling’s analysis concludes that all of these hurdles—technical, sociocultural, and regulatory—must be cleared for water reuse to become a viable solution to the world’s water supply problems.

These hurdles are substantial. Any successful effort to overcome them must involve aggressive funding to research and develop technologies that make water recycling feasible; must include a robust water quality-monitoring program; must operate within an adaptive regulatory framework; and must engage all stakeholders and the public through an outreach and education program.

In a variety of contexts, jumping hurdles has become routine for the Water Law and Policy Initiative during its first 10 years. Strifling envisions a future in which the water initiative both continues to clear the hurdles and further accelerates toward the goal of establishing the Law School and, more broadly, Marquette University as a center for study, exploration, discussion, and education concerning this critical element for all life. “I’m looking forward to seeing what the next decade will bring,” he says. ■



“My experience as a student researcher on water law has made me a more confident professional and has allowed me to dive into a rich field . . .”

— Thais Marques, 3L

WHAT IF...

... K-12 Education Reform Efforts Focused on Making Teaching Jobs More Doable?

Lubar Center exchanges bring attention to improving teaching quality.

BY ALAN J. BORSUK

Taylor Thompson was concerned how things would go in her first year as a first-grade teacher in a public elementary school in Oshkosh, Wisconsin. And, in fact, she found teaching during that 2024–2025 school year to be hard work. “Each day is not rainbows and singing and dancing,” she said. But Thompson ended the school year feeling positive.

The reasons for Thompson’s experience speak to crucial needs in American education that get too little attention, at least in the public discourse: Improving what goes on in classrooms. Making teaching more doable and sustainable. Increasing teamwork among teachers. Turning the focus of education



Illustration by
Robert Neubecker

policy toward classrooms and away from large-scale reforms that have so often brought disappointing results. Better training. Better classroom materials. Effective steps to improve learning environments in classrooms. Easing the burdens of bureaucratic requirements.

A year ago (fall 2024), the *Marquette Lawyer* magazine offered an essay by me on how broad, top-down education reforms of many kinds had not brought substantially better outcomes for students or closed the gaps in education success. The problems of a generation ago remain much the same today. And the magazine included reaction essays by six education experts.

Among the thoughts in the responses that lingered with me was this statement by Robert Pondiscio: “Sustainable improvement in education requires a focus on practical, everyday realities of teaching and learning, coupled with policies that support and enhance these practices rather than simply mandate them.” Toward the end of his reaction essay, Pondiscio, a senior fellow at the American Enterprise Institute, sharpened it into a question: “What if, instead of exclusively pulling policy levers, we redirected the reform movement’s energy and enthusiasm toward improving classroom practice?”

So—what if? Trying to answer that question sparked an in-person forum convened by Marquette Law School and the Marquette College of Education. On May 8, 2025, at the Law School’s Lubar Center, educators, experts, policymakers, philanthropists, and interested citizens participated in a program considering what might help teachers be more successful in their classrooms.

BETTER CLASSROOM CULTURES, BETTER OUTCOMES

Thompson, the Oshkosh teacher, was part of a panel discussion. She made important points then and also in an earlier appearance before the Oshkosh Area School District board about her first year of teaching:

- **“I fully expected to be way overwhelmed,** especially by literacy and all the moving pieces with that,” Thompson told the school board on April 23, 2025. It has happened to so many teachers in widely varied circumstances. The work can just be too much. It’s a key to why so many teachers leave the job early in their careers. But it didn’t happen for Thompson. What helped?
- **She had high-quality teaching tools.** Oshkosh, a district some 75 miles northwest of Milwaukee with about 9,000 students, is among a growing number of school districts around the country moving toward wider use of prepared curriculum and lesson plans. Core Knowledge Language Arts was the program Oshkosh implemented in several schools. CKLA, as it is often called, doesn’t give teachers scripted lessons for what to teach, but it does give lesson

plans that greatly ease the time-consuming demand of developing lesson plans. “CKLA has actually given me a clear, structured path that supports my teaching and my students’ learning,” Thompson said. “That structure has allowed me to focus on how we are teaching things, rather than spending hours worrying and figuring out what we are teaching.” She said she loved seeing how much her students took to literacy lessons and how they developed as readers.

- **She was part of a team.** Thompson was paired with a co-teacher in working with first graders. Teachers often feel isolated and unsupported when they work solo. Even without a co-teacher, teachers can be organized to make the work more of a team effort. Teaching can be unmanageable, Thompson said, but “it’s not if you are a collaborative person and you work with your peers and you have a community of a school and co-workers and principals who don’t allow you to silo into your own room and do your own thing.” She added, “If you’re able to use your teacher craft, it’s not impossible.”

This was music to the ears of Pondiscio. In keynote remarks at the Lubar Center conference, he said, “Improving students’ outcomes depends on improving what happens



inside classrooms, where teachers and students meet every day. Yet for decades, reform efforts have rested, at least tacitly, on the assumptions that schools already know what to do and only need to be held accountable for doing it.”

And such assumptions, Pondiscio said, are simply not true. In fact, “[t]eachers often lack the training, support, and evidence-based tools, most specifically curriculum, to deliver effective instruction.”

In his estimation, too much emphasis has been placed on finding high-quality teachers, when the emphasis should be placed “not on teacher quality but on quality teaching, by making this a job doable by the teachers we have, not the teachers we wish we had.” Noting that the United States has about 3.7 million teachers, Pondiscio said that it is unrealistic to expect them all to be, as he put it, “saints and superstars.” The large majority are people who want to be good teachers but who would benefit from more help in making their work successful.

Teachers are often asked to do too much, as Pondiscio sees it. Instruction, he argued, often is undermined by all the other things teachers are asked to do: They have become frontline social workers, nurses, and personal and family therapists. They often help provide children with clothing or other basic necessities. They deal with too many bureaucratic requirements and get too little support, and they’ve been under pressure of many kinds from many politicians, administrators, parents, and others. “Why are we asking schools and teachers to take on this burden,” he asked, “when they’re already failing at their primary responsibility?”

SIGNS NATIONWIDE OF MORE HELP FOR TEACHERS

It’s not coming in a giant wave, but there is momentum around the country to do more to help teachers. Louisiana has launched an initiative called “Let Teachers Teach,” which offers ideas that have at least some appeal across the divisions in education-policy advocacy. Nationwide, there appears to be increasing use of “high-quality instructional materials,” the education-jargon term for curricula and lesson plans that both are effective and ease the demands on teachers related to preparing for each school day. And many states have adopted policies aimed at leading more students to be proficient readers.

If such steps are effective, they could pay off in increased student success in school more broadly and better engagement and behavior in classrooms. Support is building across the political spectrum—including among teachers—for reducing and even eliminating student access to smartphones and social media during the school day, particularly during class time. And the near-crisis-level problems in some school systems with attracting and retaining teachers appear generally to have leveled off and, in some areas, eased.

Changing the realities of teaching isn’t easy. There is much inertia in school systems, the lives of kids outside of the classroom often aren’t conducive to engagement in learning, financial realities impose major limits, and, too often, public opinion doesn’t really treat educational success as a priority. The list of reasons to be doubtful about improving the circumstances surrounding teachers is long. We’ll expand on this later in the essay.

INCREASING QUALITY WHILE EASING THE WORKLOAD?

Some experts, such as Pondiscio, advocate for more use of prepared curricula and lesson plans. Not everyone agrees. For one thing, the “high quality” aspect is crucial. Some curricula are not as conducive to success as others. For another, many teachers resist being told how to teach and say that flexibility and individualization in working with students are crucial.

Pondiscio, a former teacher who previously worked for the Core Knowledge Foundation, a leading provider of curriculum material, said at the May 2025 program in the Law School that a teacher who spends 10, 20, or more hours a week on lesson plans should think that that is time when “I’m not giving feedback to student work, developing relationships with my students, studying their work, or learning the material myself so I can more effectively communicate it.”

“Somebody else can write the curriculum,” he said. “Something’s got to come off the teacher’s plate. And the most obvious thing to me is curriculum.”

Core Knowledge is a major player in the “high-quality instructional materials” world. Based on the work of E. D. Hirsch, Jr., whose books on what people should know have been bestsellers in the past, it offers a range of curricula. In Wisconsin, for example, Core Knowledge Language Arts is one of the reading curricula recommended by a state advisory committee on early literacy. CKLA has been the most popular choice of Wisconsin school districts during the accelerating movement to use “science of reading” instruction, which is best known for its emphasis on teaching students to sound out letters in learning how to read.

Beth Battle Anderson, president and CEO of the Core Knowledge Foundation, based in Charlottesville, Va., said in an interview that teachers benefit from letting go of the idea that “I can do everything myself.” Anderson has a different view: “We need [teachers] to focus on how to teach and not on what to teach.” While high-quality instructional materials can’t solve all issues, she said, they can “empower teachers to empower students.”

Anderson said that use of such materials is on the rise nationwide, with encouragement from groups such as the Council of Chief State School Officers, the national organization of state school superintendents. Use of CKLA

has grown to about five million students nationwide, she said. Core Knowledge has been criticized in the past for focusing too much on content rooted in white, European cultures, but it has changed to include a wider array of cultures and content that more students can relate to, Anderson said.

THE DIFFICULTY OF MAKING CHANGES IN CLASSROOM REALITIES

But even with momentum around curriculum such as CKLA, Anderson stated, “It’s really, really hard to affect classroom practice.”

Broadly speaking, educators—including Pondiscio—say that serious progress in improving the education environment in most classrooms requires more than better curriculum materials. Rashida Evans is a consulting partner with TNTP, an education consulting and research group formerly known as The New Teacher Project, which works with school districts nationwide. She says high-quality instructional materials can be “a godsend” for teachers, especially new ones.

But that’s not enough, as Evans sees it. There needs to be “a change management process” to improve many aspects of classroom life in many schools, she said, including strong school leadership, teacher training, and effective ways of dealing with the issues students have. Evans, a former teacher and principal, who is based in Milwaukee, said, “The more we can clear the noise that distracts from instruction, the more successful we can make the job.”

During the Law School program, I said to Pondiscio that a big reason teachers end up taking on so many roles going beyond academics is simply that teachers are the ones who work every day with the students—and so many kids have so many needs. “If we’re going to make a big difference in academic outcomes,” Pondiscio responded, “we have to ask those schools to do less.” Who will do the other things? “I don’t know what the answer is, but I know what the answer is not. It’s not asking Miss Jones to do it,” he said. “This is about making teaching easier and doable.”

The answer is indeed unclear at best. Especially since the COVID pandemic period, many states and schools have expanded their programs dealing with children’s nonacademic needs, including mental health. But the availability of such help falls far short of what will be required if the demands on teachers are to be meaningfully reduced.

MONEY, MONEY, MONEY

That points to a big issue hanging over efforts to shift the burdens on teachers: Money. Even as there have been widespread increases in school budgets, better classroom culture often comes only from the presence of more adults in classrooms and in a school as a whole—more teachers’ aides, more specialty teachers for art or music or physical education,

more tutors, more counselors. But in some schools, such as those in the Milwaukee Public Schools system, class sizes are often large—an issue that can be not just expensive but complex to improve. Financial and other constraints on those fronts mean that classroom teachers face big demands.

An additional recent factor: Although the future is unclear, dramatic changes in federal spending during the new, second administration of President Donald Trump may lead to less money coming from the federal government to schools. And on state and local levels, there is widespread pressure to hold down taxes. For one bottom line or “big picture” view, it seems unlikely that there will be substantial increases in the number of adults in most schools.

BEHAVIOR AND SPECIAL EDUCATION CHALLENGES

Teachers often say that if something effective could be done about a handful of students—sometimes even just one—in a classroom, the atmosphere in class would be much better, followed by improvement in the learning by the rest of the students. Some kids have chronic behavior problems, and many teachers and school leaders struggle to respond effectively.

For an additional—and often separate—matter, there has been a trend for years to include more students with special education needs in general classrooms, a trend that is supported by federal law and beneficial for many kids. But teachers often say that it has meant some children in mainstreamed classrooms who shouldn’t be there.

In all these instances, the problems that result can be long-term and difficult. Some school systems are aiming to do more to deal with students who are tough (or impossible) to manage. Houston has received national attention for a program that demands more success from students as a whole while pulling some students out of classes and assigning them to alternative programs, with the intention of giving those students help getting on track and the rest of the students better classroom experiences.

STRONG PRINCIPALS AND GOOD LEADERS—OR NOT

Pay and benefits are factors in the high rates of teachers who leave their jobs, often after short careers. But low job satisfaction and burnout are big reasons for quitting, and experts often have pointed to teachers’ dissatisfaction with support from above—principals or other supervisors—as a problem. Conversely, working for a good principal can keep teachers at a school and can build job satisfaction and teamwork among them. Evans, of TNTP, said consistency and clarity in running a school are important to teachers’ success.

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Louisiana's "Let Teachers Teach" Plan Strikes a Chord

Louisiana as a leader in education improvement? The idea would have drawn guffaws for many years. The state had some of the weakest K–12 education records in the United States. But in the last several years, Louisiana has been part of what some have called a Southern educational surge that includes Mississippi, Alabama, and Tennessee. Those states have launched reforms in teaching and curriculum, and they have seen improvement in test scores that outpace almost every other state (although that moves them into the middle of the pack, not to the top). Louisiana is the only state in the nation where fourth-grade reading scores released in 2024 were better than the scores prior to the COVID pandemic.

One recent initiative attracting attention to Louisiana is a set of goals called "Let Teachers Teach." In 2024, a 30-person work group, which included teachers and school administrators, issued 18 policy ideas. Cade Brumley, the Louisiana education superintendent, has backed the proposals, including some that have been particularly popular with teachers. "Teachers want to be working for acceptable leaders, teachers want to have their voices heard, teachers want to have environments where they're free to teach without distraction and students are free to learn," Brumley said during a webinar hosted by the American Enterprise Institute on August 8, 2024.

A FEW OF THE POLICY IDEAS IN THE LOUISIANA TEACHING PLAN:

Limit cell phone use. "This was probably the number-one item . . . from the teachers on the work group," Brumley said.

Address chronic absenteeism. Nationwide, absenteeism increased during the pandemic and has remained higher than before 2020. Some schools, which have put particular effort into connecting with kids who aren't coming to school regularly, have had more success, but absenteeism remains a big issue. Kids can't learn from a curriculum if they're not in school and, more broadly, if they're not engaged.

Ensure ample time for classroom preparation. Brumley said he got enthusiastic applause from a convention of 7,000 Louisiana educators when he promoted this. The plan from the task force said much of the time given to professional learning does not allow teachers to do what they really need, which is to focus on getting ready to teach.

Place ungovernable students at alternative sites for behavior support. Finding alternatives for such students is a tough challenge for many schools. It often involves complex special education questions and financial costs. Brumley said the number of students who need to be put in alternative situations is actually small but that doing this can make learning for the rest of a class much better.

Support mental health challenges through trained professionals. "We need to stop forcing teachers to be mental health therapists," Brumley said. "Teachers are not trained for this." Louisiana's "Let Teachers Teach" plan makes this statement: "Asking teachers to fill this role places teachers in difficult situations. Further, it distracts from the important academic work for which they're trained and hired to perform. An increased amount of legislation requires teachers to perform mental health duties, and it's becoming an undue burden on the profession and a disservice to students."

Abolish antiquated lesson-plan requirements. The task force called for using high-quality curricula that give teachers lesson plans while still affording to the teachers decision-making options of how to teach.

Pay teachers for additional nonacademic work. This does not apply to grading papers and similar duties, but it does apply to providing staffing at school events such as sports competitions. Many schools nationwide have systems for paying teachers for such duties, but some do not, including Louisiana districts. Brumley said there has been resistance to the idea from some school systems because of the financial impact. But advocates say that such steps are needed to make the jobs of teachers more manageable.

Give effective teachers more professional autonomy in their classrooms. The Louisiana plan says, "Teachers with an evaluation rating of proficient or higher should be allowed to internalize lessons within their curriculum and plan to use those materials to meet the individualized needs of their students."

Brumley said, "Whether it's burdensome training or disruptive student behavior, we must 'have the backs' of teachers so they are empowered to succeed every single day."

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“There’s no way around it,” she said. “Too many schools are chaotic places. . . . It’s the chaos that is wearing out students, wearing out teachers, wearing out principals.”

One key to being a successful principal—and to building a good teaching staff—is setting a constructive tone for what conduct is allowed and not allowed in school. This includes both promoting positive steps that can build the atmosphere or spirit in a school atmosphere and fostering consistency in dealing with behavior problems.

During a panel discussion at the May 8 event, Maggy Olson, director of equity and instruction for schools in the Milwaukee suburb of Greendale, emphasized the importance of principals. She suggested that they help teachers by providing support, instructional materials, and leadership to boost teachers’ effectiveness. “Teachers don’t fail,” Olson said. “Principals fail.” She said that one of her own roles as an administrator is to be an umbrella protecting teachers from factors such as community pressures that could distract them.

TRAINING AND DEVELOPMENT

Preparing teachers for success in the classroom and giving them the tools they need are commonsense ideas. But for years, teachers in large numbers have said that they learned much of what they need to know to do their jobs while on the job, not in college or other training programs. That especially applies to ways to manage a classroom, despite a trend toward giving teachers better training, including more time practice teaching. At least anecdotally, professional development sessions that almost every school has in the course of school years don’t seem to be the solution. Large gatherings of teachers for one day of training are especially unpopular among many teachers, who often say such sessions provide little practical help. Advocacy for different approaches to on-the-job training, often focused close to classroom life and involving small groups of teachers with similar situations, is growing.

And then there are those big changes coming from above. At the Marquette conference this past May, Sarah Almy, chief of external affairs for the National Council on Teacher Quality, said, “So often, district and states are pushing things down to the classroom in this sort of one-off, piecemeal fashion—like ‘here’s the policy on science of reading,’ ‘here’s the policy on social emotional learning,’ ‘here’s the new policy on culturally responsive education’—and leaving it to the teachers



Taylor Thompson



Robert Pondiscio

or sometimes the principals to do all the sense-making around ‘how does this all fit together?’” She said this often means that things don’t change “because the classroom door closes, and the teacher does whatever the teacher’s going to do.”

Almy said there is a big need to connect anything done involving recruiting, hiring, retaining, and developing teachers to actual instruction. “A huge opportunity, which is a huge area of focus for us at the National Council on Teacher Quality, is that we need to stop putting all of the onus on training teachers on the districts and we need to ensure that we’re holding our teacher prep programs to really high expectations.”

BROADER CULTURAL INFLUENCES

And then there are all the elements of students’ lives beyond the classroom—and sometimes in the classroom. Smartphones and social media have been the focus of attention nationwide. Many states and school districts have tightened rules on allowing phones in school, and especially in classrooms. Bans and restrictions are popular across the political spectrum and especially among teachers. The Marquette Law School Poll found in June that, among Wisconsin registered voters, 69 percent strongly supported banning cell phones during

class time and an additional 20 percent somewhat favored it. As for banning phones during the entire school day, 37 percent strongly supported this, and another 35 percent somewhat supported it.

But the screen-time issue goes well beyond what happens in school. The social lives, interests, attitudes, and self-conceptions of millions of kids are shaped by the huge amounts of screen time in their lives—often with negative effects on school-based learning. Can anything, including phone bans in schools, reduce or improve the influence of technology on kids’ lives and values? That’s a tough but important question.

Then you have the changing dynamics of family lives across the nation and across social economic levels—looser family ties, less constructive family bonding and social development. The general entertainment culture around most kids, with such strong themes of violence and sexualized conduct, is another worry. Not to mention political and social climates that are long on polarization and hostility and short on sweeter-character development. What’s a teacher to do? It’s a huge question—and one that better lesson plans and even better teaching strategies struggle to overcome.

Principals Can Play Big Roles in Teacher Success

SUGGESTIONS FROM FORMER MARQUETTE EDUCATION DEAN BILL HENK

Cynthia Ellwood, a Marquette University College of Education faculty member, said at the May 2025 program, “It’s not just a matter of going out there and finding the perfect material. I don’t think it boils down to a single approach to curriculum” or other factors. She urged educators to take an optimistic approach to what they can accomplish. “We must know that every single one of our students is capable of high intellectual thought, that they are capable of seeing themselves as intellectuals,” she said. “What we’re doing right now is not building pathways so that every child is offered this incredible challenging curriculum and the appropriate supports that make it possible for them to succeed.”

Almy, from the National Council on Teacher Quality, said, “Nothing can happen in a silo. . . . You can’t do just one thing to make things better, but there is hope overall.” And realizing the hope will require educators to connect together a lot of pieces.

Kanika Burks, chief schools officer for the Howard Fuller Collegiate Academy, a Milwaukee charter school, told the audience in the Law School’s Lubar Center that teachers need to understand their students—and to tell the students that they see them, they love them, and they want the best for them. “They deserve us to do all those great things,” Burks said. “If we do anything else, we are not being responsible adults.”

Thompson, the Oshkosh teacher, is certainly accurate in saying every day is not rainbows and singing and dancing. But can’t more days be more successful for more teachers and students? There are paths to make things better, especially if enough educators, leaders, and entire communities got behind the old phrase from *Star Trek*: Make it so. ■

While pay and benefits matter, the research is clear that many teachers who quit their jobs cite low job satisfaction. And many of them attribute this in particular to a perceived lack of support from principals and supervisors.

So it makes sense that Bill Henk, dean emeritus of the Marquette University College of Education, would emphasize the role of these administrators. After attending the Lubar Center conference discussed in the main story, Henk responded to a request from the *Marquette Lawyer* for his thoughts on making teachers more successful. Henk, education dean from 2004 to 2020, created a list of things that principals and supervisors can do to make classroom work more manageable.

Here are some of Dean Henk’s suggestions:

- Most importantly, trust teachers and listen to them.
- Ask teachers directly what can be done to make their work more efficient, especially ways to reduce non-instructional duties such as hallway, lunch, recess, and bus duty.
- Encourage teamwork by providing opportunities for teachers to collaborate, share resources, and learn from each other through meetings, mentoring programs, and online opportunities.
- Adopt an open-door policy that encourages teachers to share their ideas, concerns, and suggestions.
- Recognize and appreciate teachers’ hard work, achievements, and imaginative practices.
- Help teachers access available mental health resources, counseling services, and workshops on topics such as mindfulness and stress reduction.
- Provide constructive and actionable feedback.
- Enforce student discipline and support teachers when parental issues arise.
- At the start of some days, ask individual teachers if there is anything you can do to help, and then follow through on requests.
- Reduce expectations for lesson-plan compliance and submission.
- Be honest, transparent, and timely.

Summarizing the list, Henk said, “When teachers feel like ‘I’m not in this alone,’ that makes a world of difference.”



FROM THE FACULTY BLOG



Copyright law requires courts to answer difficult questions, such as: How much of the photo, immediately above to the left, is fact, and how much is art? And how much of that art is taken by the illustration at right?

BRUCE E. BOYDEN

The Grapes of *Roth*

Bruce E. Boyden, associate professor of law, posted a series of entries on the Marquette Law School Faculty Blog concerning his recent law review article on copyright law. The following combines the first two posts, appearing on January 26 and 27, 2025.

My latest article, “The Grapes of *Roth*,” has just come out in print in the *Washington Law Review*. In it, I argue that copyright law passed through at least three important phases over the course of the last century, in which judges struggled in different ways with the process of how to determine whether two works are infringing. This periodization of copyright decision-making is, I believe, insufficiently appreciated; copyright lawyers, scholars, and students tend to read cases from any era as going about the decision-making process in the same way. The goal of the article is to focus more attention on how decision-making has varied over time, and to at least begin the discussion of which era’s procedure is closer to optimal.

The title is a reference to the old copyright chestnut *Roth Greeting Cards v. United Card Co.* (9th Cir. 1970), in which the majority concluded that infringement was the right call based on the shared “total concept and feel” of the plaintiff’s and defendant’s greeting cards. The “total concept and feel” standard from *Roth* is one that copyright lawyers love to hate. The phrase is nearly meaningless: concepts are explicitly excluded from protection under 17 U.S.C. § 102(b), and copyrighted works are distinct from any physical embodiment, meaning they have no “feel.” The influential Nimmer treatise has for decades reproached the standard as “invit[ing] an abdication of analysis.”

So why is it so popular? Judges seem to have no qualms about using it, no matter what the commentariat says. They have cited it regularly as the standard for infringement in cases involving non-identical works from the 1980s to the present day. Indeed, it has found its way into jury instructions: juries are commonly told, without further elaboration, that two works are infringing if one was copied from the other and they share the same “total concept and feel.” The answer to this puzzle, I argue, sheds light on the transition from the first phase of copyright law during the last century to the second, and reveals the trap sprung (or the “grapes” pressed) in the third phase.

Source of Prince images: Opinion of U.S. Supreme Court, No. 21-869 (May 18, 2023)

The story starts with Learned Hand. Judge Hand, as I've mentioned before [in "Learned Hand: You're Reading Him Wrong," a post on the Marquette Law School Faculty Blog on April 13, 2018], is one of the giants of copyright law. His opinions for the Second Circuit in *Nichols v. Universal Pictures Corp.* (1930), *Sheldon v. Metro-Goldwyn Pictures Corp.* (1936), and *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.* (1960) have been mainstays in copyright textbooks and cited in caselaw and treatises for decades.

But one of the reasons why is not often appreciated. Take a look at any copyright decision from Hand's heyday, such as his district court opinion in *Fred Fisher v. Dillingham* (S.D.N.Y. 1924), the report of which begins as follows: "In Equity. Bill by Fred Fisher, Inc., against Charles Dillingham and others. Decree for complainant."

The most important words are the first: "In Equity." Up through 1938, when the Federal Rules of Civil Procedure were adopted, and even for decades after that time, judges were used to resolving certain disputes based on considerations of fairness and justice—suits brought in equity. Not just any claim could be filed in equity; complainants had to be requesting some sort of relief that was not available to them "at law," either because that relief was only equitable (discovery, injunctions, rescission, etc.) or because there was some sort of gap or loophole in the law that needed filling. The judge hearing a dispute in equity would resolve the issue without a jury and based on principles of fairness, such as those encapsulated in the maxims of equity.

Most copyright cases—indeed, most intellectual property cases—before 1938 were brought in equity, because



Bruce E. Boyden

typically the primary relief being sought was an injunction. Indeed, well after the merger of law and equity in 1938, courts still heard copyright cases claiming injunctive relief in an equitable fashion, without a jury; and even after the Supreme Court nixed that practice whenever damages were alleged, in 1959's *Beacon Theatres, Inc. v. Westover*, juries

were rarely requested in copyright cases until the 1980s. The result was that, throughout the middle decades of the 20th century, judges were quite used to making infringement decisions on their own, based on their impressions of the two works at issue.

This was in many ways fortunate, because an infringement determination in non-exact copying cases involves a tricky balance of three disparate inquiries. *First*, there is a question of amount: how much of the plaintiff's material wound up in the defendant's work? *Second*, there is a legal determination to be made: was the borrowed material the sort that the law should categorize as protected? And *finally*, there is a question of line-drawing: where is the threshold of impermissible borrowing, and did the defendant cross it?

The first of these questions is more or less factual, although determining whether or how much a defendant's non-identical character or melody or painting is based on the plaintiff's is the stuff of many late-night pop culture arguments. (Is 1978's *Battlestar Galactica* derivative of *Star Wars*? How much?) The second question is mostly legal, and no less difficult. Factual material is not protected, and neither are the general ideas or concepts underlying a work. But where's the boundary between a fact (not protected) and how it's expressed (protected)? What is the expression in a work

(protected) and when does it become so abstract or common that it becomes a mere idea (unprotected)?

For example, take photographs, such as one of the musician Prince [see opposite page]. Obviously Prince's face is not something the photographer created, and she can't claim protection over it—Prince's face is a sort of fact. But the artistry that the photographer added is copyrightable. What is it, exactly? And how much of the artistry, and not merely the features of Prince's face, is duplicated in the Warhol artwork [to the right of the photograph]?

These two questions—the amount taken and its protectability—are hard to consider simultaneously. Focus on the total amount of similarities and dissimilarities, and their protectability fades from view. Focus on the protectability of various pieces of the plaintiff's work, and the total amount taken becomes blurry. It's a bit like the old duck-rabbit image popular in introductory psychology courses. [See image at the top of the next page.] You can see the duck, or you can see the rabbit, and maybe you can rapidly shift back and forth, but unless you have super-human perception or you are utterly unfamiliar with animals, you can't see a "duck-rabbit."

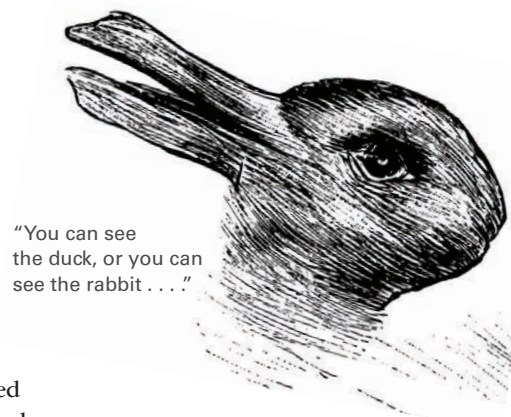
So the first two questions are difficult to answer together. But it's also impossible to disentangle them. The amount question and the protection question cannot be tackled seriatim but, rather, have to be considered at once in order to answer the third question: has the defendant taken enough *protectable material* to be liable for infringement? That third question is in some ways the most difficult of all, because it is neither a factual question nor a legal question, but a policy question: how much taking of protected material from the plaintiff's work is too much? When does it become unreasonable?

Policy questions involving reasonableness calculations might be ideal for a jury to determine, but not only is it not possible to take on the

three questions one at a time, it's also not possible to assign them neatly to different decision-makers. Copyrighted material cannot simply be separated out like gold ore from silt. Both the precise details of a work, such as lines of dialogue, and its higher-level structure, such as a novel's plot, can be copyrightable. A judge could not therefore itemize every protected or unprotected component of a work for a jury. Indeed, determining whether the defendant took protected material depends on exactly how the defendant copied it— isolated phrases or pages of text; the general concept or every beat of the narrative. The amount of appropriation depends on what is protected, and what is protected depends on the amount of appropriation.

Judges in the Learned Hand era resolved the question of infringement by making all of the judgment calls at once, in one fell swoop. They announced these decisions with all of the explanatory detail that football referees provide when they are trying to determine if a receiver both completed the catch and made a “football move” before dropping it—in other words, “fumble” or “incomplete.”

Here's Hand himself in his classic 1936 opinion in *Sheldon v. Metro-Goldwyn Pictures* (2d Cir.), involving an infringement claim against the Joan Crawford film *Letty Lynton* [see the top image on p. 44 simply for illustrative purposes]. After summarizing the plaintiff's play, the historical event on which it was based, the historical novel that the defendant's film was allegedly based on, and the defendant's film, Hand concluded that there were a number of similarities traceable only to the plaintiff's play: e.g., “Each heroine's waywardness is suggested as an inherited disposition; each has had an errant parent involved in scandal; one killed, the other becoming an outcast.” As to why such seemingly general



similarities amounted to infringement of protected expression, Hand wrote only that “the dramatic significance of the scenes we have recited is the same, almost to the letter.” Case closed.

Hand's well-known and earlier-mentioned 1930 *Nichols* opinion is similar. *Nichols* involved another play-to-film infringement claim, this time that Universal Pictures had ripped off the plot and characters of the plaintiff's hit play, *Abie's Irish Rose*, to make the silent film, *The Cohens and the Kellys* (described in some ill-advised ad copy as “the ‘Abie's Irish Rose’ of the Screen”). Hand famously spends some time talking about how general ideas are not infringing even if copied, and how some characters in a work have sufficient detail to be copyrightable whereas others don't. Then it's time for the “Application” part of the Issue-Rule-Application-Conclusion or IRAC analysis (as I tell my students, the *A* is what you get paid for!), where Hand concludes, “In the two plays at bar we think both as to incident and character, the defendant took no more—assuming that it took anything at all—than the law allowed.”

Why is this? “The stories are quite different.” Hand then identifies several differences. “The only matter common to the two is a quarrel between a Jewish and an Irish father, the marriage of their children, the birth of grandchildren

and a reconciliation. . . . [T]here is no monopoly in such a background. . . . [S]o defined, the theme was too generalized an abstraction from what she wrote. It was only a part of her ‘ideas.’” Why ideas and not protected material? Not only does Hand not explain why the material in question is unprotected, he insists that it's unexplainable: “Nobody has ever been able to fix that boundary, and nobody ever can.”

Nor is this some sort of quirk about Learned Hand. Copyright opinions from the 1900s through the 1950s bore this sort of decision-making style. For example, in *Nikanov v. Simon & Schuster, Inc.* (2d Cir. 1957), future Supreme Court justice Potter Stewart affirmed a district court's finding that the defendant's Russian language textbook infringed on the plaintiff's explanatory chart, holding that “[w]hile only a part of the plaintiff's copyrighted work was appropriated, what was taken was clearly material.” As to whether the taken portion constituted idea or expression, Stewart held that by copying the “arrangement, order of presentation and verbal illustration” of a portion of the chart, “more than mere idea” was taken. Why more? It just seemed that way to the court. “This case is perhaps close to the borderline, but no closer than many others in which copyright protection has been afforded.”

For better or worse, judges decided non-identical infringement claims in the early to mid-twentieth century by comparing the two works as an ordinary observer would and then mentally paring down the similarities to compare only protected expression, at the end making some judgment about whether the similar and protected material was significant enough to result in liability for the defendant. All that came screeching to a halt in the 1960s, when judges started concluding that this method of decision-making was not sufficiently “law-like.” That will be the focus of my next blog post. ■

JAMES B. SPETA

The Changing Federal and Wisconsin Law of Judicial Deference to Administrative Agencies

The matter of judicial deference to administrative agencies' interpretations of law has seen notable developments both in Wisconsin and at the federal level in recent years. James B. Speta, the Elizabeth Froehling Horner professor at Northwestern University's Pritzker School of Law, recently participated in a panel on the topic at the State Bar of Wisconsin's Annual Meeting and Convention and developed his remarks into this guest post appearing on the Marquette Law School Faculty Blog on October 1, 2025.

Very near the end of its term last year, on June 28, 2024, the U.S. Supreme Court handed down one of its most significant administrative law decisions ever. *Loper Bright Enterprises v. Raimondo* (2024) overruled one of the Court's own precedents, which it had relied upon for 40 years in more than a hundred decisions and which had been cited in nearly 20,000 lower court decisions. Yet not only was *Loper Bright* not a great surprise in federal administrative law, but it was in many ways anticipated by a decision issued by the Wisconsin Supreme Court interpreting that state's administrative law six years earlier, *Tetra Tech EC, Inc. v. Wisconsin Department of Revenue* (2018).

At this summer's annual meeting of the State Bar of Wisconsin, I was privileged to join a panel with former Wisconsin Supreme Court Justice Daniel Kelly, author of the lead opinion in *Tetra Tech*; retired Dane County Circuit Court Judge Shelley Gaylord; and Quarles & Brady appellate litigator James Goldschmidt, to discuss the connections between *Loper Bright* and *Tetra Tech*. It was a wide-ranging and vigorous conversation, with great questions from the floor.

Let me offer some of my thoughts

from that event: first, a bit of background on the federal and state cases; second, some connections and differences between them; and, last, some reflections on the hard questions that both cases raise and what, at the federal level, we are already seeing as changes wrought by *Loper Bright*.

1. Some Background on *Loper Bright* (and *Chevron*) and *Tetra Tech*

Though properly described as an administrative law decision, *Loper Bright* constitutes a major change in the way federal regulation works in almost every field—from transportation and energy, to health and safety, to the environment and labor relations, and more. Specifically, the Court held that its so-called “*Chevron* doctrine” was overruled.

In *Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984), in an opinion by Justice John Paul Stevens, the Court had said that, where Congress delegated to an agency authority to administer a statute, the agency also was empowered to interpret any ambiguous provisions of the statute. Of course, at what came to be called “step one” of a court's process under *Chevron*, if Congress had been clear in a statute, courts always



James B. Speta

ensured that agencies followed such clear instructions. But where there was ambiguity in the statute, in “step two” of the process, courts must defer to agency interpretations so long as they were reasonable.

The doctrine that emerged—*Chevron* deference—was initially promoted by Justice Antonin Scalia and other, largely conservative judges, and it supported what at the time (particularly under the Reagan and Bush administrations) were significant changes in agency regulation, mostly in a deregulatory direction. Its deference rule was based on three ideas: (a) that, in using an agency, Congress had delegated authority to the agency to resolve ambiguities in its governing statutes, (b) that resolving such ambiguities was usually an exercise in policymaking, as to which agencies would have more expertise than would courts, and (c) that agencies were more politically accountable (through both presidential and congressional oversight) than courts, allowing more democratic oversight of that policymaking.

Loper Bright overruled *Chevron* and placed principal authority for all statutory interpretation in the courts. Judges are to consider views of agencies on their governing statutes,

but judges must exercise “independent judgment” in interpreting statutes and always determine the best interpretation of a statute. The only exceptions, *Loper Bright* noted, are where Congress has specifically delegated to the agency the power to “fill up the details” or where the agency action was really limited to factfinding. And even then, courts are to rigorously ensure that agencies stay within the bounds of their delegated authority.

The result of *Tetra Tech* in 2018 for Wisconsin administrative law was very much the same. Before that case, the Wisconsin Supreme Court had developed an elaborate three-tier deference regime, which in some instances required courts to defer to an agency’s reasonable interpretations. *Tetra Tech* eliminated that regime, requiring courts to interpret statutes, and the Wisconsin legislature confirmed that outcome through amendments to the Wisconsin Administrative Procedure Act. “Upon review of an agency action or decision, the court shall accord no deference to the agency’s interpretation of law.” Wis. Stat. § 227.57(11). The statute also says that, while not deferring, courts should give “due weight” to the agency’s views. *Id.* § 227.57(10).

2. Some Connections and Differences Between the Cases

Loper Bright and *Tetra Tech* thus similarly transfer interpretive authority over a vast collection of regulatory statutes from agencies to courts. Both decisions emphasize judicial expertise in statutory interpretation, as opposed to agency expertise over their own statutes and agency expertise in policymaking. And both decisions emphasize that legislatures decide policy and courts enforce those policy choices. According to these decisions, statutory interpretation, even in highly technical areas, is not policymaking and therefore is the realm of courts.

Although the results are similar, *Loper Bright* and *Tetra Tech* reach their conclusions in fundamentally different

ways. The U.S. Supreme Court based its decision on the language of the federal Administrative Procedure Act (APA), which says that “the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706. This language, which Congress passed in 1947 in part in response to the New Deal’s growth of the administrative state, *Loper Bright* says, is fundamentally inconsistent with *Chevron* deference—and the Court said it had never previously considered whether *Chevron* deference was consistent with the APA.

By contrast, the lead opinion in *Tetra Tech* based its decision on separation of powers grounds. And, although the lead opinion had only Justice Kelly’s signature for all of its propositions, a majority of the court thought that judicial deference at least raised such issues and that the deference doctrines should be eliminated.

Similar separation of powers arguments were presented to the U.S. Supreme Court in *Loper Bright*, with parties and amici arguing that *Chevron* deference violated both Article I’s vesting of legislative power in Congress and Article III’s vesting of judicial power in the courts. Yet, although it began its opinion with the famous language of *Marbury v. Madison* that “it is emphatically the province and duty of the judicial department to say what the law is,” the *Loper Bright* court did not embrace those constitutional arguments

(though it is also clear that some individual justices find them persuasive).

This difference in grounding is important. Because *Loper Bright* is based on statutory and not constitutional grounds, it preserves to Congress the ability to clarify or change standards of judicial review, generally or in specific cases. Indeed, as noted above, *Loper Bright* says that in instances in which courts find that Congress has clearly delegated interpretive authority to administrative agencies, courts need only find that the agency’s interpretation is reasonable.

3. The Questions Raised by *Loper Bright* and *Tetra Tech*

Loper Bright and *Tetra Tech* have raised several difficult questions. Those include: How are judges to interpret complex regulatory statutes, especially those involving scientific or other technical questions? How will courts determine under *Loper Bright* whether agencies have been delegated authority? How should lawyers respond to the changes in standards of review?

The first of these is perhaps the easiest to answer and the hardest to operationalize. As both Justice Kelly and Judge Gaylord emphasized in the state bar panel—and as Chief Justice John Roberts’s opinion for the Court in *Loper Bright* said—judges interpret complex statutes all of the time, in cases not involving administrative agencies. *Loper Bright* requires courts to consider the agency’s views, which bring along the agency’s expertise, and courts will be aided by advocates and amici (and

[N]ot only was *Loper Bright* not a great surprise in federal administrative law, but it was in many ways anticipated by a decision issued by the Wisconsin Supreme Court . . . six years earlier

expert testimony where appropriate). The “mood” (if you will) of *Loper Bright* is that judges should be confident in their ability to find a meaning in every statute and not to doubt their (superior) ability to determine whatever policy or other matters go into a best interpretation of a statute.

Here, there is something of a difference between the mood of *Loper Bright* and *Tetra Tech*. Chief Justice Roberts refutes the idea that “language runs out” (again, a paraphrase) in agency statutes, making necessary agency policymaking. By contrast, Justice Kelly’s discussion on the state bar panel indicates that he can imagine such cases, but if they occur, that simply means that the legislature has not done its job to set policy and the proposed regulation fails. To some degree, this echoes the U.S. Supreme Court’s recent “major questions doctrine,” which requires a clear statement of congressional delegation where an agency interpretation would have significant regulatory, economic, or other (as yet not fully defined) consequences.

To turn to the instances in which a court is evaluating a delegation (an issue principally arising under the federal approach, given *Tetra Tech*’s constitutional grounding), *Loper Bright* makes clear that ambiguity in a statute is not enough, even if the agency administers the statute. Similarly, authority to engage in general rulemaking and in adjudication is probably not enough to infer that the agency has been granted sufficient interpretive authority to support a form of deference. Rather, the Court seems to be looking for specific words of delegation: statutory instructions that an agency will define a term, or the use of broad language, such as “reasonable” or “appropriate,” that implies that the agency will have broad discretion.

While we do not yet have a complete answer, even from a year of lower court decisions since *Loper Bright*, it does seem obvious that the U.S. Supreme

Agencies and advocates are focusing more energy on establishing the scope of delegations, seeking to secure (or deny) the greater deference that such a showing might permit.

Court will not embrace the previously understood and permitted model that Congress sometimes does create an agency with the explicit intent that the agency will supervise a significant industry or problem and will largely determine regulatory policy as facts and circumstances change over time. The Court has also made clear that it will take a dim view of novel agency interpretations, especially those that change previous and longstanding agency positions. The flexibility that agencies had under *Chevron* to change their mind on the interpretation of a statute was, in fact, one of the Court’s main reasons to overrule *Chevron* as unworkable and wrong.

Notwithstanding the need for further development, I do think we can see some trends in how agencies and lawyers are responding to *Loper Bright* (and, as I understand from the state panel discussion, to *Tetra Tech*). Agencies and advocates are focusing more energy on establishing the scope of delegations, seeking to secure (or deny) the greater deference that such a showing might permit. And agencies and advocates are working much harder to show that their preferred interpretations are the “best” interpretations of the statute. Courts are writing more detailed and comprehensive opinions on statutory interpretation issues. Under *Chevron*, an agency defending its interpretation had to show that the statute was ambiguous and that its interpretation was reasonable. A court was required to affirm even if it would not have interpreted the statute in the same manner.

A recent Sixth Circuit decision is a good example of these developments. *In re MCP No. 185—Federal Communications Commission* (6th Cir. 2025) involved a challenge by broadband internet access providers to the FCC’s most recent application of nondiscrimination rules to their services. If you have followed the “net neutrality” debate, you know that the FCC has changed its mind several times (corresponding with changes in administrations) on whether such internet access service is a common carrier service. Under *Chevron*, the Supreme Court and the D.C. Circuit had said the statute was ambiguous and therefore upheld each of the FCC’s different decisions.

But not this time. The FCC itself wrote extensively in its order to say that its decision to regulate internet services was not a major question and was in all events the best interpretation of the statute. And the briefs of the parties (and amici) similarly reflected that, under *Loper Bright*, the court would delve deeply into every corner of the Communications Act. Ultimately, the Sixth Circuit decided that the Act was best interpreted to not permit common carrier regulation of internet services (again, to be clear, notwithstanding the Supreme Court’s prior holding that the Act did not clearly do so). Thus, it set aside the FCC’s ruling.

Much is ahead. As *Loper Bright* unfolds, it will continue to be interesting to look to Wisconsin’s experience under *Tetra Tech*. ■

JOHN T. CHISHOLM

Witnesses—and Recalling Michael Ash and Jo Kolanda

This post, by John T. Chisholm, senior lecturer in law, appeared on the Marquette Law School Faculty Blog on March 3, 2025, as part of his continuing series of entries reflecting on his service (2007–2025) as district attorney of Milwaukee County—and looking forward to the future.

I want to begin making good on some of the promises in my first blog post to look back on—and forward to—the criminal justice system in this region and beyond. This is an appropriate place to do so: Marquette University and the Milwaukee County District Attorney's Office played a significant yet mostly unknown role in improving how witnesses in criminal cases have been treated in our country during the last 50 years.

The heart of the adversarial justice system in the United States is the direct involvement of citizens in a structured process that peacefully resolves conflict by balancing the rights of individuals with the collective needs and responsibilities of the community. People reluctantly encounter the criminal justice system in four general categories: as defendants, victims, witnesses, and jurors. Each category shares one thing in common: almost no one volunteers or wishes to be so identified. And while the resources directed toward victims and witnesses and defendants have improved over time, a strong need persists to reexamine and refresh how we treat our community members in the contemporary court system. A new generation of lawyers should embrace that challenge, because how we treat people in our justice system is among the clearest mirrors of who we are as a community.

In 2008, Professor Dan Blinka moderated a panel at the Law School that discussed criminal plea bargaining in Wisconsin and asked about the

role of victims in that process. One of the panelists, recently retired Milwaukee County District Attorney E. Michael McCann, answered a question about the victim's role in plea negotiations and how much things had changed in his 38 years as district attorney, by saying, "I recommend that you read an article out of the *Notre Dame Law Review* from about the early 1970s."

Mr. McCann was referring to an article authored by then Milwaukee County First Assistant District Attorney Michael Ash in 1972, when Ash was only five years out of law school. "On Witnesses: A Radical Critique of Criminal Court Procedures," in the *Notre Dame Law Review*, was a scathing assessment by Ash that, despite longstanding calls for reform of how witnesses were treated in criminal court systems, "the witness, especially the witness in criminal courts, is more abused, more aggrieved, more neglected, and more unfairly treated than ever before."

Ash called for action and focused on seven possible areas of reform, many of which are now standard practice

in court systems and district attorney offices throughout the country—and arguably others that *should* be. They included:

First, Ash advocated for what he called "witness appearance-control projects," which emphasized reducing unnecessary court appearances by collecting demographic information that would allow witnesses to be placed on call and to come to court only when needed. He also recognized the need to provide witnesses with information in appropriate languages.

Second, he proposed the creation of "witness liaison and support squads," with dedicated specialists to act as information bridges between witnesses (including victims) and the court process. This suggestion is now directly embodied in dedicated victim/witness advocates who work in every district attorney's office in the country.

Third, he promoted the concept of "early screening and diversionary devices," predicated on the idea that many of the cases presented to prosecutors for charging could be better handled by deflection to rehabilitative processes



Michael Ash, ca. 2008

rather than the criminal court system—what is now called the "early intervention" process in the Milwaukee County District Attorney's Office.

Fourth, this young lawyer argued for mandatory pretrial conferences between prosecutors and defense attorneys within a short time after the first appearances in court. The idea was that prosecutors would offer one-time best deals for quick acceptance of responsibility. The hope was to dramatically reduce the number of appearances by witnesses and victims in overcrowded trial dockets.

Finally (in this list), Ash argued for justly compensatory witness fees and creating facilities for the comfort and convenience of the witnesses and victims—what we would now refer to as witness waiting rooms.

Michael Ash's analysis, critique, and call for action came at a unique and opportune time. The Federal Law Enforcement Assistance Administration (LEAA) focused on the conditions of witnesses in the criminal courts around the country in the early to



Jo Kolanda, 2003

mid-1970s. Influenced by Ash's article, LEAA funded the first victim/witness pilot programs in the district attorney's offices in Brooklyn and Milwaukee. Titled "Project Turnaround," the express purpose of the funding was to create model assistance programs for victims, encourage victim cooperation, and improve prosecution.

Like most great ideas that catch fire, Mike's focus was a confluence of factors, and it still needed someone with passion and drive to make the abstract a reality. Here, Mike Ash's great idea was blessed not just by the confluence with LEAA but by a friendship formed at Marquette University.

In 1975, Jo Kolanda, a Marquette University graduate and a social worker in the Milwaukee County welfare department, heard about Project Turnaround from Ash, who encouraged her to apply to lead the project but recused himself from the hiring process because of their friendship. In a 2003 oral history interview, Kolanda recounted her experience forming the first victim-coordinator program in the country. She related the

challenges that she initially experienced in piercing the courthouse culture that centered around the judges and the attorneys—and not around the people brought into that environment.

Kolanda's perseverance paid off because when the three-year demonstration project ended, she had objectively demonstrated the value of the program, which Milwaukee County adopted at the urging of District Attorney McCann. Her contribution was not finished there. In 1980, she and others convinced the Wisconsin Legislature to pass the country's first statutory crime victim bill of rights—what is now Chapter 950 of the Wisconsin Statutes.

The success of the Milwaukee and Brooklyn projects led to widespread adoption of the concept of dedicated victim/witness assets within district attorney's offices in the country. The focus on the citizen has led to a gradual evolution in improving conditions and services for witnesses that continues to this day.

Recent examples of continued innovation from the Milwaukee District Attorney's Office include the creation of the first restorative justice component in a DA's office in the 1990s; the development of an in-house dedicated witness-protection program in 2008 to address intimidation and dissuasion of crime witnesses and victims; and helping envision and advocate for the creation of the Sojourner Family Peace Center, with comprehensive services for victims in a dedicated

The network of relationships that Marquette undergraduates and Marquette law students make is not just a transactional advantage.

facility devoted to therapeutic intervention. And arguably the state's adoption of Marsy's Law into a constitutional protection is an extension of the work pioneered by Ash and Kolanda in the '70s.

I started by saying that Marquette played an outsized role in changing how victims are treated in the country. A core value of a Jesuit education is aspiring to uplift human dignity and being a courageous voice for the powerless, the oppressed, and the dispossessed. Michael Ash was a polio survivor. He lost the use of his legs when he was a sophomore at Marquette University High School but fought his way back to graduate as his class president and then to graduate from Marquette University and, thereafter, from Harvard Law School. Jo Kolanda was a single mother who graduated from Marquette University and was working as a social worker in Milwaukee County's welfare department when she got the call from Mike.

Treating people with dignity and compassion was not an abstraction for either; it was a core part of their identity and values they advanced with humility and courage. The network of

relationships that Marquette undergraduates and Marquette law students make is not just a transactional advantage. It is a recognition that your friend, your colleague, your alum shares your calling to devote a part of his or her life to making communities better.

If Ash and Kolanda were here today and spent a day in the Milwaukee County Circuit Court, they would see some of the same challenges they saw in the late 1960s and early 1970s. But they would also acknowledge (modestly, because they were profoundly humble, generous people) that their vision for change had an impact, even if their contribution is mostly hidden, forgotten, or taken for granted today. They should be remembered and uplifted as models of young professionals, one a new lawyer and one a new social worker—who overcame challenges in their personal lives, and perhaps because of those challenges, helped make the quality of justice better for millions.

[The blog post ended with links to an article about Ash from the Milwaukee Journal Sentinel and to an interview of Kolanda, available on YouTube, which is the source of the photo on this page.] ■

JUDITH G. McMULLEN

Resting Your Case—and Yourself

Judith McMullen is a professor of law at Marquette University. This post appeared on the Marquette Law School Faculty Blog on July 7, 2025.

This year's summer solstice has passed, and the Fourth of July weekend has come and gone. Have you taken—or at least planned—a vacation yet this year? For many lawyers, the answer appears to be “No.” An *American Lawyer* survey this year of 3,000 lawyers revealed that while



Judith G. McMullen

about 36 percent said they use all their vacation time, 10 percent of lawyers said they take no time off at all. A 2024 survey conducted by *Law360 Pulse* found that more than 20 percent of lawyers planned to take one week or less of vacation that year. Associates in law firms were even less likely to take time off: almost one-third reported they planned to take a week or less of vacation time.

Why does this matter? The aforementioned studies also assessed lawyer mental health generally, and confirmed what we have known “officially” since 2017, when the ABA National Task Force on Lawyer Well-Being issued its report. Lawyers suffer from high amounts of stress that take a big toll on our physical and mental health, potentially leading to cardiac disorders, burnout, depression, anxiety disorders, or substance abuse. Chronic stress was reported by 38 percent of lawyers overall (and 47 percent of women lawyers) in the *Law360 Pulse* survey. Fifty-six percent of lawyers working more than 50 hours per week reported chronic stress. Although our awareness of the impact of stress on lawyer mental health has improved in the eight years since the ABA report,

implementation of helpful policies to moderate stress has been slow.

So why don't lawyers take more time off? Sadly, the culture at many firms tends to discourage or even penalize time off. Forty-seven percent of lawyers surveyed by the *American Lawyer* said that their manager discouraged taking time off. One attorney reported that

they didn't want to go on vacation and have the firm see them as replaceable. Many lawyers cited pressure to make billable-hours goals, client demands, not wanting to have work piling up while they're gone, or a firm culture of being online 24/7 as preventing them from taking vacation time. Although associates may believe they can take some time off when they make partner, the extra demands of partnership may make taking time off an even bigger challenge.

While it is tempting to say that it is good for clients and for the legal profession to have lawyers available 24/7 for their clients, it is only a good thing if those lawyers are consistently at the top of their game. Probably this is not the case. Chronic stress has been shown to impair working memory, concentration, problem-solving ability, efficiency, social skills, and creativity—all qualities necessary for good lawyering. Our brains need rest and relaxation to function properly over time, and vacations are a good way to interrupt chronic stress, relieve monotony, and let our brains reset, according to Susan Albers, Psy.D, of the Cleveland Clinic. Vacations can decrease stress hormones such as cortisol



The Aitken Reading Room in Eckstein Hall

and trigger release of hormones like serotonin, dopamine, and endorphins, all of which contribute to a better mood, a sense of well-being, and improved cognitive function. Although a week or more off is ideal, even a day or two of leisure time can make a positive difference.

It will be difficult to shift the culture of the legal profession in a way that normalizes taking time off to rest and rejuvenate. But lawyers are logical people, and for the most part we have our clients' best interests at heart. As the evidence accumulates that leisure time is essential to mental health and optimum brain function, we need to spread the word, take some time off, and encourage our colleagues to rest as well. It's in everyone's best interests. ■

FROM THE PODIUM

KATRINA G. HULL

Cheers to IP

This is a lightly edited version of remarks delivered by Katrina Hull, Midwest Managing Attorney at Markery Law and adjunct professor at Marquette Law School, on March 29, 2025, at the annual banquet for the *Marquette Intellectual Property and Innovation Law Review*.

I am glad for this opportunity to draw on some of my experiences as I offer you both congratulations and counsel. I've been privileged to teach a trademarks class at Marquette Law School during the past nine years. And I have also been practicing law for nearly 20 years, with a focus on trademark prosecution.

At the midpoint of my career, my advice to upcoming intellectual property attorneys is simple. Whenever you can: Have fun. Be kind. Give back.

Starting with “have fun,” I have one intellectual property joke. The four types of IP—patent, copyright, trademark, and trade secret—were invited to the end-of-year banquet for the *Marquette Intellectual Property and Innovation Law Review*. But they didn't make it. On the way, they stopped at a bar on Water Street and got into an argument.

Patent started the fight. Lifting his drink, he said, “Cheers to me. I'm the best type of IP. I'm the smartest. I protect innovation and technology. Cheers to Patent!”

Copyright responded and said, “Hold on there, Patent. I'm the best type of IP. You may be smart. But I am the most beautiful and interesting. I protect works of art, music, and film. Cheers to Copyright!”

Trademark then said, “Excuse me, Patent and Copyright. I'm the best type of IP because I'm the most popular. Everyone knows my name. Without me, no one can identify your inventions, Patent, or your artistic works, Copyright. Cheers to Trademark!”

Finally, Trade Secret, stepping out of the shadows, said, “Enough. Cheers to Trade Secret! I'm the best type of IP. You all know it. And I can never tell you why.”

Admittedly, that joke may be amusing only to those who study intellectual property. There are limits on having fun. For clients, IP issues can be personal.

The first time I recall encountering an intellectual property issue was personal. It happened in high school and involved the theft of my intellectual property. To set the scene, it was the mid-1990s. We didn't have TikTok or Instagram to mindlessly scroll to encounter a variety of content. We did have David Letterman—a



The building décor of goats on a grass roof of Al Johnson's Restaurant in Door County, Wis., is registered as a trade dress the restaurant has used since 1973. Katrina Hull defended the restaurant in several legal challenges to the trade dress registration.

late-night TV variety show host, perhaps I should explain. The *Late Show with David Letterman* featured comedic monologues, celebrity guests, live music, Stupid Pet Tricks, and Top Ten lists. The Top Ten lists were irreverent and humorous. Examples include the “Top Ten Things You Don't Want to Hear from a Guy Dressed Like a Cowboy” and the “Top Ten Numbers Between 1 and 10.”

In January 1996, inspired by David Letterman, I wrote a “Top Ten Super Bowl Disasters” list for my high school newspaper. The list was published two days before Super Bowl XXX, when the Dallas Cowboys defeated the Pittsburgh Steelers. I was proud of my attempt at a comedic Top Ten list, although my No. 1 Super Bowl Disaster was “Cowboys win.”

We exchanged newspapers with other local high schools. A year later, a school from a neighboring town published a “Top Ten Super Bowl Disasters” list nearly identical to the one I wrote in 1996, with a few details changed to account for differing teams because in January 1997 the Green Bay Packers were playing the New England Patriots in Super Bowl XXXI. My hard work—my copyright, although I didn't know it was called *copyright* at the time—had been stolen. It was personal.

Interestingly enough, David Letterman was involved in an IP dispute in 1993 when he moved networks, from a show at NBC, called *Late Night with David Letterman*, to a program at CBS, called the *Late Show with David Letterman*. NBC threatened

to sue CBS and David Letterman because NBC claimed it owned the intellectual property rights to the format of Letterman's show, including the show's most popular features, such as Stupid Pet Tricks and the Top Ten lists.

Under the threat of an IP lawsuit, David Letterman approached the situation with his trademark humor, delivering an opening monologue that addressed the threatened IP suit from NBC. He started the monologue by joking, "My name is Dave, and I checked this now with the CBS attorneys, and legally I can continue to call myself Dave." A few minutes later, Tom Brokaw from the *NBC Nightly News* appeared on stage, grabbed two cue cards, and said, "Dave, I'm kind of disappointed. The fact is these last two jokes are the intellectual property of NBC." After Brokaw left the stage with the cue cards, David Letterman quipped, "Who would've thought you would ever hear the words *intellectual property* and *NBC* in the same sentence?"

David Letterman resolved the threatened lawsuit by changing some character names and calling his Top Ten list the "Late Show Top Ten," a good resolution as "Top Ten" is descriptive if not generic for Top Ten lists.

Whenever you can: Have fun. Be kind. Give back.

Although the advice to "be kind" sounds simple, I'm often surprised at the lack of kindness between attorneys. I'm going to share a personal story about an unkind attorney. I will refer to him only as Opposing Counsel.

Opposing Counsel took issue with the registered trade dress of Al Johnson's Swedish Restaurant & Butik in Sister Bay, Wisconsin, up in Door County. Al Johnson's owns a U.S. registration for restaurant décor consisting of goats on a grass roof—a trade dress registration the restaurant has used since 1973. If you visit Door County in the summer, seeing the goats on the roof is a memorable experience, and the Goats on the Roof trade dress uniquely identifies Al Johnson's Restaurant.

In 2011, Opposing Counsel petitioned to cancel the Goats on the Roof trade dress on behalf of a photographer. The petition, filed with the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB), alleged that the photographer was harmed because he was "unable to satisfy his desire to take photographs of goats on grass roofs."

On behalf of Al Johnson's, we filed a Rule 12(b)(6) motion to dismiss the cancellation action for a lack of standing and for failure to allege a plausible claim. We argued that the cancellation petition did not identify any type of harm that could be addressed under the federal trademark statute, known as the Lanham Act.

The TTAB agreed and granted Al Johnson's motion to dismiss but provided the photographer leave to amend. In 2012,



Katrina Hull

My hard work—my copyright, although I didn't know it was called *copyright* at the time—had been stolen. It was personal.

Opposing Counsel filed an amended petition, alleging that the photographer now desired to dine and shop in establishments with Goats on the Roof. The TTAB once again dismissed the cancellation petition, finding that the photographer did not have standing because such an interpretation of the Lanham Act would give standing to challenge a trademark registration to any consumer with the desire to purchase infringing goods.

All was quiet for six years. Then, in 2018, and not dissuaded by two previous dismissals for failure to allege standing, Opposing Counsel petitioned a third time to cancel the Goats on the Roof trade dress registration. This time, Opposing Counsel had no client. He represented himself and said he was harmed because the Goats on the Roof trade dress was allegedly demeaning to the goats.

Setting aside the fact that Opposing Counsel is not a goat, he filed the petition with the TTAB in 2018, *after* the U.S. Supreme Court ruled in *Matal v. Tam* (2017) that the disparagement clause of the Lanham Act was unconstitutional because it constituted viewpoint discrimination in violation of the First Amendment. If you'll recall, *Tam* involved the Asian American band, called *The Slants*, that wanted to register its own band name but was denied because the U.S. Patent and Trademark Office said the band name was disparaging to Asian Americans.

Back to the Al Johnson's case: We again filed a motion to dismiss with the TTAB, pointing out that Opposing Counsel had no standing and that he failed to plead a valid claim because the U.S. Supreme Court had recently struck down the disparagement clause of the Lanham Act.

The TTAB agreed and, for a third time, dismissed Opposing Counsel's petition to cancel the Goats on the Roof trade dress registration.

Did this dissuade Opposing Counsel? No, he appealed to the Federal Circuit.

The Federal Circuit found in Al Johnson's favor and upheld the TTAB decision that Opposing Counsel did not have standing and failed to plead a plausible cause of action. The Federal Circuit also sanctioned Opposing Counsel for filing a frivolous appeal.

Opposing Counsel petitioned for certiorari to the Supreme Court. And, not much of a surprise here, the Supreme Court denied cert.

This is where the unkindness comes in: When Opposing Counsel could not win in court, he put up a website. The website

heading appearing in the Google search for my name states “Attorney Katrina Hull successfully lies in defending ridiculous goat . . .” and the “article” on the website is titled, “Milwaukee Lawyer Protects Restaurant’s Ridiculous Trademark by Lying to United States Patent and Trademark Office and to Federal Appeals Court.”

To be honest, this website hurts. (My kids, though, have had “fun” with this website. They love to Google my name at school, and brag to their friends that their mom is a “successful liar.”) I encourage all of you, though, to be kind and not to be like Opposing Counsel.

Whenever you can: Have fun. Be kind. Give back.

Perhaps the most important advice I can offer is to give back. You have impressive intelligence, and I encourage you to find a way to share that with the community where you practice law. If you practice in Milwaukee, you can volunteer as an attorney at the Marquette Volunteer Legal Clinic (MVLIC). Many of you may have already volunteered as law students, and I thank you for that service.

For almost as long as I’ve been practicing law in Milwaukee, I’ve been volunteering at the House of Peace location for the MVLIC. I may be an “IP attorney,” but the MVLIC provides an opportunity to encounter other areas of law—those you’ve been studying the past two or three years—and to connect with the local legal community while giving back.

I would not be here tonight if I had not been volunteering as a lawyer at the House of Peace a decade ago. I was paired one evening with an excellent Marquette law student, Xheneta Ademi. At the end of our shift, I asked her what area of law she wanted to practice, and she said intellectual property. Xheneta introduced me to Professor Kali Murray, and Professor Murray invited me to guest lecture on trademark prosecution for her trademarks course. The next year, at Professor Murray’s encouragement, the Law School invited me to teach the trademarks course. Teaching is a true honor. I have learned more from the students over the years than I have taught them, and I’m truly grateful for the experience of being an adjunct professor.

Whenever you can: Have fun. Be kind. Give back.

In closing, I am giving back to you a David Letterman-inspired Top Five list. So, from the home office in Milwaukee, Wisconsin, here are the “Top Five Things I Wish I Had Known as a Brand-New IP Attorney.”

5. Pat Pend is not a person.
 4. Copyright does not mean “I can copy—right?”
 3. The *TM* next to a word stands for “Trademark” and not “The Man.”
 2. The fact that the Green Bay Packers own the Chicago Bears does not mean that the Green Bay Packers own the Bears’ trademarks.
 1. It’s a trade secret. I will never tell you.
- Thank you. Cheers to IP! ■



HON. JAMES A. WYNN

Judging in a Polarized World

The Hon. James A. Wynn, L’79, is a judge of the U.S. Court of Appeals for the Fourth Circuit. Judge Wynn delivered the following remarks at a dinner of the Federal Bar Association in Charlotte, N.C., on June 4, 2025.

Good evening. It is an honor and privilege to address this distinguished gathering of the Federal Bar Association.

This year marks my 35th year as an appellate judge—20 years on the state courts and now 15 years on the federal bench. That journey has been one of change and learning. The legal world in which I began my judicial career is not the same one that we practice in today. And neither are we the same judges. To paraphrase a saying of my mentor, former North Carolina Chief Justice Henry Frye, “The world has turned many times over the past 35 years, and we have turned with it.”

I was first elected to the North Carolina Court of Appeals in 1990, a time when the judicial selection process—and the judiciary itself—operated quite differently. Back then, judicial elections in states such as North Carolina were partisan and, in various other states, nonpartisan. Today, while the method

of selection in most states remains unchanged, the legal and political landscape around them has evolved, often in unpredictable ways.

Some of you may know that I was first nominated to the U.S. Court of Appeals for the Fourth Circuit by President Bill Clinton in 1999, but the Senate never held a hearing. It wasn't until more than a decade later, under a new administration, that the opportunity returned—and the outcome of that process stands before you this evening.

When I reflect on the past 35 years, the most visible shift is generational. A third of all lawyers today are 35 or younger. Many of you weren't yet born when I first put on a robe. And with that generational shift comes a shift in values, expectations, and the rhythm of professional life.

In 1990, there were 12 judges on the North Carolina Court of Appeals—five of whom are now deceased, and none of whom still serve in a judicial capacity. On the state Supreme Court, where I briefly served in 1998, not one of my colleagues remains on the bench. The players have changed. Look at it this way: In 1990, Hubert Davis was a star player on the University of North Carolina men's basketball team; today, he is the team's coach—times have changed his role and the makeup of the Tar Heels basketball team.

Even in the federal judiciary, the transformation has been significant. When I joined the Fourth Circuit in 2010, only a handful of the judges from 1990 remained active. Today, the most junior judge of that era—Albert Diaz—is now our chief judge who may serve until the year 2030. And if it continues that a chief judge serves in that capacity for seven years, Chief Judge Diaz's successors until the year 2051 will be in this order: Judge Stephanie Thacker, Judge Jay Richardson, and then Judge Allison Rushing. That, of course, assumes that none of them gets elevated to the Supreme Court.

But while the generational, societal, and political changes are great influencers on our judiciary, the one constant that we

[T]rue judicial judgment . . . is a moral and intellectual task, one shaped not only by precedent and principle but also by character.

judges maintain is the responsibility we carry—one that transcends partisanship and demands something deeper of us as judges and legal professionals.

That brings me to a recent work that has helped frame my thinking in this chapter of my judicial life. *Judges, Judging, and Judgment: Character, Wisdom, and Humility in a Polarized World* is a book by Professor Chad Oldfather of Marquette University Law School.

As Professor Oldfather reminds us, “Judges are humans, and human motivations are varied and complex.” He points out that over a century ago, Justice Benjamin Cardozo wrote: “There is in each of us a stream of tendency, whether you choose to call it a philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals.”

While there is much to consider and learn from Professor Oldfather's book, one takeaway that I got is that judgment—true judicial judgment—is more than simply applying rules to facts. It is a moral and intellectual task, one shaped not only by precedent and principle but also by character.

In a time when there are serious threats to the public's confidence and trust in the integrity of our judicial institutions, Professor Oldfather's insights are timely. He writes that the legal system, in its design, assumes human fallibility. It builds in mechanisms—such as the adversarial process, written opinions, and appellate review—not to mask our imperfections but to confront them.

Yet these mechanisms are under stress. Caseloads grow. Time shortens. The space

for deep reflection shrinks. And more troubling, the legal profession itself is fragmenting into ideological camps. We now risk losing the shared professional norms that once bound us together. As Professor Oldfather notes, when a judge identifies with a particular side, the accountability to the broader profession erodes.

What then sustains us? Oldfather offers a path grounded not in procedure alone but also in character.

Character. Wisdom. Humility.

These are not just aspirations—they are prerequisites. In the words of Professor Anthony Kronman, whose 1993 book, *The Lost Lawyer*, Oldfather echoes, we must revive the ideal of the lawyer-statesman. That is, we must return to the concept of a professional committed not simply to technical mastery but to being “a person of . . . practical wisdom as well.”

For the judiciary, this means nurturing the habit of reflection. It means selecting judges not just for their credentials, but for their judgment. It means designing systems that support thoughtful deliberation, not just efficiency throughput.

I share these reflections not as someone who claims to have mastered them, but as someone who strives toward them every day.

Let us commit—amidst our changing profession, our evolving judiciary, and our polarized society—to uphold the virtues that remain constant. Character. Wisdom. Humility.

May we pursue justice not only with sharp minds but with full hearts.

Thank you. ■

Alumni Awards Ceremony Brings Tears, Gratitude, and Calls to Service

How important is an alumni achievement award? Some might think of it as just a nice part of the annual life of an institution such as Marquette University.

Don't tell that to any of the four Marquette lawyers honored at a ceremony at Eckstein Hall on April 24, 2025. The meaningful and emotional moments that occurred during the program underscored what the awards meant to them.

"Thank you for this honor, which means more than I can ever tell you, but you can tell that from the crying," said Mary L. Ferwerda, L'11, who received the Howard B. Eisenberg Service Award.

Christian Bray, L'14, who received the Charles W. Mentkowski Sports Law Alumnus of the Year Award, said, "This award means more than anybody could really know."

Joseph E. Tierney III, L'66, receiving the Lifetime Achievement Award, said the honor "validates probably the second most important decision I ever made, and that is to be a lawyer." His extended family, across several generations, has been deeply engaged with Marquette Law School. "That makes this honor extremely important to me, and I hope to live up to it," Tierney said.

And Mark A. Cameli, L'85, recipient of the Alumnus of the Year Award, recounted with emotion the roles in his life of his immigrant parents and of his wife, Sharon, as well as a long-ago mentor who opened his eyes to possibilities for his life. "You cannot want something you cannot see, you cannot aspire to be something you do not know," Cameli said, urging people to bring vision and hope to others.

Marquette University President Kimo Ah Yun praised the four lawyers for careers and lives showing Marquette's mission—succinctly stated as excellence, faith, leadership, and service—in action.

Mark Cameli, Alumnus of the Year

Presenting the awards, Dean Joseph D. Kearney said Cameli represents clients "with civility and respect, not just toward those on his side and the courts, but for his opponents, both parties and their lawyers." This can be a challenge, given the context: In the words of one of his former partners, Cameli's work as a lawyer "is to help individuals and businesses in times of great crisis."

A native of Chicago Heights, Ill., Cameli is a former federal prosecutor and now longtime criminal defense and civil litigator in Wisconsin. For the past 27 years, he has been with the Reinhart Boerner Van Deuren firm, based in Milwaukee. In the context of challenging cases and situations, in the words of a partner, Cameli "is an unfailing voice for calm, for fairness, for doing the right thing."

Cameli's broader effectiveness as a lawyer and civic leader, Kearney said, offering examples, "often has to do with putting other people— younger colleagues, in particular—in a position for accomplishment and success."

In accepting the award, Cameli said of his late parents, who immigrated from Italy, "I'm the son of a machinist and a brilliant, self-educated mother." He said, "They struggled but persevered and gave what they were capable of giving. . . . My four siblings and I have no journey without their journey, no grit without their grit, no dreams without their dreams." And he praised his wife: "No Sharon, no Mark as alumnus of the year."

He especially praised a mentor whom he named only as "Tom." The mentor encouraged him to go to college, guided him in getting there, and opened Cameli's eyes to what kind of life he could lead. "I wanted to be like him," Cameli said. He has aimed to play that role for others. "We are indeed our brothers' and sisters' keepers," he said. "Everyone in this room—everyone in this room—can do this for others." Cameli said that if his story causes one person to take such a role with someone, "this evening could not have been more important to me."

Joseph E. Tierney, III

"I've not done a lot of job hopping," Tierney said. Indeed. He joined the law firm known now as Meissner Tierney Fisher & Nichols in 1967 and has worked there ever since, except for a period of leave during military service. Kearney praised Tierney's expertise as a tax lawyer—as a threshold matter. "Suffice it to say that a tax lawyer with a practice such as Joe's cannot succeed at a high level or across a sustained period of time without rather exceptional 'soft skills,'" Kearney said. He described Tierney as "intensely interested in people and in serving them."

For more than 10 years, Tierney has been an

adjunct professor at the Law School, teaching a course on sports industry taxation issues. Tierney and others in his family have been longtime valuable supporters of the sports law program at the Law School, and Tierney has been a supporter of youth sports programs in Milwaukee—soccer, in particular.

In presenting the award, Kearney described generations of involvement of Tierney family members in Marquette Law School, going back to Joseph E. Tierney, L'11 (that's 1911). "Yet there is only one Joseph E. Tierney III, and we at Marquette University Law School—like your clients, your fellow lawyers in your firm, and others in the profession—have learned, directly and uniquely, from you," Kearney said. "For you do not just reflect Marquette University's mission of excellence, faith, leadership, and service, but you help teach it. I consider myself among your students."

Tierney said, "It's a privilege to be a lawyer and to practice law." He said his time at the Law School "was tremendously enlightening." He said he learned that practicing law "was demanding in the way that would affect people's lives."

Mary L. Ferwerda

Ferwerda grew up in South Dakota, earned bachelor's and master's degrees from Creighton University, and came to Marquette University in 2001, to work in student affairs. Soon thereupon, "while working at Marquette," Kearney said, "Mary demonstrated her characteristic tenacity by pursuing a law degree in our part-time evening program." Even all of that was not enough: Ferwerda soon started volunteering as a student at the Marquette Volunteer Legal Clinic, an experience she characterized as "life-changing."

After graduation, she became the first director of the Mobile Legal Clinic, a project of Marquette Law School and the Milwaukee Bar Association, and subsequently became executive director of the Milwaukee Justice Center (MJC). A partnership among Marquette Law School, the Milwaukee Bar Association, and the Milwaukee County Clerk of Court, the MJC serves people involved pro se in legal proceedings in Milwaukee County. Kearney quoted one person who nominated Ferwerda for the Law School's Howard B. Eisenberg Service Award by praising how her "servant's heart" was paired with tenacity and a fighting spirit. Ferwerda was recently named chief deputy clerk of the Milwaukee County Circuit Court.

Ferwerda said, "I stand here truly full of



gratitude for Dean Eisenberg's legacy, for becoming a Marquette lawyer, for everyone who has been part of my journey and that of the Milwaukee Justice Center. . . . This work has been the honor of my life."

Christian Bray

Bray graduated with a degree in sports management from Texas A&M University and was attracted to Marquette Law School by the sports law program. Kearney recounted Bray's career path since graduating from the Law School in 2014: "Her first stop was in New Haven, at Yale University, where she soon became assistant athletic director for compliance and, shortly thereafter, the university's senior woman administrator in athletics, an important position required by the NCAA Constitution." She went on to Harvard University, where she oversees compliance and is responsible for supervision of sports, including women's rugby, men's fencing, women's fencing, women's volleyball, men's and women's cross-country, and men's and women's track and field.

"Christian has excelled in bringing her legal education and her relational skills to bear on her work with students, coaches, fellow administrators, and others to support Harvard's student-athletes in their education, development, and growth," Kearney said. He described how Bray also has remained an active participant in Marquette sports law program.

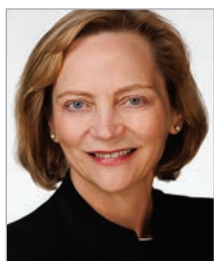
In her remarks, Bray said, "There are so many people from Marquette and from Marquette Law specifically who have impacted my life in big ways and small. . . . I could truly fill this entire program with 'thank you's' to all those who have impacted me." She particularly noted four individuals at the Law School: Stephanie Nikolay, director of admissions and recruitment, and Professors Paul Anderson, Vada Lindsey, and Matt Mitten.

"I'm overwhelmed with gratitude," Bray said. ■

Left to right:
Marquette University
President Kimo
Ah Yun joins Mark
Cameli, Joseph E.
Tierney III, Mary
Ferwerda, Christian
Bray, and Law
Alumni Association
Board President
Jonathan Ingrisano
at the alumni awards
ceremony on
April 24, 2025.



Patrick Knight



Lynne Halbrooks



Tyrone St. Junior II



Tim Patterson



Molly Madonia



Taylor A. Van Zeeland

79 William Honrath released his novel *The Plots of Men*, a historical thriller set in 1934.

Patrick Knight, longtime partner at Gimbel Reilly Guerin & Brown, was named to the *Wisconsin Law Journal's* Power 30 List for health care law.

82 Denis Regan, of Gimbel Reilly Guerin & Brown, was named to the *Wisconsin Law Journal's* Power 30 List of business defense attorneys.

83 Paul T. Dacier was appointed chief legal officer and corporate secretary at IonQ, a leader in the quantum computing and networking industries. Most recently, he was a partner at Quinn Emanuel Urquhart & Sullivan and, for 25 years previously, general counsel of EMC Corp.

88 Lynne Halbrooks joined Cassidy Law in Washington, D.C., providing practical advice to individuals and organizations to help them manage legal, compliance, and enforcement risks.

David J. O'Leary, the longest-serving district attorney in Rock County history, was honored by the Wisconsin District Attorneys Association with the Lifetime Achievement Award. He retired in January 2025 after serving 28 years in the role.

01 Michael F. Iasparro was appointed U.S. Magistrate Judge for the Northern District of Illinois, in Rockford.

03 Daniel Abelson is now the deputy city attorney for the civil division of the Minneapolis City Attorney's Office.

04 Ryan L. Woody helps lead the newly branded AxePoint Law in Milwaukee.

05 Theodore "TJ" Perlick Molinari was named CEO of Perlick Corp., a Milwaukee-based bar, beverage, and refrigeration systems manufacturer. He is the fifth generation of his family to lead Perlick.

08 Michelle "Mimi" Murphy earned a program certificate in Creating Brand Value from Harvard Business School's Executive Education program.

Geraldo "Jerry" Olivo, of Henderson Franklin, a Florida law firm, shared his expertise at the 2025 Florida Liability Claims Conference in Orlando.

09 Nicolas "Nick" J. Heitman, of Milwaukee County, was named Assistant District Attorney of the Year by the Wisconsin District Attorneys Association.

Sean Light was named senior corporate counsel at Ryan Specialty in Chicago, a service provider of specialty insurance products and solutions.

Melissa McCord, partner at Quarles & Brady, and **Rebecca Hopkins Mitich**, partner at Husch Blackwell, were named among the 2025 Women of Influence by the *Milwaukee Business Journal*.

10 Tyrone St. Junior II was promoted to senior vice-president at Baird in Milwaukee.

12 Nicholas S. Cerwin joined von Briesen & Roper as a shareholder in the government law group and real estate section.

Sabrina Gilman took on the role, in Texas, of chief legal officer at Worley, a global professional services company of energy, chemicals, and resources experts.

Jim Witecha was appointed judge of the Sauk Prairie Municipal Court, serving the Wisconsin communities of Sauk City, Prairie du Sac, and Roxbury.

14 Emil Ovbiagele is managing partner for the newly branded AxePoint Law in Milwaukee. He also serves on the adjunct faculty at Marquette Law School.

Tim Patterson, senior counsel at Foley & Lardner, was named by United Way of Greater Milwaukee and Waukesha County as one of its Philanthropic 5 award winners.

15 Tristan A. Dollinger joined von Briesen & Roper in Milwaukee as a shareholder, practicing in the firm's health law and business and corporate law sections.

16 Molly Madonia joined Froedtert ThedaCare Health Inc. as an attorney, leading IT and supply chain contracting and contributing to the organization's work around AI.

18 Samantha H. Baker is helping lead the newly branded AxePoint Law in Milwaukee.

Mitchell "Mitch" L. Benzine was named deputy staff director and general counsel of the U.S. House of Representatives Committee on Homeland Security.

Ioua Alen Lagazo joined Mondeléz International as senior counsel, managing data privacy compliance for its brands including OREO, Chips Ahoy!, and Ritz.

19 Brayton Deprey, based in Chicago, has been named corporate counsel—North America at Sinch.

20 Dan Kinderman joined Aetna, a CVS Health Company, as associate counsel, based in Milwaukee.

Rebecca Meyer, of Sheboygan County, was honored as the Deputy District Attorney of the Year by the Wisconsin District Attorneys Association.

22 Taylor A. Van Zeeland joined von Briesen & Roper in Milwaukee as an associate in the firm's insurance coverage and risk management section.

23 Alexis J. Witte joined von Briesen & Roper as part of the firm's expanding trusts and estates section.

SHARE SUGGESTIONS FOR CLASS NOTES WITH CHRISTINE.WV@MARQUETTE.EDU.

We are especially interested in accomplishments that do not recur annually. Personal matters such as weddings and birth or adoption announcements are welcome. We update postings of class notes weekly at law.marquette.edu.

FROM THE DEAN

The ABA's Proposal on Experiential Learning

Marquette University Law School long has sought to educate students who are fully prepared upon graduation to begin the practice of law and thereby to serve others. To do this, Marquette's law program extends beyond traditional classroom education to encompass "experiential learning," as well as a rich complement of student organizations, pro bono initiatives, lectures, and other cocurricular learning opportunities. Marquette's current experiential-learning offerings are considerably richer than they have ever been. Following the foundational leadership of now-emeritus faculty member Tom Hammer, Marquette Law School today offers a robust experiential-learning curriculum, involving supervised field placements in the community, judicial internships, and clinics. Full-time faculty engaged with the program include clinical professors of law: Nathan Hammons, director of the Law and Entrepreneurship Clinic; Mary E. Triggiano, director of the school's Andrew Center for Restorative Justice; and Anne Berleman Kearney, director of clinical education. Most recently (last academic year), Rebecca Donaldson, assistant clinical professor and assistant director of the Andrew Center, joined the faculty. And Nadelle E. Grossman, professor of law and associate dean for academic affairs, oversees both this work and the experiential-learning opportunities more generally available at the Law School, especially in the workshop component of the curriculum, which itself provides essential practice simulation. The knowledge, skills, and values important for a student to attain in developing into a Marquette lawyer make it essential that the school's education attend to the human side of practice.

Every law school must grapple with the difficult questions of balancing its offerings (all of which require resources) and covering the myriad subjects and skills that students may need to pursue a multitudinous variety of careers. Dean Joseph D. Kearney accordingly decided to oppose, on behalf of the Law School, a recent proposal by the American Bar Association to double the number of experiential-learning credits that a law school must



Dean Joseph D. Kearney (center) talks with student competitors at the 2025 Jenkins Honors Moot Court Finals.

require of every student in order for the school to remain accredited (the proposal would impose some strong mandates also on the details of experiential education). The dean is not some general critic of the ABA's work in the accreditation sphere, but the (de)merits of the ABA's proposal were clear. It exceeded the ABA's role as accreditor, which should be limited to imposing necessary standards for acceptable legal education; intruded on the primary curricular role of law schools; threatened to stifle innovation; and demanded significant new resources. Numerous others in the legal academy and broader legal communities submitted comments, some in support of the ABA's proposal but most in opposition.

Dean Kearney's letter is worth setting forth in the following pages here because the ABA remains undecided whether it will adopt the proposal and because, in all events, the *Marquette Lawyer* community should be aware of this significant move in legal education. Signs in August suggested that the official entity, the Council of the ABA's Section on Legal Education and Admissions to the Bar, would move to adopt a slightly revised proposal, imposing a revised requirement with a start date some few years hence. In fact, facing considerable opposition, the ABA (the Council) thereupon voted to pause its consideration of the requirement, giving "the committee time to discuss with our newly constituted members how we got to where we are, as well as whether we want to make any additional changes," in the words of the chair of the group's Standards Committee during a meeting of the Council in Chicago on August 22.

So where this will go next is anyone's guess. Dean Kearney's letter, of June 24, 2025, follows.

Dear Chair Brennan and Members of the Council:

Thank you for the opportunity to comment: The proposed revisions to the Standards, doubling to 12 the number of experiential-learning credits that each law student must earn and therefore that every law school must provide to every student, should be withdrawn. The basis for this conclusion should not be mistaken. Marquette University Law School shares the widespread view that simulations, clinics, and field placements are valuable in legal education. Indeed, many of our law students routinely exceed the requirements of the current Standards. Marquette Law School works hard at and takes great pride in its experiential program, whose contours and features serve our communities impressively.

Yet the Council's proposal would mandate a startling redirection of resources. Given the integrated nature of a program of legal education, the proposal would constitute an unprecedented invasion into the upper-level curricula of law schools, diminish substantially the schools' appropriate autonomy, and impair their ability to innovate and to adapt their programs to local needs and institutional missions—all at a time of other extraordinary pressures on legal education. More succinctly and concretely: The proposal ignores the curricular tradeoffs that will necessarily result for schools and students and dismisses the likely financial costs of the new requirements.

The proposal's apparent general animating philosophy—which has scant regard for the precept that accreditation standards are intended to establish minimum requirements for “adequate” education while protecting each school's leading role in defining its own educational program—is regrettable enough. More specifically objectionable is that the proposal to double the current minimum requirement of experiential-learning credits lacks adequate

evidentiary support. Valuable though experiential education is, a “more is better” approach to its requirement is not adequately supported in the proposal— notwithstanding the observation that other, very different professions, with different educational pathways, have more experiential education. Given the weak evidentiary basis for increasing the number of mandatory experiential-learning credits, the absence of a rigorous (or really *any*) cost-benefit analysis should prompt the proposal's withdrawal.

Accreditation Framework

The proposal, as formalized, now acknowledges that accreditation standards, by law and design, only “ensure . . . acceptable levels of quality” and that “institutions of higher education are permitted to operate with considera[ble] independence and autonomy.” Proposal, p. 4 (quoting the U.S. Department of Education). Not just in theory, but also in fact, the current ABA Standards generally fulfill this role appropriately. That is, they set true standards—required general contours of curriculum, faculty, governance, and the like—ordinarily without dictating particulars. By contrast, the proposed requirement of 12 experiential credits—some 20 percent or more of a typical law school graduate's upper-level curriculum—is, quite evidently, not so much a standard as a specific mandate. It would require significant changes at Marquette and at other law schools. Even greater change would be required to accommodate the specific proposed 3-credit requirement of a clinic or field placement, as opposed to simulation-based courses, such as workshops, through which students may currently fulfill some or all of their required 6 experiential credits. Such an approach can be justified only by a finding that a law school requiring fewer than this number and precise form of credits thereby would not be providing a minimally acceptable education.

The proposal responds to this fundamental point (which I made previously in writing to Council Member Mary Lu Bilek, chair of the working group) first by pointing to ABA Standard 301(a)'s general requirement that all schools provide a “rigorous” legal education (Proposal, p. 4). Then, the proposal portrays a general practice-readiness crisis (p. 5) and reiterates that experiential education generally is “preferred” for some skills and valued by students and employers (pp. 5, 6).

None of this adequately supports the proposal to double experiential minimums, as demonstrated below.

The Proposal's Inadequate Evidentiary Basis

It is doubtful that the ABA, by invoking the adjective “rigorous,” can use its own Standard to change the legal and historical practices that accreditation sets only minimums. But, even on its own terms, the proposal does not establish that 12 credits are necessary for such an education. It is not enough for the proposal to state a concern over practice readiness—an evergreen concern, which law schools have every market incentive to address, based on their particular student bodies and practice communities. To begin, the ABA Standards, consistent with their proper focus on outcomes and not on prescriptive intervention, already require law schools to assess their success in part by engaging with their relevant constituencies. *See* ABA Standards 302 (requiring schools to establish learning outcomes), 315 (requiring assessment of outcome achievement) & Interpretation 315-1. More importantly, practice readiness has multiple dimensions and contributors. The 2021 changes to Standard 303's interpretations to enhance professional-identity development, for only one example, were similarly connected with promoting practice readiness. *See* ABA Standard 303 & Interpretation 303-5 (“The development of professional

identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.”). In these circumstances, the proposal rests, at bottom, on a “more is better” theory. In fact, whether due to the law of diminishing returns, the choice paradox, information overload, or increasing costs at greater quantities, more is not always better—indeed, it may be worse.

Similar problems inhere in the proposal’s reliance on survey evidence. Among the surveys that the proposal cites, just two are instances in which respondents are said to have called for “more,” and each of these studies predates the 2014 increase to require 6 experiential-learning credits.¹ And the recent, comprehensive survey of relevant research, by Robert Kuehn and Peter Joy, repeatedly warns of the shortcomings of survey evidence in this sphere: “Some of the survey research has methodological issues, such as lack of a control group, no before-and-after measurement, possible selection bias, and undefined and overlapping terms for experiential courses.”² Most importantly, Professors Kuehn and Joy, while corraling significant evidence for the general value of experiential education, say that survey data do not support even the 2014 increase, noting no evidence “that the increased experiential requirement measurably improved [recent law school graduates’] practice skills.”³

To be sure, decisions sometimes must be made on imperfect information. But schools already have different approaches to experiential requirements, creating the kind of diversity that can be studied (rigorously). And one thing we do know, as the proposal concedes (after my having noted this in earlier written comments to Ms. Bilek), is that there is no evidence that experiential education improves bar exam passage. The proposal responds by suggesting that the NextGen bar exam is better aligned with experiential education (pp. 2, 3–4, 8), but it properly refrains from suggesting that the proposed revisions to the Standards will help improve bar passage.⁴ That is a necessary (if implicit) concession, given the only available relevant evidence: “Repeated studies have failed to find that participation in experiential courses is related to bar exam passage”⁵ Certainly, researchers and schools will be

addressing these matters in the future, in a world actually involving widespread use of the NextGen bar exam, at which point the Council can take this up again if it so desires, on a record reflecting actual experience with that bar exam.

Other Professional Education

The proposal portrays “legal education [as] significantly behind other professions that require experiential learning,” Proposal, p. 8, echoing Kuehn and Joy, 73 J. Legal Educ. at 608–09. Yet neither document makes any case for equivalence. Take medical education as an illustrative example: Medical school is four years in length and is usually succeeded by a residency (to say nothing of a fellowship frequently following the residency). Even the largely clinical residencies require intensive examination of published case studies and academic research. Indeed, relatively recent limitations on medical residents’ clinic hours have been designed in part to “increase . . . the time available for residents to read and strengthen clinical knowledge,” and most surgery residents “reported reading consistently for patient care throughout the year.”⁶ And this education is always preceded by—for medical schools *require*—significant *undergraduate* coursework in biology, chemistry, math and statistics, and physics.⁷ Legal education routinely makes a different choice on “prerequisites”—and appropriately so: Given its pervasive societal scope and impact, legal education is infinitely enhanced by encouraging students from all backgrounds to attend. So, too, may legal education and various law schools reasonably and appropriately make a different choice, or different choices, concerning such extensive aspects of experiential learning and upper-level curricula as the proposal would shift to centralized national control.

In short, the proposal fails to engage in any sophisticated way with the different contexts of the various other professions to whose educational modes it points.

Costs and Tradeoffs

Aside from providing insufficient evidence of its benefits, the proposal scarcely engages with the costs. The proposal concedes that clinics are higher cost than large-enrollment courses, but states that tuition increases will be avoided though a three-year phase-in, which will allow schools to “shift resources” and “make faculty hires to meet the revised

¹ See Proposal, p. 5 n.13 (referring to 2012 survey cited at end of n.12); *id.*, p. 6 n.17 (citing Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 Stanford L. Rev. 317, 350 (2010)).

² Robert R. Kuehn & Peter A. Joy, *Measuring the Impacts of Experiential Legal Education*, 73 J. Legal Educ. 598, 610 n.76 (2024, though still forthcoming) (available on SSRN); see also, *e.g.*, *id.* at 613, 616–17, 628 n.192.

³ *Id.* at 621.

⁴ See also Robert R. Kuehn & David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. Legal Educ. 624, 640 (2019) (“the claim that enrollment in experiential education courses is related, either positively or negatively, to bar exam passage lacks empirical support in our sample”).

⁵ Kuehn & Joy, 73 J. Legal Educ. at 655.

⁶ Jerry Kim et al., *Reading Habits of General Surgery Residents*, 150 JAMA Surgery 882, 882, 883 (2015) (available at <https://jamanetwork.com/journals/jamasurgery/fullarticle/2389262>) (last visited June 24, 2025).

⁷ Association of American Medical Colleges, 2024 Official Guide to Medical School Admissions 12 (required courses for medical school “usually represent about one-third of the credit hours needed for [undergraduate] degree completion”) (available at https://store.aamc.org/downloadable/download/sample/sample_id/636/) (last visited June 24, 2025).

IN THESE CIRCUMSTANCES, WHICH EXTEND BEYOND THE ABSENCE OF A STRONG JUSTIFICATION, THE PROPOSAL'S TIMING IS EXCEPTIONALLY POOR AND ITS URGENCY UNFOUNDED.

Standard.” Proposal, p. 8. So the proposal concedes that these tradeoffs will occur. Yet it neither offers a specific cost-benefit analysis of those tradeoffs nor takes any real broader account of the circumstances of legal education.

Even a general statement as to aspects of legal education's situation should be instructive: The Council has continued to increase programmatic and reporting requirements. Universities and law schools face budget challenges, which range from declining undergraduate student populations to rising costs overall. And new developments—including AI technologies, proliferating areas of practice, and larger societal phenomena—demand new teaching and research as well. At the same time, with respect to experiential learning, as noted above, even Kuehn and Joy report that there is, as yet, no proof that the 2014 increases provided any benefits.

In these circumstances, which extend beyond the absence of a strong justification, the proposal's timing is exceptionally poor and its urgency unfounded.

An Inaccurate Presentation of Modern Law School Pedagogy

The proposal depends upon the impression that, outside of experiential-learning credits, law school classes are exceedingly more passive than has been the case for some time. For example, one writer, favorably cited, contrasts experiential learning with “simply learning information through reading and lecture.” Janet Eyler, *The Power of Experiential Education*, Liberal Education, Fall 2009, at 24, 28 (cited in Proposal, p. 5 n.9). Kuehn and Joy put it just about equally starkly: “Experiential education contrasts with traditional education, which relies more heavily on passive forms of learning, such as listening to lectures or reading textbooks.” 73 J. Legal Educ. at 600.

This is a false dichotomy, even to leave aside that the Socratic method, well undertaken, is hardly passive “reading and lecture.” “In response to [various] criticisms,” the Socratic method in legal education has come to be “often supplemented with other teaching techniques such as group work, skills simulations, [and] practice problems.”⁸ Classrooms in substantive courses at American law schools today are increasingly “flipped,”⁹ focused on problems and real-world examples,¹⁰ with active discussions and group work.¹¹ And not only are such courses often supplemented with active and experiential components, but law school co-curriculars and extracurriculars, at Marquette and no doubt elsewhere, similarly include community outreach and engagement, teamwork, and project management, well beyond the norms of just a decade or more ago. To be sure, the mix might be changed and even improved, but the Standards already require law schools to attend to these matters and, unlike the proposal, give schools substantial leeway in testing and evaluating teaching that works for them. See ABA Standards 302 (outcomes must include skills, professionalism, ethics), 303(b) (law schools must educate on professional identity), 304 (law schools must require 6 credits of experiential education). That we do not have significant data on the full pervasiveness of each of these pedagogies should be another research inquiry appropriate for the Council prior to an intervention into the curriculum such as the proposal would decree.

♦ ♦ ♦ ♦

Marquette Law School is deeply committed to, and in fact highly accomplished in, experiential education, as is true of American law schools more generally. These various successes across the nation should be a matter of pride for the Council; among other things, they demonstrate that more than one model for experiential education can succeed, as it does in substantive courses and other programmatic realms. For such an astonishing revision as has now been proposed, we should require substantial evidence for its net desirability, accounting for costs as well as benefits. No such presentation has occurred. The proposed revisions should be withdrawn.

Respectfully,

Joseph D. Kearney
Dean and Professor of Law

⁸ Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. Legal Educ. 562, 566–67 (2015).

⁹ See Lutz-Christian Wolff & Jenny Chan, *Flipped Classrooms for Legal Education* (2016); William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. Legal Educ. 93 (2014).

¹⁰ See, e.g., Debora L. Threedy & Aaron Dewald, *Re-conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving*, 64 J. Legal Educ. 605 (2015); Terrill Pollman, *The Sincerest Form of Flattery: Examples and Model-Based Learning in the Classroom*, 64 J. Legal Educ. 298 (2014).

¹¹ See, e.g., Jodi S. Balsam, *Teaming Up to Learn in the Doctrinal Classroom*, 68 J. Legal Educ. 261 (2019); William R. Slomanson, *Pouring Skills Content into Doctrinal Battles*, 61 J. Legal Educ. 683 (2012).

Marquette University, P.O. Box 1881, Milwaukee, Wisconsin 53201-1881 USA

Aichelle White has a goal: *“To be the greatest music administrator this side of heaven.”*

White loves music. She performs, she promotes, she immerses herself in music. And she has a business, MuSample. She works mostly online with more than 100 musicians, reaching seven countries from her Milwaukee base.

The Law and Entrepreneurship Clinic at Marquette Law School has goals: Helping people such as White and educating students.

The LEC, as the curricular program is commonly known, is marking its 10th anniversary with a record of helping hundreds of small businesses and entrepreneurs with matters such as business practices, contracts, regulatory compliance, and intellectual property issues. Marquette Law School Professor Nathan Hammons, the LEC’s director, has worked with dozens

of law students in providing free legal help to get clients’ initiatives launched.

Law students such as Grady Rosin and Ben Radde have helped LEC client Aichelle White guide artists in matters such as protecting rights to their music and navigating the business side of work as a musician. “They’ve been extremely helpful,” said White.

Rosin believes his experiential-learning opportunity with the LEC will help him as a lawyer. Working with White, he said, “we learned how to help her develop some clarity as to what she wanted to do with her business.” As for Radde, the clinical opportunity was tailor-made: “I’m really passionate about contracts and negotiation.” Working in the clinic is advancing his goals.



Ben Radde, Grady Rosin, and Aichelle White