



# Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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Spring 2012

Volume 1



## The First Annual Milwaukee Justice Center Campaign

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### Be Part of the *Messenger*

Please send your articles, editorials, or anecdotes to [editor@milwbar.org](mailto:editor@milwbar.org) or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate on the *Messenger* Committee, we have seats available. Please contact James Temmer, [jtemmer@milwbar.org](mailto:jtemmer@milwbar.org).



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### Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice

and

- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.



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# Letter From the Editor



*Charles Barr, Editor*

The Milwaukee Justice Center is the MBA's signature community service project. The MBA Foundation, charitable arm of the MBA, will conduct the First Annual Milwaukee Justice Center Campaign March 19-30, under the rubric of "Access to Justice for All." In this issue of the *Messenger* (page 8), Milwaukee Circuit Court Judge Carl Ashley succinctly describes the MJC's mission, why our community needs the MJC, and how it is addressing that need. The campaign materials you'll receive, as well as the MJC's website cited in Judge Ashley's article, provide more details.

As Judge Ashley notes, many thousands who don't qualify under the economic guidelines for legal aid nonetheless can't begin to afford private counsel. And due to the severe budgetary pressures on our legal aid organizations, more than 80% of those *eligible* for free legal services can't actually *obtain* them. One or both parties appear without legal representation in five of six divorce cases. In paternity, support, and maintenance actions, 99% of the cases proceed with at least one of the affected persons unrepresented. The recent State Bar of Wisconsin Access to Justice Survey found that more than 30,000 economically disadvantaged Milwaukee families face at least two serious legal problems every year, and 80% of them do so without any legal help.

These are the folks who turn to the MJC for help navigating the legal maze. Although it has been in operation less than three years, the MJC has already made significant inroads on the *pro se* epidemic, and with expanded hours in 2012 (see page 5), we can expect an even more positive impact going forward. Based on 2011 performance, for every dollar spent on the MJC by the MBA Foundation the community received more than eight dollars of value in the form of volunteer legal assistance. On a national level, this impact has not gone unnoticed: the MJC was honored with the inaugural Partnerships for Success Award at the 2011 American Bar Association Annual Meeting.

Notwithstanding its success, however, the truth is that the MJC's continued existence is far from a sure thing. Simply put, survival

of the MJC depends on the financial support of the lawyers who live and practice in our community. Most of us don't particularly enjoy asking for charitable contributions, and I'm no exception. I'd much rather wax poetic or droll in this space (or, to be more precise, imagine I'm doing so) about any number of other subjects. The business at hand, however, is simply too urgent to ignore. This can't wait until next year.

Therefore, I join President Mike Cohen (see page 6) and the MBA Board of Directors in appealing for your contribution to the MJC Campaign in an amount appropriate to your personal circumstances. Donating couldn't be easier. No pledges are involved. Simply go to [www.milwbar.org](http://www.milwbar.org), click on "Milwaukee Justice Center," and use your credit card; or send a check to the MBA Foundation, Inc., 424 East Wells Street, Milwaukee, WI 53202. Please give not just to support the most important MBA project of our times, but also to reaffirm the most fundamental premise of our profession: that *everyone* deserves meaningful access to justice, regardless of economic circumstances.

This spring edition of the *Messenger* has a little bit of everything. Mindful of current events, we have a brief history of recall elections in Wisconsin, and an appraisal of the National Transportation Safety Board's recommended ban of all driver cell phone use. Our "hard law" article—courtesy of Michael Best, as always—analyzes a recent Seventh Circuit decision on employer liability for overtime work. Hannah Dugan, our resident legal historian, reviews the lawyers who have served as mayors of Milwaukee. We have fond remembrances of two long-serving judges, Patrick Sheedy and Dale Ihlenfeldt, who have left us. We reveal the results of the MBA's Judicial Poll. And, on the lighter side, regular contributor Doug Frazier illuminates the solemn proceedings of an obscure, albeit peculiarly efficient, municipal agency.

We hope you enjoy this issue of the *Messenger*, and we thank you for ignoring the press of business long enough to peruse our humble publication. We close on the optimistic note we've sounded in every spring edition since our "glossy" era began: somewhere, thousands of miles away, pitchers and catchers have reported.

— C.B.

# Welcome New MBA Members!

Nicholas Anderson, *Quarles & Brady*  
 Jeffrey M. Barrett, *Michael Best & Friedrich*  
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 Danielle M. Bergner, *Michael Best & Friedrich*  
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 Thomas G. Cannon, *Legal Aid Society of Milwaukee*  
 Douglas J. Carroll Jr., *Carroll Law Firm*  
 Bryan Cecil, *Hansen Reiderer Dickinson Cruieger*  
 Jennifer Collins  
 Margaret Daun, *City of Milwaukee*  
 Toni Leann Davidson, *Balancing the Scales of Justice*  
 Erica Jeung Dickey, *Michael Best & Friedrich*  
 John Dodds, *John F. Dodds & Associates*  
 Andrea J. Fowler, *Quarles & Brady*  
 Benjamin Glicksman, *Kravit, Hovel & Krawczyk*  
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 Joan M. Shepard, *Nistler Law Office*  
 Timothy C. Smith, *Godfrey & Kahn*  
 Richard W. Silverthorn, *Whyte Hirschboeck Dudek*  
 Benjamin E. Swoboda, *Michael Best & Friedrich*  
 Guy R. Temple, *Reinhart Boerner Van Deuren*  
 Leah R. Thomas, *Mastantuono Law Offices*  
 John K. Tokarz, *Reinhart Boerner Van Deuren*  
 Michelle M. Wagner, *Michael Best & Friedrich*  
 Kathryn West, *Whyte Hirschboeck Dudek*  
 Peter J. Wyant, *Reinhart Boerner Van Deuren*

# Member News

Reinhart Boerner Van Deuren announced the addition of shareholder **Martin P. Tierney** to the firm's Employee Benefits Practice. The firm also announced the addition of **Kenny W. Hoeschen** to its Intellectual Property Practice, and an associate **Matthew S. Vanderpool** to its Health Care Practice.



Martin P. Tierney



Kenny W. Hoeschen



Matthew S. Vanderpool

Reinhart Boerner Van Deuren named four shareholders. **Lisa Nester Kass** is a member of the firm's Litigation and Intellectual Property Practices; **Rebecca Frihart Kennedy** of its Litigation Practice and Product Liability and Safety Service Practice; **Joseph W. Voiland** of its Litigation, Employee Benefits, and Government Relations Practices; and **Nathan J. Wautier** of its Real Estate and Institutional Investor Services Practices.



Lisa Nester Kass



Rebecca Frihart Kennedy



Joseph W. Voiland



Nathan J. Wautier

# Milwaukee Justice Center Expands Hours of Operation

On January 30, the Milwaukee Justice Center substantially expanded its hours of service to unrepresented litigants. Family law forms assistance is now available in Room G-9 of the Milwaukee County Courthouse on Monday through Wednesday from 8:30 a.m. – 12:00 noon and 1:00 – 4:00 p.m.; and on Thursday and Friday from 8:30 a.m. – 12:00 noon. Brief legal advice and family

law forms assistance are available in Room 106 of the Courthouse from 2:00 – 4:00 p.m. on Thursdays and Fridays. Hours and service information is also available on the MJC website, [www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com). Over 211 people were helped during the Center's first week of expanded hours, compared with 97 the previous week.

**Congratulations**  
 to the Law Office of  
**Robert A. Levine**  
 for submitting the largest  
**LRIS check for case percentage**  
**fees in 2011!**  
 Keep up the great work,  
 panel members!

# Message From the President

Attorney Michael J. Cohen, Meissner Tierney Fisher & Nichols



One of the most enjoyable events of the year is Judge's Night. This year's event was no exception. Thanks in part to cooperative weather, the turnout was once again exceptional, with over 370 in attendance, including 56 judges.

As lawyers, it is all too easy to get caught up in the day-to-day fights of our adversarial system and forget that one of the great attributes of our profession is collegiality. Mary Wortley Montague, an English author from the late 1600s, once stated, "Civility costs nothing and buys everything." One of the things I enjoy most about Judge's Night is that it provides an excellent opportunity for us to take off our armor; have a drink and a laugh with opposing counsel, past, present, and future; and mingle casually with judges before whom we have the great honor to appear to argue our clients' causes. It gives us all, bench and bar, an opportunity to meet new people, build relationships, and see and be seen in a slightly different light. I strongly believe these types of social interactions greatly enrich us as lawyers and strengthen the bonds of our fine profession. Thanks again to Katy Borowski and the rest of the MBA staff for their fine work in making this event a success again this year. The food, music, venue, and, of course, the conversation, were all truly first rate, as usual.

I had an opportunity to take in the Judicial Forum on February 1 at the MBA for the candidates seeking election to Milwaukee County Circuit Court Branches 17, 23, and 28. Given the current political environment in our state and the nation, it was refreshing to witness candidates (who are non-partisan) discussing issues and platforms in a professional and civil manner without resorting to *ad hominem* personal attacks and backbiting. Congratulations to all of the candidates—Christopher Lipscomb, Judge Nelson Phillips, Carolina Stark, Hannah Dugan, Lindsey Grady, and Mark Sanders—for their fine presentations. I left that event impressed with all of the candidates, and with the comforting feeling that regardless of who prevails in the contested races, we will continue to build on an already strong

judiciary in Milwaukee County and will be in good hands for years to come.

We are in the process of launching our first annual fundraising campaign for the Milwaukee Justice Center ("MJC"). The campaign will run during the last two weeks in March. We are employing the "United Way Model" of calling on a leader in each firm to serve as a point person to solicit donations from other members of the firm. We are recommending a \$150 per lawyer donation, or whatever individuals can afford. As you have read and heard over the last several years, the MJC is clearly meeting a need, serving over 8,000 clients per year, and doing great things. For more information on the MJC, please see Judge Ashley's article, "In a Time of Ever Shrinking Resources for Those in Need, the Milwaukee Justice Center Bucks the Trend," in this issue; and visit <http://milwaukee.gov/MJC>. The comments we hear from the many volunteers engaged in this project are consistent: the MJC is making a substantial difference. I really cannot say enough good things about this program. The problem is that we only have the funds to operate for a few more years, and need greater financial support to make this worthwhile project sustainable in the long term. Please join me and your colleagues in your firm and the bar in making a modest individual financial commitment that will have truly lasting results. Thank you in advance for your support of the MJC!

Our winter has been remarkably mild, and spring is around the corner. Enjoy the progressively warmer weather and we will see you at the Annual Meeting in June.

## Upcoming Events:

Law Day	May 1
Memorial Service	May 4
Annual Meeting	June 12
Golf Outing	August 1

# Volunteer Spotlight



## Kashoua Yang

Attorney Kashoua Yang is an associate with Hawks Quindel, located in the historic Third Ward. Her areas of practice include family law, worker's compensation, and social security disability.

Kashoua has performed a wide range of volunteer work for the MBA. She has submitted several questions and answers to the MBA's Ask-A-Lawyer blog through *Milwaukee Magazine*, given presentations to various audiences through the MBA's Speaker's Bureau, and accepted cases through the LRIS Modest Means Panel.

Kashoua believes education is the most important aspect of the volunteer programs in which she has participated. It is important to her that individuals understand their rights and make informed decisions. She strongly disagrees with the proverbial saying, "What you don't know can't hurt you," especially when it comes to legal rights. Therefore, Kashoua considers the efforts of legal clinics and volunteer legal programs important, because they represent an opportunity to educate the public about its rights.

In addition to her work with the MBA, Kashoua tries to contribute where she is most needed, while balancing the demands of family and work. Much of her volunteer work is on an *ad hoc* basis. There are some volunteer programs, however, in which Kashoua routinely participates. One example is *pro bono* representation in divorce and other family law matters. She also volunteers as a mentor to high school students, and as a lawyer at Voces de la Frontera's legal clinic. Most recently, Kashoua has been volunteering at the Milwaukee Justice Center. Additionally, she is in the process of working with Hmong leaders in Milwaukee to establish a legal clinic for the Hmong community.

For her energetic and varied contributions to *pro bono* and other volunteer work, Kashoua Yang has richly earned the Volunteer Spotlight!

# CLE Calendar

## March - May 2012

**March 7, 2012**

### **MBA Mentoring Committee**

#### **The Ethics of Mentoring**

Why mentoring is good for both new and experienced lawyers, with a focus on SCRs

Presenters: Agatha Raynor, Crivello Carlson; Catherine La Fleur, La Fleur Law Office

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE Ethics credit

**March 8, 2012**

### **MBA Presents**

#### **Sabermetrics Comes to Circuit Court: Applying EBDM in the Criminal Division**

The criminal division is implementing four initiatives for applying data-driven research and cost stewardship to criminal justice. The initiatives involve fundamental changes to the way judges and court commissioners set bail and make release decisions, and to the way prosecutors make decisions whether to charge offenders or divert or defer prosecution. Come hear how Milwaukee is leading the nation putting data and research to work to hold offenders accountable, reduce crime and recidivism, and give taxpayers a better return on the dollars they invest in criminal justice.

Presenter: Honorable Richard J. Sankovitz, Milwaukee County Circuit Court

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**March 13, 2012**

### **Health Law**

#### **An Overview of the Affordable Care Act and the Role of Exchanges in Health Reform**

This presentation will discuss the background, formation, and implementation of the Affordable Care Act, as well as the ways in which new, affordable insurance exchanges will expand coverage, inject transparency into the insurance market, and ensure essential health benefits.

Presenter: Kenneth Munson, Director, U.S. Department of Health and Human Services, Region V

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**March 14, 2012**

### **Alternative Dispute Resolution (ADR) Mediation**

A discussion of the expectations of a mediator

Presenters: David W. Paulson, David W. Paulson Law Offices; Richard L. Zaffiro, American Family Mutual Insurance Company

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**March 19, 2012**

### **Taxation**

#### **A View from the Bench**

Presenter: Honorable Julian I. Jacobs, United States Tax Court

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**March 22, 2012**

### **MBA Bench/Bar Probate Committee**

#### **A View from the Bench**

Special administration procedures for foreclosure and personal injury matters

Presenters: Honorable William W. Brash III, Milwaukee County Circuit Court; Honorable Jane Carroll, Milwaukee County Circuit Court; Commissioner Patrice Baker, Milwaukee County Circuit Court; Lindsey Grady, Deputy Register in Probate, Milwaukee County Circuit Court; Amy Wochos, Probate Administrator, Milwaukee County Circuit Court

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**March 23, 2012**

### **Family Law**

#### **Milwaukee Family Court Judges - Live and in Concert! Part VI!**

The Milwaukee County family court judges discuss several areas of family law practice.

Moderators: Gregg Herman, Loeb & Herman; Greg Hildebrand, Hanson & Hildebrand

Panelists: Honorable Michael Dwyer, Honorable Carl Ashley, Honorable Elsa Lamelas, Honorable Daniel Noonan, and Honorable Frederick Rosa

12:30 - 1:00 (Registration) No Lunch

1:00 - 4:00 (Presentation)

4:00-5:00 (Reception-Hors d'oeuvres & Wine)

3.0 CLE credits

**March 29, 2012**

### **Paralegal Association of Wisconsin & Greater Milwaukee Association of Legal Professionals, co-sponsors**

#### **Litigation Skills for Legal Staff in Wisconsin**

Learning about a case from intake to trial: the basics of document organization; how to use computer technology to your advantage; how to use informal and formal discovery techniques; the basic rules of privilege and document disclosure; and how to use discovery requests, motions to compel, subpoenas, and depositions. This seminar will assist you with managing high document-volume cases and offer new approaches using the latest technology available.

Presenters: Frank T. Pasternak, Pasternak & Zirgibel; James P. Denis III, Reinhart Boerner Van Deuren; Brent D. Nistler, Law Offices of Brent Nistler; Joseph W. Voiland, Reinhart Boerner Van Deuren; Jennifer Naeger, Reinhart Boerner Van Deuren

8:30–9:00 (Continental Breakfast/Registration)

9:00–12:30 (Presentation)

12:30–1:00 (Lunch will be provided)

1:00–4:00 (Presentation)

7.0 CLE credits / 6.0 NFPA CLE credits / 6.0 CLA credits

**March 30, 2012**

### **Real Property**

#### **Trends in Tax Incremental Financing**

Presenter: Deborah C. Tomczyk, Reinhart Boerner Van Deuren

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

**April 19, 2012**

### **MBA Presents**

#### **Trust Account Management**

Presenter: Mary Hoeft Smith, Office of Lawyer Regulation

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE Ethics credit

**May 18, 2012**

### **MBA GAL Subcommittee, Bench/Bar Family Law Committee, and Family Law Section**

#### **Eleventh Annual Guardian Ad Litem Update**

Presenters: TBA

Location: Marquette University Law School, Eckstein Hall, Room TBA

Noon - 12:30 (Lunch/Registration)

12:30 - 4:00 (Presentation)

3.5 CLE/GAL credits



# MBA Memorial Service

The MBA will host its annual Memorial Service on **Friday, May 4, at 10:45 a.m.** in Room 500 of the Milwaukee County Courthouse. Chief Judge Jeffrey A. Kremers will preside. Below is a list of attorneys and judges who will be honored at the service. If you know of others who should be included on the list, please contact Katy Borowski at 414-276-5933 or [kborowski@milwbar.org](mailto:kborowski@milwbar.org).

Julius Robert Atkins  
Dennis J. Barry  
Arthur J. Blumenthal  
James J. Bonifas  
Edward Richard Cameron  
David J. Cannon  
Eric “Jack” Curtis  
Thomas G. Duggan  
Dwight Holmes Ellis III  
Terence T. Evans  
Leslie E. Fischer  
Nathan A. Fishbach  
Harry Franke  
Seymour Gimbel  
P. Gregory Gregory  
Francis P. Havey  
Lawrence James Hayes  
Harlow J. Hellstrom  
Allan A. Hindin  
Reginald M. Hislop Jr.  
Dale E. Ihlenfeldt  
Ernest G. Johannes  
Gerald J. Kahn  
Ruth LaFave  
Robert D. LeMense  
Paul Phillip Lipton  
John Kevin McCormick  
Timothy Francis Mentkowski  
Christine F. Meyer  
Thomas K. Mullins  
Joseph Peters  
William James Riggins  
Walter P. Rynkiewicz  
David A. Sayas  
Robert W. Schroeder  
Patrick T. Sheedy  
John Lawrence Sheehy  
Robert “Bob” Silverstein  
Gordon H. Smith Jr.  
Michael R. Smith  
Sandra E. Stein  
Dana Stern  
Robert D. “Bob” Sullivan  
Allen Marcus Taylor  
Lisa D. Thornton  
William M. “Bill” Walsh  
James Thurston Whiting  
Lawrence Willenson

## In a Time of Ever Shrinking Resources for Those in Need, the Milwaukee Justice Center Bucks the Trend

*Honorable Carl Ashley, Chair, MBA Community Relations Committee*

Members of the MBA’s Community Relations Committee recently toured the Milwaukee Justice Center (MJC). We were impressed, not because we weren’t aware of the project and its commitment to assisting unrepresented litigants, but rather because we learned that despite a climate of conflict and discord in so many aspects of our society, the Milwaukee Justice Center is a refreshing example of a successful and powerful collaboration.

For years, the legal system has been adjusting to an ever larger group of litigants who are not represented by attorneys, particularly in family and civil proceedings. Litigants who file inadequate paperwork or misunderstand the process may find themselves inadvertently slowing down an already slow process, or what is worse, may find their cases dismissed and be required to start over again.

The MJC is a collaborative project among the Milwaukee Bar Association, the Milwaukee Bar Foundation, Milwaukee County, and Marquette University Law School. The underlying philosophy of the project is that self-represented litigants have a fundamental right to access the justice system, even if they cannot afford an attorney or do not qualify for legal aid.

Generally, self-represented litigants who earn more than 125 percent of the federal poverty guidelines do not qualify for free legal services. In 2010, a single person earning more than \$13,538 or a family of four earning more than \$27,563 annually is considered ineligible for most free legal assistance. These families struggle to pay for basic necessities: rent, groceries, and utilities. Thus, when faced with civil legal issues, many have no choice but to access the courts without counsel.

The MJC strives to address the substantive and procedural barriers facing unrepresented litigants so that they can better navigate the legal system. The MJC represents an extraordinary example of the commitment of various individuals to help people, who

are without means and on an often circuitous path, to resolve their legal issues. This writing is an overview of that amazing effort.

The following law firms are involved as *pro bono* project sponsors: Foley & Lardner; Reinhart Boerner Van Deuren; Michael Best & Friedrich; O’Neil, Cannon, Hollman, DeJong & Laing; Hinshaw & Culbertson; and Quarles & Brady. The MJC’s website ([www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com)) provides a detailed listing of all volunteers, as well as a review of the MJC’s history, programs, annual reports, and future plans.

The MJC is an example of the legal community, from experienced lawyers to young lawyers and law students, recognizing the gap in our legal system and, without any financial return, giving freely their time to help fill the widening void between the need and the means to obtain private counsel. In 2011, the MJC served 8,072 clients. There were 368 volunteers, including attorneys and law students, who donated a total of 7,577 *pro bono* hours. The value of that volunteer service is estimated at \$650,000. See the MJC’s 2011 annual report for more details of the volunteer effort.

The MJC has four ways to assist unrepresented litigants:

### Self-Help Desks:

Self-Help Desk volunteers assist unrepresented litigants with completion of forms and provide step-by-step instructions for filing in family law cases. Service is provided on a first-come, first-served basis. Legal advice is not provided at the Self-Help Desks.

### Appointments:

Unrepresented litigants meet with volunteers, in one-half hour appointments, to complete divorce paperwork. Legal advice is not provided during appointments.

*continued page 14*



# Hizzoner, Esq.: Milwaukee Attorneys Who Have Served as Mayor

Attorney Hannah C. Dugan

This spring will bring the quadrennial election for mayor of Milwaukee. Tom Barrett, the incumbent on the ballot, is the most recent Milwaukee mayor who also is a licensed attorney. This article reviews attorneys who have held this mayoral post, and identifies some of their contributions to the Wisconsin justice system.<sup>1</sup>

Since the city's incorporation in 1846, 40 men have held the office of mayor.<sup>2</sup> Of those 40, 14, or about 30%, have been lawyers. Of the 14, only four actually attended law school. Interestingly, in a time before ethics codes and rules, the early mayor-lawyers continued their private practices during their tenures.

Who were the 13 mayor-lawyers who preceded Mayor Barrett?

The second Milwaukee mayor was the first lawyer elected to the office—Horatio Wells. His one-year mayoral term from 1847-48 was remarkable in that at the same time, he served as President of the Territorial Council and contributed to drafting the Wisconsin Constitution. Wells studied law in Burlington, Vermont and practiced in the East for several years prior to moving to Wisconsin in 1836. For the decade prior to becoming mayor, Wells had a distinguished career as a practicing lawyer, and from 1850 to 1854 he served as Milwaukee's first county judge. His prestige and his life were cut short at age 50, however, when "he became a victim of drink and died in 1858 a physical wreck."

Don A.J. Upham, elected to two consecutive one-year mayoral terms in 1849 and 1850, also moved to the Wisconsin Territory in 1836 from the East. He studied law privately in New York and then practiced in Delaware for a few years. After practicing law in Wisconsin four years, he was elected in 1840 to the Territorial Council. In 1846, he served as President of the Wisconsin State Constitutional Convention, leading the drafting of the state's constitution. The temperance movement created disturbances and clashes with Upham during his 1849-50 term. Eight years after Upham served as mayor, President James Buchanan appointed him as United States Attorney for the District of Wisconsin, a position he held for three years until 1861.

The sixth man to hold the mayoral office, Hans Crocker, served a single one-year term in 1853-54. Crocker was born in Ireland, emigrated to New York, and privately studied law in Chicago. When he moved to

Milwaukee in 1836 (the same year his two mayor-lawyer predecessors did so), he worked as an editor of Milwaukee's first newspaper, *The Milwaukee Advertiser*, which trumpeted Byron Kilbourn's settlement activities. After a few months, Crocker directed his efforts away from business to law and government. He was admitted to the bar in 1837 and practiced law until 1844, during which time he also served as Judge Advocate General of the Wisconsin Territorial Guard; Secretary to the first territorial governor, Henry Dodge; and Wisconsin delegate to the Republican National Convention that nominated fellow lawyer Abraham Lincoln. "In 1845 he forsook the law and devoted himself to real estate and other business enterprises in which he accumulated a handsome fortune" and held a host of powerful positions related to government utilities and railroad administration.

Crocker's successor, James B. Cross, stayed in the mayoral office for three one-year terms beginning in 1855. This 1841 New York transplant came to Milwaukee to practice law (including an appointment as city attorney), and also eventually to create law as a three-term assemblyman. Cross served as the first probate judge under state law. His noteworthy contribution to the justice system as mayor was the authorization and creation of the Milwaukee Police Department.<sup>3</sup>

The first Milwaukee mayor to study in a law school was William Pitt Lynde. He served an

uneventful one-year term as mayor during the outbreak of the Civil War, 1860-1861. Arguably, he led Milwaukee twice—first as the President of the Board of Trustees of Milwaukee in 1845.

An 1841 Harvard Law School graduate, Lynde moved to Wisconsin and was admitted to the bar shortly thereafter. In 1842 he founded the law firm of Finch & Lynde, focusing his practice on commercial and admiralty law. The firm, through continuous operation and direct succession, exists today as Foley & Lardner, making it one of the oldest law firms in the country and a Milwaukee legal institution. Within two years of the firm's founding, Lynde accepted appointment as the Wisconsin Territory Attorney General in 1845, and one year later accepted appointment as the United States Attorney for Wisconsin. He held numerous other state and federal legislative offices.

Lynde was succeeded by James S. Brown, a lawyer who came to Milwaukee in 1843 via Maine and Ohio. Brown's one-year mayoral term, beginning in 1861, was remarkable in two respects: he oversaw both the first purchase of a steam fire engine and the "famous bank riot" of 1861. His prior legal practice included an 1846 election as Milwaukee County prosecuting attorney and appointment as Wisconsin's first attorney general for two years beginning in 1848. After his mayoralty, Brown was elected to Congress. Due to

*continued page 21*

## It's Monday, the First Day of the Rest of Your Life.



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\* American Bar Association Standing Committee on Lawyers' Professional Liability. (2008). *Profile of Legal Malpractice Claims, 2004-2007*. Chicago, IL: Haskins, Paul and Ewins, Kathleen Marie.

# Recall in Wisconsin: a Historical Perspective

Attorney Ann S. Jacobs, Domnitz & Skemp

With “recall mania” descending upon Wisconsin, it is enlightening to look back at the history of recalls in Wisconsin—both how the right to institute a recall came to exist, and how that right has been used. From that review, it becomes clear that Wisconsin’s recall right has been used predominantly to vote out legislators due to discontent with a single issue, not misconduct in office.

Wisconsin’s 1848 constitution did not originally include a provision to recall elected officials. In 1914, a constitutional amendment was proposed by the Progressive Party to permit recalls. The voters decisively defeated that amendment by a margin of nearly two to one.<sup>1</sup> Despite that loss, Governor John J. Blaine, also a member of the Progressive Party, advocated for the recall right as a part of his platform and in his State of the State address. When Wisconsinites were asked again in 1926 whether they wanted to amend the state constitution to include a right of recall, they narrowly adopted the amendment.<sup>2</sup>

That amendment has remained essentially

unchanged since then.<sup>3</sup> Article XIII, Section 12 begins:

The qualified electors of the state, of any congressional, judicial or legislative district or of any county may petition for the recall of any incumbent elective officer after the first year of the term for which the incumbent was elected, by filing a petition with the filing officer with whom the nomination petition to the office in the primary is filed, demanding the recall of the incumbent.

Notably, Wisconsin’s constitutional recall procedure does *not* require “grounds” for recall, such as malfeasance or corruption. This is not unusual. Of the 19 states that permit recall, only eight require specific grounds.<sup>4</sup>

The fact that specific grounds are not required for recall has led to various recall petitions—some successful, some not—for a wide variety of reasons. The first attempt to recall a state senator occurred in 1932, when Otto Mueller was subject to a recall

election for not responding to a roll call and vote by then-governor LaFollette.<sup>5</sup> Mueller won the recall election handily, retaining his seat with over 60% of the vote.<sup>6</sup> In 1990, Senator James Holperin also successfully navigated a recall election—prompted by his actions regarding spearfishing rights of the Chippewa tribe—receiving over 64% of the vote.<sup>7</sup>

In 1996, Senator George Petak became the first legislator to be recalled in Wisconsin. The recall was started because Petak had voted in favor of a tax increase to pay for Milwaukee’s Miller Park.<sup>8</sup> At the time, Senator Petak’s party (Republican) held a one-seat majority in the Wisconsin Senate, leading to the concern that his recall was an attempt to wrest control of the senate away from the Republicans.<sup>9</sup> State

Senator Gary George became the second Wisconsin legislator to be recalled, due to his votes against expansion of gambling in Milwaukee in 2003.<sup>10</sup>

It is against this historical backdrop that the recall elections of 2011 and 2012 must be considered. There is, in fact, no historical basis for the claim that a recall must be based upon some sort of wrongdoing. In fact, as can be seen from the recalls—successful and not—the predominant basis for recall has been a legislator’s votes or actions related to a single issue. This has been true nationwide, where recalls on a single issue are more commonly successful.<sup>11</sup> Even where political advantage was in play (as in the recall of Senator Petak), the recalls were predominantly driven by a single issue (such as the stadium, gambling, or tribal compacts).

Wisconsin’s law creates a “brake” on the recall process by requiring that recall petitions be signed by a number of persons equal to 25% of the total vote for governor in the state, county, or district of the elected official, and cannot be filed until the official has been in office one year.<sup>12</sup> As seen in the recent petition for recall of Governor Walker, which required over 540,000 signatures, the signature requirement creates a substantial hurdle for recall petitioners. This may well explain why Wisconsin’s recall powers have been employed so sparingly over the past 85 years.

Compare Wisconsin’s recall power with the right of impeachment—a right also enshrined in the Wisconsin Constitution. While the two processes have the same potential outcome (removal of an individual from office), the path and requirements are far different. Article VII, Section 1 provides: “The assembly shall have the power of impeaching all civil officers of this state for corrupt conduct in office, or for crimes and misdemeanors.” Impeachment requires a majority vote of the Assembly. In addition, impeachment contemplates a trial in the Assembly. A recall, however, results in another election.

Impeachment can be carried out very quickly compared to recall. Whereas recalls are not even permitted for the first year a person holds office, an impeachment can occur at

*continued page 18*

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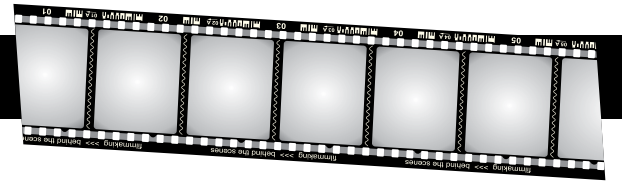
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# The Reel Law

Attorney Fran Deisinger, Reinhart Boerner Van Deuren



## Breaker Morant

Directed by Bruce Beresford  
1980; 107 minutes

As with all genres, “legal” movies have some recurring variants. This issue’s subject, the Australian-made movie *Breaker Morant*, qualifies in several sub-genres. First, it’s a military movie involving a court martial tribunal. Second, the military court is British. And last, it deals with that specific and cruelly ironic kind of court—the kangaroo court. Although the three soldiers on trial in *Breaker Morant* are Australian, that is no pun.

The story takes place in British South Africa near the next-to-last turn of the century—during the awful Boer War. For those who have forgotten their world history, the Boers were European settlers, generally of Dutch descent, in south and southwest Africa. As the British sought to establish their own colony in what became South Africa, they fought two wars with the Boer settlers. The second, the setting here, was particularly cruel; it started as a conventional war but devolved into guerilla warfare. Indeed, the word “commando” is a Boer term that came into use during this war. Because the British were facing irregulars supported by their own farms, they instituted a barbaric campaign of imprisoning Boer families in concentration camps, where many died of hunger and disease.

The three lieutenants on trial in *Breaker Morant* are the title character Harry “Breaker” Morant, Peter Handcock, and George Witton, the first two of whom are played by Edward Woodward and Bryan Brown, who also appeared in many American films. The three are leaders of an army unit made up largely of Australian volunteers called the Bushveldt Carbineers, a light cavalry force designed to fight the Boer commandoes on their own terms. In the aftermath of a savage ambush in which their Captain and friend is killed and mutilated, they order and participate in what could fairly be called reprisal killings of the commandoes involved, including the execution of prisoners and the subsequent killing of a German missionary who has seen the doomed prisoners in the Carbineers’ custody. (The Germans were very sympathetic to the Boers.) Charges are brought against them, but the film’s script makes clear that these charges are motivated more by politics than

by morality, because the British fear German reaction to the missionary’s death, and are looking for a way to end the war via treaty with the Boers themselves.

The film moves quickly from its opening into the courtroom scenes, as it skillfully uses the narrative method of intercutting present and past events. Soon, another common theme in legal movies is introduced—the inexperienced defense lawyer who turns out to be pretty good at what he is doing. In this case the lawyer is Major Thomas, played by an excellent Australian actor with whom I am otherwise unfamiliar, Jack Thompson. Thomas is an Australian country lawyer who is assigned to defend the three accused officers the day before the trial begins, and admits to his clients he wrote wills and land titles down under. But as is common in the movies, his first cross examination goes well, and he is off and running. Ultimately his defense of the men is a variant of “they were following orders,” but while it seems apparent everyone knew the orders, no one in authority will admit to them.

The chief judge of the tribunal, played with wonderful British disdain for the “colonial” defendants and defense counsel, frustrates Thomas at every turn. Quite uniquely for a courtroom drama, the trial is interrupted by a Boer attack on the base where it is being held. The prisoners are let out of their cells to fight, which they do admirably. As the trial starts again and Major Thomas cites precedent

to the tribunal suggesting that their valor should entitle them to immediate release, the chief judge harrumphs a rejection of the argument into his moustache and orders the trial to proceed. The fix is in.

Unlike most trial movies, there is no victory at the end for the defendants. The British empire wants scapegoats, and it gets them. Morant and Handcock are executed, Witton imprisoned, and Thomas disillusioned. But part of the genius of the storytelling in *Breaker Morant* is that even though we know the defendants have been railroaded, we also know how terrible the killings were in which they participated.

The true pleasures in this movie for the viewer are in the skillful acting and directing, the great sets, and the glorious scenery of the veldt. The courtroom is particularly noteworthy for its brutal sparseness, befitting both the nature of a court martial and the time and place. And as with any film set in an unfamiliar place or culture, there are wonderful moments of local color. Every time Major Thomas enters the courtroom, for example, he uses an exaggerated choreography of steps and turns in practiced military deference that is as entertaining as a dance number.

*Breaker Morant* deserves four gavels.



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2012

photos courtesy of Kevin Harrack and the Wisconsin Law Journal



← Approximately 375 guests attended Judges Night, including 56 judges.

↓ Milwaukee County Circuit Court Judges Nelson Phillips and Kevin Martens



↑ Milwaukee County Circuit Court Judge M. Joseph Donald, Attorney Richard Hart, Attorney Cheryl Ward

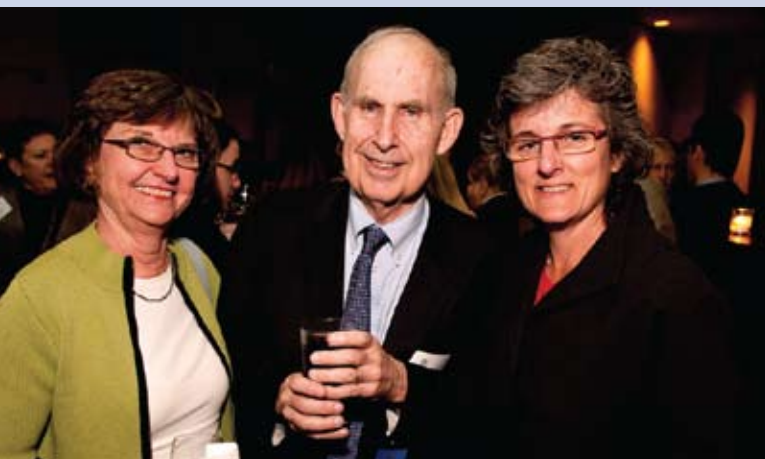
## Judges Night

2012

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**Brief Legal Advice & Referral Clinics:**

The Marquette Volunteer Legal Clinic at the MJC is a free, walk-in, legal information and referral clinic staffed by volunteer attorneys working with and supervising Marquette law students. The Clinic's goal is to provide unrepresented litigants with basic legal information and appropriate referrals on civil legal matters. The Clinic does not take cases or represent clients on an ongoing basis.

**Website:**

The MJC's website, launched in 2010, receives approximately 4,500 hits a month. Unrepresented litigants can find forms and filing instructions for divorce, child support, custody, small claim, foreclosure, landlord-tenant, Chapter 128, and name change proceedings. The site also provides general information about the MJC, copies of annual reports, testimonials, and information on volunteer opportunities.

The MJC's physical footprint at the courthouse will soon be expanding, which will allow more privacy and convenience for litigants and volunteers. Dawn Caldart, the Executive Director of the MJC, remarked that "the physical space will transform

the way the MJC delivers service to self-represented litigants by allowing for the expansion of clinic hours and increased *pro bono* opportunities."

Michael Cohen, Milwaukee Bar Association President, added that "it's extremely gratifying to be involved in this collaboration, and I encourage others to join the effort by volunteering and through financial support of this worthwhile project. We are launching our annual campaign in March and could really use whatever support you can kindly provide to help ensure the long-term success of this great program."

As a legal community, it is gratifying to know that we have so many that are willing to give their time and talent to the MJC. It's making a significant impact on access to justice, and that's no small accomplishment in an environment of ever-decreasing resources.

# MBA Seeks Nominations for Annual Awards

Do you know of a dedicated, innovative attorney or judge who deserves public recognition? The MBA honors individual or group achievements with yearly awards at the Annual Meeting. We have four award categories: Lifetime Achievement, Lawyer of the Year, Distinguished Service, and the E. Michael McCann Public Service Award. The criteria for these awards give us the flexibility to honor any outstanding individuals or groups. If you are interested in finding out more about our awards, including a listing of past winners, or if you wish to nominate someone, please contact Jim Temmer at 276-5934 or [jtemmer@milwbar.org](mailto:jtemmer@milwbar.org).

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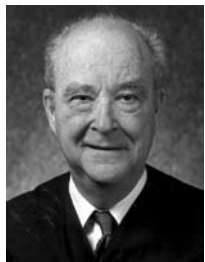
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# The Honorable Patrick T. Sheedy: an Appreciation

Victor Manian, Reserve Circuit Judge



Patrick T. Sheedy

Tom Brokaw, who wrote *The Greatest Generation*, said, "It is, I believe, the greatest generation any society has ever produced." He argued that these men and women fought not for fame and recognition,

but because it was the right thing to do. "When they came back they rebuilt America into a superpower." Brokaw was obviously referring to Pat Sheedy and the people just like him.

Born October 31, 1921, Pat Sheedy attended Shorewood High School, and then began his college education at Marquette University. World War II interrupted his undergraduate studies. He enlisted in the U.S. Army in 1943, and served both in the United States and overseas.

He returned home in 1946, and by 1948 had graduated from Marquette University Law School. A law degree was not all that he earned. He also met his wife, Margaret Mulvaney, to whom he referred as "Mugs." They became the parents of six children.

Pat continued his service in the U.S. Army 84th Division Reserves, serving as a JAG military judge from 1965 until he retired with the rank of colonel. Upon his retirement, Judge Sheedy was awarded the Legion of Merit.

From 1948 until he assumed the bench, Pat enjoyed the private practice of law with associates. His inquisitive mind led him to John Marshall Law School, which he attended on a part-time basis. After five years of commuting to Chicago while practicing law in Milwaukee, he earned a L.L.M. degree with emphasis on taxation.

Pat's reputation and work ethic continued to receive attention and accolades. He served six terms on the Board of Governors of the State Bar of Wisconsin. He was a long-time delegate to the American Bar Association. In 1974, Pat was elected President of the State Bar of Wisconsin. In 1979, at the age of 58, having established a successful law practice that included his service as a court commissioner and probate court administrator, he was elected to the

Milwaukee County Circuit Court.

Pat's innate ability to listen to each side of a case and bring the parties together in settlement was based on his sense of humor, enjoyment of speaking to people, experience in problem solving, and down-to-earth common sense. He never held himself out as superior or better equipped than others. His success was based on a clear application of the law, fairness, and compassion, amplified by his many years of experience and learning.

A classic example of Judge Sheedy's work occurred when I was chief judge. A complicated civil case with several well-known lawyers had been in the system for too long. Each time the matter was set for trial, there seemed to be a good reason to postpone it. The case passed through the hands of several judges before it was brought to my attention. Pat had just assumed the position of circuit judge and I was aware of his reputation. I called him, explained the delays and problems that had occurred, and asked him if he would be willing to take the case. I offered to relieve him of his calendar if he needed the time to get the case resolved. He agreed. I referred the case to Judge Sheedy at 9:00 a.m. Just before noon the same day, he called me and said that the case had settled. He asked whether he could do anything else for me.

In 1990, the Wisconsin Supreme Court appointed Judge Sheedy, at the age of 69, Chief Judge of the First Judicial District (Milwaukee County), and he served in

that capacity until he retired in 1998. After retirement, he continued to serve as a reserve judge. He also continued his service on the Board of Trustees of the National Conference of Metropolitan Courts.

On September 10, 1995, Congressman Tom Barrett entered remarks in the Congressional Record, admiring and congratulating Judge Sheedy for his public service and civic responsibility. In 1998, Judge Sheedy was awarded a Lifetime Achievement Jurist award by the State Bar of Wisconsin Bench and Bar Committee. Judge Sheedy and Judge Peter Pappas of La Crosse are the only two who have ever received that award.

Judge Sheedy's beloved "Mugs" preceded him in death. He joined her on January 13, 2012 at the age of 90.

Upon contemplating the career and times of Judge Patrick T. Sheedy, can there be any doubt about whom Tom Brokaw was writing?



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# Reconstructed and Possibly Imagined Minutes of Special Meeting of Weed Commission

(a single member governmental unit)

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

As subscribed by the Commission Secretary:

**1** Pursuant to Notice of Meeting posted in accordance with Open Meetings Law, Weed Commissioner calls meeting to order at Bar Louie, Table 18, at 9 p.m. Commissioner seeks unanimous consent to appoint himself Chairman and Secretary. Hearing no objection, the motion carries.

**2** Roll call. The Chair recognizes a quorum.

**3** The Chair recesses meeting to place order: New Glarus Pale Ale and nachos. Meeting reconvenes.

**4** The Chair opens meeting to public comment. Hearing none, the Chair proceeds to the first item on the agenda.

**5** Concerned property owners Brian B. and Lauren K. join Table 18 and place order for pitcher of Heineken, then change order to Corona after being informed of post-happy hour special.

**6** The Chair opens discussion on question of whether buckthorn and garlic mustard, by amendment to ordinance, should be added to list of “banned” village weeds.

**7** Lauren K. raises point of order. She asks for a report of the Latin names of subject flora. The Chair admonishes Lauren K. that she must fill out a speaker’s card to be recognized. Lauren K. and Brian B. withdraw to Table 19 with their pitcher.

**8** The Chair calls recess when it appears from in-house television monitors that

Game is at two-minute warning. The Chair orders his own pitcher. Other “concerned citizens” gather at or near Table 18.

**9** The Chair moves that the Commission refer buckthorn-garlic mustard question to newly constituted Committee of the Whole. The Chair has second thoughts and lodges objection to the Motion. The Chair acknowledges division of the House and calls for question. Motion carries.

**10** Committee elects Commissioner Chair. The Chair makes motion that Committee permit appointment of citizen members. Motion carries. Without objection, all “concerned citizens” at Table 18 appointed Committee members. Table 19 rejoins Table 18.

**11** As point of privilege, Lauren K. renews request for scientific name of weeds. The Chair invites motion to sponsor alcohol-fueled Latin name memorization and dramatic reading challenge. Brian B. seconds and calls for question. Motion carries.

**12** Lauren K. turns out to be splendid entertainer. More “concerned citizens” join meeting.

**13** Discussion as to whether Table 18 food and beverage tab may be taken as tax deduction. The Chair takes straw poll. Strong consensus in affirmative.

**14** The Chair moves to recommend to Commission that subject weeds be added to village “no grow” list, and so reported, that Committee of Whole dissolve. Brian B. moves to amend motion to strike garlic mustard from list on ground that both garlic and mustard are well-regarded flavoring agents. Motion to amend dies for lack of second. Lauren K. seeks point of information on question of whether dissolving Committee of the Whole might jeopardize aforementioned food and beverage tax benefit. Bar owner and wait staff join Table 18. On main motion, “concerned citizen” asks to suspend rules or postpone question indefinitely. Motion to suspend or postpone adopted by proclamation. The Chair acknowledges status of Permanent Standing (But Mostly Sitting) Committee of the Whole.

**15** Last call. Committee adjourns *sine die*.

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# Out of Sight, Out of Mind – Not Out of Pocket

Attorneys Steven J. Teplinsky and Mitchell W. Quick, Michael Best & Friedrich

Employers continue to be hit with lawsuits under the Fair Labor Standards Act (“FLSA”) and similar state laws in record numbers. These lawsuits frequently contain allegations that employers failed to pay their employees for work performed prior to the scheduled start of their shifts, or “off the clock.” In its recent decision in *Kellar v. Summit Seating Inc.*, 664 F.3d 169 (2011), the Seventh Circuit Court of Appeals addressed the issue of employer overtime liability for “pre-shift” work when the employer had no knowledge or reason to know that such “pre-shift” work was being performed.

Summit Seating manufactures seating for buses. Kellar, an employee who was paid by the hour, would regularly arrive at the factory 15 to 45 minutes before her scheduled starting time of 5:00 a.m. She would punch in upon her arrival and then perform tasks such as making coffee, reviewing schedules, gathering and distributing fabric and materials to employee workstations, and other preparatory activities. On days when Kellar forgot to punch in, she would write her officially scheduled start time on her time card. The company owners, who were also Kellar’s supervisors, would typically arrive at the factory between 7:00 and 8:00 a.m.

Kellar filed a lawsuit under the FLSA

seeking overtime pay for all of the time she spent performing these “pre-shift” tasks. In defending the lawsuit, the company argued that the work performed by Kellar was not compensable because it was preliminary to her assigned work responsibilities, was not assigned by the company, and was undertaken by Kellar for her own convenience. The court of appeals, however, found that Kellar’s activities were an integral and indispensable part of her principal work for the company, which derived significant benefit from her efforts. Under such circumstances this “pre-shift” work would generally be compensable under the FLSA.

Nevertheless, the court of appeals found that the “pre-shift” work performed by Kellar was not compensable because the evidence showed that the company neither knew nor should have known that Kellar was working overtime. Over the course of eight years of employment, Kellar never told the owners, who arrived hours later, that she was working overtime. Kellar attended the company’s weekly scheduling meetings and never mentioned that she was working overtime. Furthermore, she was aware of the company’s policy prohibiting overtime without express authorization. Therefore, the court concluded that the owners had little reason to know or

even suspect that Kellar was working overtime in direct contradiction of company policy.

While the company ultimately prevailed in the court of appeals, it is important to recognize that the employer’s victory came *only* because it was able to prove its lack of knowledge of work being performed. If the owners had known or had reason to know of Kellar’s pre-shift activities, the result would have been different and Kellar would have prevailed, regardless of the company’s policy against unauthorized overtime.

In order to avoid liability for failure to pay employees for “pre-shift” or “off the clock” work, employers must be vigilant in *implementing* and *enforcing* policies concerning overtime. If unauthorized overtime is prohibited, the company must have a clear, disseminated policy, including the consequences for unauthorized overtime. When violations occur, the employer must enforce the policy and issue appropriate discipline for violations. Employers (and their supervisors) must be aware of situations where employees perform pre-shift, post-shift, or “off the clock” work, and must take steps to prevent it. Such work, even when performed without authorization, will be compensable if the company knows of or should know of its performance.



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## Recall continued from p. 10

any time. The only process for impeachment is the trial; there are no lengthy periods of signature gathering, challenges, and the like as in recalls. This makes sense when considering the differences in the goals of the two procedures. Impeachment is to remove a corrupt or criminal officeholder, someone whose continued presence in office could deleteriously affect all aspects of government. In contrast, as discussed above, recalls are generally issue-driven, and require that a majority of the voters simply agree that the targeted official should no longer represent them. Impeachment is driven by the Assembly, recalls by the electorate.

The risk of partisan alignment arguably creates the perception of bias in an impeachment trial. The recall procedure, on the other hand, protects the electorate against the potentially partisan influences inherent in an impeachment trial.

Regardless of whether one agrees with the recent spate of recalls, it is clear from Wisconsin's history that misconduct in office has never been a criterion for recall. Corruption and crimes are the basis for impeachment. Since the passage of the

amendment authorizing recalls, it has been used to try to recall officials who took specific positions with which the recall organizers disagreed. While we may debate whether a "no grounds" recall petition is a good or bad idea, Wisconsin voters have never required malfeasance in office in order to begin a recall.

<sup>1</sup>Wisconsin Historical Society, "Dictionary of Wisconsin History: Recall Elections (in Wisconsin)," [http://www.wisconsinhistory.org/dictionary/index.asp?action=view&term\\_id=15563&search\\_term=recall](http://www.wisconsinhistory.org/dictionary/index.asp?action=view&term_id=15563&search_term=recall) (viewed Feb. 2, 2012).

<sup>2</sup>*Id.*

<sup>3</sup>It was amended in 1981 to permit primaries in recall elections.

<sup>4</sup>National Conference of State Legislatures, "Recall of State Officials," <http://www.ncsl.org/legislatures-elections/elections-campaigns/recall-of-state-officials.aspx> (viewed Feb. 2, 2012).

<sup>5</sup>"Footnote: Only 4 Recall Elections of State Legislators in State History; Only Two Successful," [http://host.madison.com/mobile/article\\_64314b08-570b-11e0-b218-001cc4c002e0.html](http://host.madison.com/mobile/article_64314b08-570b-11e0-b218-001cc4c002e0.html) (viewed Feb. 6, 2012).

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>"Recall Fever: Historic Recalls in Wisconsin," [http://www.wuwm.com/programs/news/view\\_news.php?articleid=7997](http://www.wuwm.com/programs/news/view_news.php?articleid=7997) (viewed Feb. 6, 2012).

<sup>9</sup>*Id.*

<sup>10</sup>"Gary George Beaten by Coggs In Recall Election,"

<http://www.channel3000.com/news/2566326/detail.html> (viewed Feb. 2, 2012).

<sup>11</sup>"Joshua Spivak: Recalling the Mayor of Spokane for Various Offenses," <http://hnn.us/blogs/entries/18782.html> (viewed Feb. 6, 2012).

<sup>12</sup>Wis. Const., Art. XIII, § 12(1).

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# The Honorable Dale E. Ihlenfeldt: a Common Touch

Honorable James E. Shapiro, U.S. Bankruptcy Judge

I have known Judge Ihlenfeldt for over 40 years. I first met him as an attorney appearing before him in bankruptcy court. Later, we became colleagues after my appointment as a bankruptcy judge. I will refer to him in this tribute as “Dale.” It took me a while before I started calling him by his first name, but I think he would have liked that.

## Dale in His Younger Years

Dale was born in Two Creeks, Wisconsin, in the front bedroom of a farmhouse in 1919. He grew up in a rural environment and, as a young lad, drove a horse and wagon full of milk crates to the local cheese factory.

## Dale the Student

After Dale moved to Wilmot, Wisconsin, he graduated very near the top of his class at the age of 16. He then went to the University of Wisconsin-Madison starting at age 17 and graduated with honors in 1940.

## Dale the Navy Man

Shortly after December 7, 1941, when World War II broke out, Dale enlisted in the Navy. He rose in rank from an enlisted man to lieutenant junior grade and served as a supply officer on a destroyer. After his return from service, he entered law school at the University of Wisconsin and graduated with honors in 1949.

## Dale in Public Service

He became a law clerk for the Honorable Robert E. Tehan, a federal judge, whom he admired greatly. In 1955, he was appointed Clerk of the United States District Court, a position he held until 1966 when he was appointed as a referee in bankruptcy. The title “referee in bankruptcy” was later changed to United States Bankruptcy Judge, and Dale held that position for approximately 30 years. After he retired, he continued to participate in annual bankruptcy programs, in which he reviewed all of the local bankruptcy decisions, including mine. He was always tactful in his remarks. If he didn’t agree with some of my decisions (and that did happen from time to time), he would ask, “Jim, was that decision of yours appealed?” I got the picture of how he felt about that case.

## Dale the Judge

This is where I have my most vivid memories of Dale. I recall one time before I became a judge when one of the other judges who

was handling a case became ill. It was a very complicated case and had reached a crucial stage: a hearing was to be held the next day. Dale was asked to take over this case, and time was of the essence. I’m sure that he spent the better part of the evening before the hearing familiarizing himself with this case. At the time of the hearing, he knew what the case was all about, and he didn’t miss a beat. It resulted in a successful outcome for all parties. I know because I was representing one of the parties.

He was a master in his handling of pretrial conferences. He would call all the attorneys into his chambers, where the atmosphere was very relaxed. He was well prepared and told the attorneys what he tentatively thought might be the outcome of the case. But he acknowledged that the outcome would depend upon the facts. He would not only give each of the attorneys pertinent citations, he would actually print out the cases for the attorneys to review. Quite often, this led to a settlement.

Dale’s reputation as a fair judge, who always treated attorneys and clients with respect, is well founded. It didn’t make any difference if the debtor was a large company with many employees whose jobs were at stake in a chapter 11 case, or an elderly couple fighting to save a home from foreclosure. Everyone who appeared before him was given the time and attention he or she required.

His door was always open to his colleagues—Judges Clevert, Eisenberg, McGarity, and me—for advice. I have vivid recollections of walking over to his chambers and seeing Dale sitting at his desk pounding away at a beat-up old typewriter, cranking out the minutes of his most recent hearing.

He had a great relationship with the Bankruptcy Clerk’s office. Frequently, on his trips to Green Bay for court hearings, he would take orders for cheese from the clerk’s office, which he picked up at a store in Greenbush. He also from time to time went to Racine for court hearings and would come back with kringles for all employees in the clerk’s office. When he stopped going to Racine and Green Bay and I took over that job, I didn’t do that. Obviously, I knew where I would have stood had there been a popularity contest between Dale and me.

When Dale retired in 1996, the Bankruptcy Section of the Milwaukee Bar Association decided to give him a present. I knew he was very fond of an old sofa in his office, and which formerly was in the office of Judge Tehan. But it was government property, and purchasing such property involves a certain amount of red tape. When I checked with the Excess Property Division in Washington, D.C., I was told that a notice must be given for bids, which should be posted in the clerk’s office. However, I was not told where to post this notice, so I found a small corner in a remote location of the clerk’s office. Eventually, the only bid came from the Milwaukee Bar Association Bankruptcy Section. The sofa wasn’t really worth much. I think we paid somewhere between \$25 and \$50. But it had sentimental value for Dale, and he proudly showed me the sofa a few weeks before he passed away.

## Dale the Family Man

Dale truly loved his family. He was married for 57 years. He had six children—Julia, a pharmacist; Sue, a registered nurse and teacher; Tom, a CPA and computer expert; Amy, a wastewater expert with the Wisconsin Department of Natural Resources; Ellen, a CPA working for Milwaukee County; and Andy, another computer expert.

And, of course, there was his wife, Elly, who was the love of his life. In his autobiography, Dale said, “The smartest thing I ever did in my life was to marry Elly. That was the best day in my life. Our home without Elinore would be like a fireplace without a fire.”

Shortly after Dale passed away, one of the first persons I spoke to was Floyd Harris, a close friend of Dale. Floyd said that Dale was a real “mensch.” A “mensch” is a Jewish word defined by Leo Rosten in *Hooray for Yiddish* as “an upright and honorable decent person.” When “mensch” is translated from Jewish to English it sort of loses its impact. If anyone ever asks me, “What is a mensch?”—my response will be: if you knew Dale Ihlenfeldt, he was a real mensch.

# Comprehensive Driver Cell Phone Ban Unlikely

Attorneys Catherine A. La Fleur and Colin J. Casper

Undeniably, many attorneys conduct a significant amount of business—and bill significant amounts of time—via use of their cell phones while driving. This business practice, and the income it generates, is under potential threat from an unprecedented recommendation by the National Transportation Safety Board (NTSB) to ban all driver cell phone use. In light of current law, the political landscape, and pushback by various interest groups, however, the prospect of a comprehensive driver cell phone ban appears to be remote.

## The NTSB Recommendation

On December 13, 2011, the NTSB released a report on a year-old fatal car accident that involved a tractor, a pickup truck, and two Missouri school buses.<sup>1</sup> The report was typical for the NTSB, an independent federal agency charged with investigating accidents and promoting transportation safety.<sup>2</sup> As per the agency's usual practice, the report made recommendations to various groups, including government agencies, automobile manufacturers, and lobbyists, for safety improvements.

It was the recommendation to the 50 states and the District of Columbia, however, which received immediate attention. To improve driver safety, the NTSB recommended that the 50 states and the District of Columbia ban all cell phone use while driving, including hands-free technology.<sup>3</sup> The question remains whether the federal government, or any individual states—specifically Wisconsin—will adopt the recommendation.

## State Laws

Adoption of the NTSB's recommendation would be an unprecedented step in the legal regulation of drivers using cell phones. According to the Governors Highway Safety Association, an organization that tracks state highway safety laws, no state currently bans all cell phone use while driving.<sup>4</sup> Indeed, only nine states, D.C., and the Virgin Islands prohibit all drivers from using handheld phones, while 35 states, D.C., and Guam ban text messaging for all drivers.<sup>5</sup> States also regulate cell phone use by driver type, including school bus drivers and novice drivers. 2009 Wisconsin Act 220 banned all individuals from text messaging while driving, and imposed fines up to \$400 plus four demerit points.<sup>6</sup> There is no current Wisconsin ban, however, on handheld cell

phone use or the use of headsets, Bluetooth, or other hands-free cell phone devices.

## Federal Ban?

Given the NTSB's lack of power, it appears unlikely the recommendation will become a federal law any time soon. The NTSB has no authority to impose or enforce the safety procedures it recommends.<sup>7</sup> Rather, the agency relies on the publication of its accident investigation reports to enhance transportation safety. Furthermore, U.S. Transportation Secretary Ray LaHood, whose agency does have federal rulemaking authority, has stated that he would not support the recommendation because the issue "is not the big problem in America."<sup>8</sup> Without an ability to enforce the recommendation and due to a lack of support from the federal government, the NTSB has no power to transform the recommendation into a rule of the road.<sup>9</sup>

In addition, heavy public criticism of the NTSB recommendation is likely to prevent the federal government from adopting the ban. One such critical group is, unsurprisingly, the CTIA Wireless Association. On the same day the NTSB released the report, the CTIA released a statement that opposed federal adoption of the recommendation and urged deference to state and local lawmakers, and their constituents, for appropriate action.<sup>10</sup> Opposition among automakers is also certain to grow because they have invested heavily in hands-free phone systems for vehicles, which would be banned under a federal adoption of the recommendation.<sup>11</sup> In light of the NTSB's lack of rulemaking power and mounting criticism of its viewpoint, it appears unlikely that drivers will be affected by the NTSB's unprecedented recommendation.

## Wisconsin Ban?

While the NTSB does not have authority to enforce a federal ban, individual states retain the ability to pass statewide legislation, which could mirror the NTSB's recommendation.<sup>12</sup> As stated, Wisconsin does not have a ban on the use of even handheld cell phones while driving. On the heels of the Wisconsin Act that banned texting while driving, however, several recent Assembly bills aim to limit distracted driving by expanding cell phone regulation.<sup>13</sup>

Wisconsin Assembly Bill 291 would prevent drivers under the age of 18 with probationary licenses or driver's permits from using a cell

phone or other wireless telecommunications device while driving.<sup>14</sup> Wisconsin Assembly Bill 131 would prevent school bus drivers and other professionals who transport children from using a cell phone or other wireless telecommunications device while in the process of transporting children.<sup>15</sup> In addition to these bills, State Representative Peter Barca, author of the Wisconsin legislation that banned texting while driving, is reportedly developing legislation similar to the NTSB's recommendation.<sup>16</sup>

None of the several bills currently in the Wisconsin Assembly would regulate cell phone use to the extent of the NTSB recommendation. Generally speaking, Wisconsin is not at the forefront of cell phone regulation, being the 25th state to ban texting and one of 23 states with no ban on the handheld use of cell phones for any drivers.<sup>17</sup> Thus, it appears unlikely at present that Wisconsin will jump to the front of the line and become the first state to completely ban the use of cell phones while driving.

<sup>1</sup>NTSB, *Highway Accident Report: Gray Summit, MO: Collision Involving Two School Buses, a Bobtail and a Passenger Vehicle, August 5, 2010* (13 December 2011), [http://www.ntsb.gov/news/events/2011/gray\\_summit\\_mo/index.html](http://www.ntsb.gov/news/events/2011/gray_summit_mo/index.html) (viewed Feb. 18, 2012).

<sup>2</sup>For more information about the NTSB, see <http://www.ntsb.gov/about/index.html> (viewed Feb. 18, 2012).

<sup>3</sup>NTSB, *Highway Accident Report: Gray Summit, MO: Collision Involving Two School Buses, a Bobtail and a Passenger Vehicle, August 5, 2010* (13 December 2011), [http://www.ntsb.gov/news/events/2011/gray\\_summit\\_mo/index.html](http://www.ntsb.gov/news/events/2011/gray_summit_mo/index.html) (viewed Feb. 18, 2012).

<sup>4</sup>Governors Highway Safety Association, *Cell Phone and Texting Laws* (January 2012), [http://www.ghsa.org/html/stateinfo/laws/cellphone\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html) (viewed Feb. 18, 2012).

<sup>5</sup>*Id.*

<sup>6</sup><https://docs.legis.wisconsin.gov/2009/related/acts/220> (viewed Feb. 18, 2012).

<sup>7</sup>For a history of the NTSB, see <http://www.ntsb.gov/about/history.html> (viewed Feb. 18, 2012).

<sup>8</sup>*Id.*

<sup>9</sup>Sharon Terlep, "U.S. Won't Back Ban on Phones for Drivers," *The Wall Street Journal* (22 December 2011).

<sup>10</sup>CTIA Wireless Association, *Statement on the U.S. National Transportation Safety Board Recommendations* (13 December 2011), <http://www.ctia.org/media/press/body.cfm/PRID/2152> (viewed Feb. 18, 2012).

<sup>11</sup>Peter Valdes-Dapena, "Cell Phone Bans Don't Work – Insurance Group," *CNN Money* (15 December 2011), [http://money.cnn.com/2011/12/15/autos/ihs\\_cell\\_phone\\_bans/index.htm](http://money.cnn.com/2011/12/15/autos/ihs_cell_phone_bans/index.htm) (viewed Feb. 18, 2012).

<sup>12</sup>Governors Highway Safety Association, *Cell Phone and Texting Laws* (January 2012), [http://www.ghsa.org/html/stateinfo/laws/cellphone\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html) (viewed Feb. 18, 2012).

<sup>13</sup>"Wisconsin: Cell Phone Laws, Legislation," *Hands-Free Info* (28 December 2011), <http://handsfreeinfo.com/wisconsin-cell-phone-laws-legislation> (viewed Feb. 18, 2012).

<sup>14</sup>Wisconsin AB 291. Online source: <https://docs.legis.wisconsin.gov/2011/related/proposals/ab291> (viewed Feb. 18, 2012).

<sup>15</sup>Wisconsin AB 131. Online Source: <http://docs.legis.wisconsin.gov/2011/related/proposals/ab131> (viewed Feb. 18, 2012).

<sup>16</sup>"Wisconsin: Cell Phone Laws, Legislation," *Hands-Free Info* (28 December 2011), <http://handsfreeinfo.com/wisconsin-cell-phone-laws-legislation> (viewed Feb. 18, 2012).

<sup>17</sup>*Id.*

# MBA Judicial Poll — 2012

	Qualified	Not Qualified	No Opinion
<b>Wisconsin Court of Appeals — District 1</b>			
Ralph Adam Fine	322	20	80
<b>Milwaukee County Circuit Court — Branch 4</b>			
Mel Flanagan	333	29	59
<b>Milwaukee County Circuit Court — Branch 8</b>			
William Sosnay	336	19	69
<b>Milwaukee County Circuit Court — Branch 17</b>			
Christopher R. Lipscomb Sr.	143	49	216
Nelson W. Phillips III	193	26	193
Carolina Maria Stark	95	38	268
<b>Milwaukee County Circuit Court — Branch 20</b>			
Dennis P. Moroney	316	45	57
<b>Milwaukee County Circuit Court — Branch 23</b>			
Hannah C. Dugan	226	49	148
Lindsey Grady	216	23	175
<b>Milwaukee County Circuit Court — Branch 28</b>			
Mark Sanders	172	17	215
<b>Milwaukee County Circuit Court — Branch 38</b>			
Jeffrey A. Wagner	318	17	82
<b>Milwaukee County Circuit Court — Branch 39</b>			
Jane Carroll	249	22	148
<b>Milwaukee County Circuit Court — Branch 43</b>			
Marshall B. Murray	223	3	180
<b>Milwaukee County Circuit Court — Branch 46</b>			
Bonnie L. Gordon	228	55	123

## Hizzoner continued from p. 9

poor health, he left the country in 1865 to convalesce. After nearly two decades abroad, Brown returned to Milwaukee, curiously, to practice law. He died five years later in Chicago at the age of 54.

It would be a decade after Brown left office before the next mayor-lawyer was elected. David G. Hooker<sup>4</sup> served an unremarkable one-year mayoral term beginning in 1872. Like Horatio Wells, Hooker hailed from Vermont, settling in Milwaukee in 1856 to practice law. One decade after he began practicing, he accepted an appointment as city attorney for three years until 1870. His greatest achievement was his appointment as General Counsel for Northwestern Mutual Life Insurance in 1878, where he served as in-house counsel until his death in 1888.

Under a new law, Ammi Butler became the first Milwaukee mayor to serve a two-year

term after he was elected in 1876. Butler, a third Vermont native to serve as mayor, moved to Milwaukee in 1846 to practice law. Unlike all other 39 mayors, his mayoralty was the only public office he held; most of his professional life was spent as a practicing lawyer. He was nominated to be Chief Justice of the Wisconsin Supreme Court; however, he was in Europe at the time. Apparently, a quick answer from the nominee was not an expectation in that age.

The two consecutive two-year terms of Emil Wallber were marked and defined by the Great Labor Strike of 1886. After much strife and violence, the mayor ultimately adopted the eight-hour work day law—flawed as it was, in that it did not contain a penalty for employers who did not comply. Wallber was elected in 1884 and again in 1886. A native of Prussia,<sup>5</sup> he came directly to Milwaukee in 1855 and studied law at the offices of Smith and Salomon. He was admitted to the

bar in 1864. He served for two years as an assistant state attorney and for five years as city attorney (1873-1878) prior to his election as mayor. Subsequent to his two mayoral terms, he became the city's municipal judge in 1890, a criminal court judge in 1895, and a Milwaukee County judge in 1900.

Common Council President Peter Somers became mayor in December 1890, when his predecessor, George Peck, resigned upon his election as governor. Somers' subsequent election to a term as mayor in 1892 was itself cut short: in June 1893 he also resigned the mayoralty upon election to fill a Congressional vacancy. A Menomonee Falls native, Somers became a lawyer by studying in the law office of the legendary Chief Justice Ryan. Somers was admitted to the bar in 1874 and opened his own law practice in Milwaukee. After leaving Congress in 1895, Somers returned to Milwaukee law practice for a decade until he

*continued page 22*

moved to Reno, Nevada to practice law and eventually to become a judge.

With the election of David Stuart Rose, the city wrestled with a mayoral administration notorious for corruption. A Darlington, Wisconsin native, Rose was a *wunderkind* of a sort. After a printer's apprenticeship, he studied law in his father's Platteville law office with such success that he was admitted to the bar at age 20. He practiced for seven years until he won election in the first of two terms as Darlington mayor. He left that mayoralty in 1885 after election as Lafayette County judge. Three years later he moved to Milwaukee, where he quickly and unsuccessfully attempted election to several offices before successfully seeking mayoral election in 1898. While Rose initiated many improvements of Jones Island and the docks, his four terms in office<sup>6</sup> saw vice go unpoliced—reportedly at Rose's direction—and featured an unsuccessful prosecution of the mayor over an alleged illegal \$50,000.00 payment to him by a municipal utility.

Ripe for reforms and clean government in the wake of Rose's corruption, the city elected Emil Seidel, the first Socialist mayor of a major American city. Seidel, a non-lawyer, immediately appointed Daniel Hoan as city attorney. Six years later, in 1916, Hoan resigned his city attorney office upon election to the office of mayor. This Socialist Party member was reelected five times, serving a total of 24 years in the office, until he was replaced by another Socialist Party member, Carl Zeidler.<sup>7</sup>

Hoan, a Waukesha native, left school early to work odd jobs and therefore had to attend evening classes to be qualified as a lawyer, pursuing his professional course of study at Chicago Kent School of Law. Upon admission to the bar, Hoan represented the State Federation of Labor before becoming city attorney.<sup>8</sup>

The tremendous number and depth of Daniel Hoan's accomplishments are due not just to his longevity in office but also to his visionary ideas, unflagging energy, and legal sensibility. Hoan's tenure as mayor was marked by honesty, efficiency, and progressive legislation. Under Mayor Hoan, Milwaukee won a number of awards as the healthiest, safest, and best-policed big city in the United States. In 1936, Mayor Hoan appeared on the cover of *Time Magazine* and was described in the issue as "one of the nation's ablest public servants, and, under him, Milwaukee has

become perhaps the best governed city in the U.S." In 1999, prominent historians named him as one of the top ten American mayors of all time.

Some of Hoan's legal accomplishments as city attorney include compilation of the city ordinances and city charter laws, litigation involving the enforcement of franchises to the railroad utilities (resulting in appropriations of \$15 million for local street and transportation improvements), and reduction of city settlements in damages claims. Hoan's labor policies and legislation include the codification of the eight-hour work day and minimum wage.

As mayor, Hoan's legal and civic accomplishments are legendary. Legislation passed during his tenure includes home rule; authority for municipal ownership, city planning, city forestry, and housing; zoning ordinances; public health laws of all sorts; and harbor, road, and airport plans. His labor legislation and police reforms prevented outbreaks of violence that other cities experienced during the 1920s and 1930s.

An enduring legal development that arose from Hoan's leadership as both city attorney and mayor was the establishment of the Legal Aid Society. While the city eventually was unsuccessful in its efforts to charter a legal aid society in Milwaukee, Hoan was among those who strategized and encouraged Legal Aid's eventual creation by three civic entities: the Milwaukee Bar Association, the predecessor agency of the United Way, and the predecessor agency of the Public Policy Forum.

Carl Zeidler, running in 1940 as an independent upstart, succeeded Hoan in an upset election. After graduating with a J.D. from Marquette University Law School in 1931, Zeidler served as a Milwaukee assistant city attorney from 1936 to 1940. He resigned in 1940 to run for mayor, and then requested a leave of absence from his mayoral office in 1942 to serve as a lieutenant in the U.S. Navy Reserve during World War II. Later in 1942, the ship he commanded was reported missing; he was presumed dead in 1944.

It would be 62 years before Milwaukee would elect another lawyer as mayor, when Tom Barrett ran for the office in 2004. Barrett graduated from the University of Wisconsin-Madison Law School in 1980, and served for the next two years as a law clerk for Judge Robert Warren of the U.S. District Court for the Eastern District of Wisconsin. For the next several years he engaged in the private practice of law and served as a bank examiner for the

Federal Deposit Insurance Corporation, while he unsuccessfully ran for state public office. After his first successful election—in 1984 to the State Assembly—he spent his professional life in state or federal elected offices, including the U.S. House of Representatives, for the next 18 years. He worked in a major Milwaukee law office between 2002 and 2004 before running for Milwaukee mayor.

The contributions of lawyers to the mayoralty of Milwaukee have ranged from the nondescript to the corrupt to the dynamic and progressive. The pending election may return Tom Barrett to office to continue a lawyerly presence in the executive branch of City Hall. Curiously, none of the mayor-lawyers served in local or state bar leadership. Yet it is certain that their legal training has influenced Milwaukee's legislative and policy development, and has shaped the city's growth and evolution.

<sup>1</sup>The resources for this article include: Breyer, H.W., ed., *The Sentinel Almanac and Book of Facts for the Year 1899* (Milwaukee Sentinel, Milwaukee 1899); Berryman, John, ed., *History of the Bench and Bar of Wisconsin*, Vol. 1 (H.C. Cooper, Jr. & Co., Chicago 1898); Reed, P. M., *The Bench and the Bar of Wisconsin: History and Biography, with Portrait Illustrations* (Milwaukee 1882); Anderson, W.J. and Bleyer, Julius, eds., *Milwaukee's Great Industries: a Compilation of Facts Concerning Milwaukee's Commercial and Manufacturing Enterprises* (Association for the Advancement of Milwaukee, Milwaukee 1892); *Milwaukee, a Half-Century's Progress 1846-1896: a Review of the Cream City's Wonderful Growth and Development* (Consolidated Illustrating Company, Milwaukee 1896); Holly, Melvin G., *The American Mayor: the Best and the Worst Big City Leaders* (Pennsylvania State University Press, University Park, PA 1999); Curry, Josiah Seymour, *History of Milwaukee, City and County*, Vol. 2 (S.J. Clarke Publishing Co., Chicago-Milwaukee 1922); Buck, James Smith, *Pioneer History of Milwaukee: 1840-1846* (Symes, Swain and Co., Milwaukee 1881); Holmes, F. L., et al., eds., *Who Was Who in America* (Chicago 1946); <http://www.linkstothevast.com/milwaukee/mkemayors.php> (viewed September 20, 2011).

<sup>2</sup>Thirty-seven men have been elected; three succeeded to the office upon the resignations of their predecessors: Peter Somers in 1890, Henry Hase in 1893, and Marvin Pratt in 2004.

<sup>3</sup>Building on the creation of the police department was Mayor Herman Page, a non-lawyer who was elected in 1859. Ironically, Page, an abolitionist and notorious renegade, as mayor started the detective force and advocated for police uniforms and for uniformity in policies. For the six years prior to his mayoralty, he was county sheriff.

<sup>4</sup>His name has also been transcribed as David G. Hecker.

<sup>5</sup>Wallber's successor in 1880, Thomas Brown, was the first native Milwaukeean to serve as mayor, 34 years after its 1846 charter.

<sup>6</sup>After Rose's third term, the city elected Sherburn Becker for one four-year term and then returned Rose to office for his last term.

<sup>7</sup>Beginning with the election of Gerhard Bading in 1912, the mayoral term became four years instead of two years.

<sup>8</sup>Hoan drafted the worker's compensation act, the constitutionality of which he defended for SFL.

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