



# Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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Summer 2010

Volume 2



**Law Day 2010:**  
MBA Members  
and Fox 6 News  
Spring Into Action

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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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# Letter From the Editor



*Charles Barr, Editor*

At the Milwaukee Bar Association's Annual Meeting last month, Rachel Schneider, the newly sworn 111th President of the MBA, announced her highest priority in no uncertain terms. It is to assure the long-term future of the Milwaukee Justice Center by raising \$1 million from MBA members during her term to endow that fledgling institution. Rachel has reiterated that goal in her inaugural Message From the President in this issue of the *Messenger* (p.8). We get the distinct impression she means business.

We, the MBA membership, can do this. And we can do it on our own, if necessary. But we should be alert for opportunities to make the task a little easier or, better yet, to give Rachel a nice surprise by exceeding her goal. One possibility for which practicing members of the bar and mediators should be on the lookout is that of helping to direct a *cy pres* gift to the Milwaukee Justice Center.

The term "*cy pres*" comes from the French expression "*cyprès comme possible*" (as near as possible). The *cy pres* concept arises most prominently in the context of class actions. A class action settlement typically results in the creation of a common fund for the benefit of a class of claimants and, for various reasons, it is not unusual that a portion of that fund cannot be distributed to class members. In such a case the parties often stipulate to, and the court often approves, a *cy pres* gift of the unclaimed funds to a charitable organization that promotes an interest or objective bearing a reasonable relation to the interest or objective of the class action. The MJC may be an appropriate donee in a class action seeking to vindicate the legal rights of the economically disadvantaged.

Trust and estate administration can also offer opportunities for *cy pres* gifts. For instance, if a testamentary charitable gift is to an organization that no longer exists and has no successor, or is no longer eligible to receive such a gift, courts have the authority to direct the gift to a comparable charitable organization so as to effectuate the donor's intent as nearly as possible. See, e.g., Wis. Stat. § 701.10(2)(a). Thus, where a donor's

evident charitable intent is to promote access to justice in this community but the gift would otherwise fail, the MJC may be an appropriate *cy pres* donee.

Class actions and trust and estate administration may result in substantial *cy pres* gifts, but those cases don't come along every day. A third set of conditions carries the potential for smaller gifts but can be expected to arise more frequently. The conditions are: a claim for money damages, absence of insurance coverage, hotly contested liability that is difficult to prove, potential damages that are relatively low, and high emotions between the contestants. (One name for this set of conditions is "principle suit.") The claimant may be less interested in recovering any money than in imposing some financial pain on the adversary; the adversary may be willing to buy peace but unable to abide the thought of enriching the claimant by so much as a dime. Not uncommonly, such a deadlock is broken via a gift by the defending party to a charitable organization with which the claimant is sympathetic. The gift in that context can only loosely be termed a *cy pres* gift, but the money is just as green.

So, to the class action bar, trusts and estates bar, plaintiff's bar, defense bar, and mediators: keep a sharp eye for a *cy pres* scenario that could benefit the Milwaukee Justice Center. We might just get lucky.

Little space remains to extol what's in this edition of the *Messenger*. We have, however, conveniently included a table of contents, along with our typical mix of legal history, practice tips, community and *pro bono* news, and humor (we try to think of everything). We do want to mention one exciting new feature: "The Reel Law," in which the *Messenger* goes to the movies! We present the first of our law-oriented movie reviews, this one courtesy of our immediate past President Fran Deisinger, who is a uniquely qualified reviewer because he has a college degree in film history.

We hope you enjoy this issue of the *Messenger*; and that you also find some time to enjoy our all-too-brief summer. And if you get a sudden urge to write something for us, or to us, don't try to resist.

— C.B.

# Member News

Becker & Hickey announced that **Heather B. Poster** (Marquette 2002) is a full partner and **Megann M. Senfleben** (Marquette 2010) has joined the firm as an associate. The firm handles divorce and related family matters, Title 19, estate planning, and guardianship.



J. Mark Wilkinson



Erin K. Fay

Boyle Fredrickson, Wisconsin's largest intellectual property law firm, announced the election of **Jay G. Durst** to its board of directors. Durst's primary expertise lies in patent and trademark prosecution. The firm also announced the promotion of **Michael S. Brayer**, **Mollie A. Newcomb**, and **J. Mark Wilkinson** as shareholders, and of **Erin K. Fay** as a senior associate.

Mallery and Zimmerman announced that **Jacqueline**



Jacqueline H. Sestito

**H. Sestito** has been elected a shareholder of the firm. Sestito practices in the firm's Milwaukee office with its real estate, lending, and corporate transactions groups.

GrzecaLaw Group, a full-service immigration law firm, announced the addition of **R.**



R. Oliver Branch

**Oliver Branch** (U. Richmond 2006).

**Reinhardt Boerner Van Deuren** announced that **Scott M.**



Scott M. Fabry

**Fabry, Caroline P. Lavelle, James G. Morrow, and Robert A. Lawler** have joined the firm. Fabry is a shareholder in the Business Law and Tax Practices and is based in Reinhardt's Waukesha office. Lavelle, a member of the firm's Health Care Practice, is based in Milwaukee. Morrow and Lawler work in the Intellectual Property Practice, and are based in the firm's Milwaukee and Madison offices, respectively.



Caroline P. Lavelle



James G. Morrow

Simandl & Prentice announced that **Andrew Frost** has joined the firm.



Robert A. Lawler

**Harvey Held**, U.W. 1974, has relocated his practice

and is now with Machulak, Robertson & Sodos, a general practice firm on the east side of Milwaukee. He will continue to work in the areas of family law, civil litigation, personal injury, and related matters.



Harvey Held

He previously was with the Brookfield office of DeWitt Ross & Stevens.

The College of Labor and Employment Lawyers announced the election of **Marianne Goldstein Robbins**, a shareholder in the law firm of Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, as a Fellow of the College.

## Welcome New MBA Members!

- Jennifer Baumler, *Krigbaum Law*
- Rita Lynn Beckman
- Brooke Bennett, *Milwaukee County Circuit Court*
- John S. Bennett, *Bennett Law Office*
- Sara Bongers
- Alexander R. Britton
- Peter W. Bruce, *Davis & Kuelthau*
- Beth Bulmer, *Previant, Goldberg, et al.*
- William D. Butler, *Storm, Balgeman, Miller & Klippel*
- Erica Christian, *Cordell & Cordell*
- Christine Davies D'Angelo, *D'Angelo & Jones*
- Ronald E. English, *Hippenmeyer, Reilly, Moodie & Blum*
- Randy T. Enochs, *Seifert Law Center*
- Katherine J. De Lorenzo, *D'Angelo & Jones*
- Bryant Edward Ferguson
- Andrew T. Frost, *Simandl & Prentice*
- Jeremy Geisel, *D'Angelo & Jones*
- Mark Gauthier
- Joshua J. Grant
- Alexis Hagquist
- Monica M. Ireland Karas
- Bryan Johnson, *McDermott, Foley, Johnson & Wilson*
- Kimberly M. Kershek, *Kershek Law Offices*
- Kelly L. Lowery, *Cross Law Firm*
- Matthew T. Luening
- Nicole Maher, *Murn & Martin*
- Emily McIntyre, *Schmidkofer, Toth & Loeb*
- Dennis H. Milbrath, *Levy & Levy*
- Laura J. Now, *O'Neil, Cannon, Hollman, DeJong & Laing*
- Jared Nusbaum
- Carolyn R. Parkinson, *D'Angelo & Jones*
- Rebecca Scarr, *Andrus, Sceales, Starke & Sawall*
- Susan H. Schleisner
- Megan M. Senfleben, *Becker & Hickey*
- Jeffrey J. Szczewski, *Kuchler & Cotton Law Offices*
- Annette Wall

# Volunteer Spotlight

## Edward Sarkas

Attorney Edward Sarkas of Michael Best & Friedrich has been a member of the Milwaukee Bar Association since 1998. Edward is currently the volunteer coordinator for the firm and also serves as a volunteer attorney at the Milwaukee Justice Center. Attorney Sarkas states that compassion and pragmatism made the decision to volunteer easy: "It's a great cause and lawyers have a duty to ensure that the justice system serves all members of our community. There are too many people who have basic legal issues to navigate but simply cannot afford to hire a lawyer to help them. The Milwaukee Justice Center is an excellent resource for many of those people."

Edward's favorite experience thus far is the feeling of satisfaction at the end of a client meeting when he saw the client's expression

of relief after getting the basic information he needed to resolve his legal issues. A simple handshake, smile, and "thank you" make volunteering at the MJC rewarding and worthwhile. It has also been a lot of fun working with the MJC staff, volunteer law students and the other volunteer attorneys, states Attorney Sarkas.

When asked how he handles the work/life balance, Edward says that you "just do it." One of the many advantages of volunteering at the MJC is that hours are scheduled in advance, so a volunteer can have an alternate volunteer at the ready in case an emergency comes up.

Edward is also a proud board member of the Hunger Task Force, and volunteers at the Waukesha Salvation Army.

# Legal Action Presents *Pro Bono* Awards

Legal Action of Wisconsin's Volunteer Lawyers Project recently celebrated "30 Years of Connecting Lawyers to Those in Need" by honoring the 250 lawyers who provided *pro bono* legal services to Legal Action clients in Milwaukee and Waukesha Counties in 2009. In addition to recognizing the contributions of all active VLP lawyers, the Honorable Richard J. Sankovitz, Milwaukee County Circuit Court Judge, presented several special awards at the 2010 Volunteer Lawyers Project Awards Reception on Wednesday, May 26.

Attorney Catherine Conway, a partner at von Briesen & Roper, has been assisting Legal Action for more than 15 years by drafting Qualified Domestic Relations Orders (QDROs) to divide retirement plan proceeds in divorces. Conway received recognition for Outstanding *Pro Bono* Advocacy.

Attorney Donald O'Meara, of counsel to Houseman & Fiend, also received an award for Outstanding *Pro Bono* Advocacy. He has been advising and representing Legal Action clients in a variety of matters for more than 20 years. He has represented unemployment compensation claimants, tenants, homeowners, and consumers.

Alan C. Olson & Associates received the Outstanding Law Firm *Pro Bono* Participation Award. All four lawyers in the firm accept unemployment compensation referrals for Legal Action clients at a time when the unemployment rate is very high.

Attorney April Hartman, a Legal Action staff attorney, received the VLP's Outstanding Legal Services Advocate Award in recognition of her commitment to train and support volunteer lawyers representing tenants.

The Volunteer Lawyers Project is the largest *pro bono* operation in Wisconsin, serving poor people in 39 counties. "In addition to recognizing the significant commitment to *pro bono* legal services made by our special award recipients, the VLP is especially pleased to thank all of the lawyers who have contributed their time, energy, and expertise to provide legal assistance to the low-income residents of Milwaukee and Waukesha Counties for the past 30 years," said the VLP's attorney coordinator Patricia Risser.

For more information about the VLP, please contact Pat Risser, at 414-274-3063 or pzs@legalaction.org.

## Do-Gooders' Auction Helps Fund Summer Internships

Each year, the Public Interest Law Society (PILS) at Marquette University Law School hosts the Howard B. Eisenberg Do-Gooders' Auction. The proceeds from the auction, along with the generous support of Dean Joseph D. Kearney, fund summer fellowships for law students at public interest organizations. The 15 Marquette University Law School 2010 PILS fellowship recipients found placements throughout the country, and here is what they had to say as they embarked upon their journeys:

**Elizabeth Brodek, American Civil Liberties Union – Wisconsin Foundation:**

"I chose this organization because of its dedication to protecting those who are least able to protect themselves, especially prisoners. I hope to enhance my legal research abilities and persuasive reasoning skills."

**Julie Bucheger, Midwest Environmental Advocates:**

"I have a strong interest and background in environmental law and a passion for protecting the environment through the use of our legal system. I hope to help grass roots environmental groups realize their goals of environmental protection and environmental justice in Wisconsin."

**Amanda Burrows, Legal Aid Society of Milwaukee – Guardian ad Litem Division:**

"I hope to apply what I learned at Kids Matter last summer and gain additional knowledge and experience in my work at Legal Aid, an agency that shares my passion for securing the rights of our community's children."

**Colin Casper, Cook County State's Attorney's Office—Felony Trial and Narcotics Division (Chicago, IL):**

"I am eligible to receive my 711 student practitioner license to practice law in Chicago this summer. I look forward to trying my own cases under the supervision of an attorney, as well as handling motions and other trial matters on the record and in the courtroom this summer."

**Jennifer Jackson, Disability Rights Wisconsin:**

"DRW will provide an excellent opportunity to apply my knowledge of health and disability law and do some good at the same time. I have worked with disabled people in a health care setting in the past, and I look forward to providing help on a different level."

**Kyle Jesinski, Milwaukee Justice Center:**

"The MJC provides an important service to the community in helping *pro se* litigants

enforce their rights. I hope to get a better understanding of family law and small claims legal issues, the recent changes in the court rules, and the resources available for *pro se* litigants."

**Maxwell Livingston, California Advocates for Nursing Home Reform (San Francisco, CA):**

"I will be helping to write briefs regarding elder law disputes, helping to amend laws to benefit the impoverished elderly persons of California, and helping to write pieces for nursing homes throughout California."

**Amanda Rabe, American Civil Liberties Union – Wisconsin Foundation:**

"I chose to work with the ACLU because I am interested in learning more about impact litigation. This summer, I am hoping to learn about the pretrial process and how to apply constitutional theory to real-world problems."

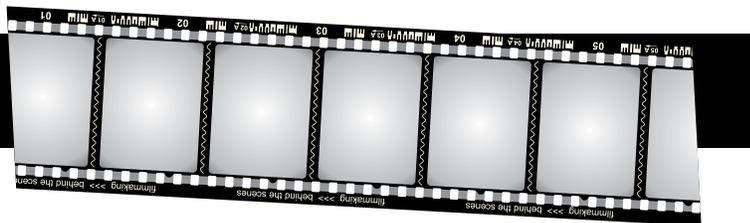
**Meghan Refinski, Juvenile Rights Division of The Legal Aid Society of New York (New York, NY):**

"I will assist the Special Litigation and Law Reform unit in class action lawsuits, including a challenge to the inadequate mental health treatment of juveniles in state

*continued page 8*

# The Reel Law

Fran Deisinger, Reinhart Boerner Van Deuren



## The Man Who Shot Liberty Valance

1962, 123 minutes

During my college years in the early 1970s, campus film societies showed movies of every genre in empty classrooms on weekends. These were the days before DVDs and videotapes, so it was really the only way to see a lot of interesting movies on the cheap. My hobby soon became an academic pursuit, and I ultimately obtained a degree in film history. Not long afterwards I decided to go to law school, and what seems like a lifetime later I have just finished my tenure as President of the MBA.

I however, always retained my interest in movies, and given my profession I have a particular interest in movies that feature lawyers or trials. Since I will no longer be writing a presidential column, the *Messenger* has asked if I would contribute an occasional piece about law in the movies.

The movie I picked for my first column does not feature any dramatic courtroom scenes, but it still makes a great statement about the power of the law and the role of lawyers. It is the great John Ford's *The Man Who Shot Liberty Valance*, released in 1962. Over his long career, Ford directed some of the best Westerns ever made, including *Stagecoach*, *My Darling Clementine*, and *The Searchers*. But *Liberty Valance* was something different. Near the end of Ford's career, it was a reflection on how the lawless Old West had disappeared—just as the era of Western-themed movies was itself running out of steam.

Ford's protagonist in this allegory was none other than "a lawyer and a teacher, the first west of the Rosy Buttes." And who better to play the young "pilgrim" from back east than Jimmy Stewart? Ironically, Stewart was already 53 years old when he played "young" Ransom Stoddard. Likewise, John Wayne, as Tom Doniphan, the symbol of the old West (where righteous men got justice through their six-shooters if necessary), was already 55. Considering that the two were vying for the hand of a radiant young Vera Miles in the film, one might wonder how audiences could suspend their disbelief. But the casting of Wayne and Stewart, both frequent members of Papa Ford's repertory, worked because it

reinforced that this movie was a valedictory to a passing era.

In the film, Stoddard arrives in the town of Shinbone on a stagecoach that is robbed by the evil Liberty Valance, an outlaw employed by the cattle interests and played with snarling intensity by Lee Marvin. After "Rance" intervenes when Valance threatens a woman passenger, Valance learns he is a lawyer, and whips him mercilessly. Rance is brought to Shinbone for medical care, and he finds a town where the small farmers and ranchers live in fear of Liberty Valance—all but Tom Doniphan, of course, who is tougher of fist and faster of gun. And while the good, simple folk of Shinbone want statehood for the territory, with its promise of progress, the cattlemen vigorously oppose it.

In the midst of all this, Rance hangs a shingle and begins a school. He allies with another symbol of coming civilization—the publisher of the local newspaper, Dutton Peabody. After Valance attacks Peabody and destroys the newspaper office, a final clash between the whip-carrying outlaw and the law-book-carrying "pilgrim" is inevitable, and its ultimate resolution is the key to the movie's title. I won't give that part of the film away for those of you who haven't seen it yet.

Even though this movie does not portray Rance Stoddard practicing law in the usual sense, there is an illuminating sequence in which his action epitomizes the role of the lawyer and the law in civilizing society. Stoddard is serving as a waiter and dishwasher at a restaurant to earn his keep with the owners and their pretty daughter Hallie (Miles), who have taken him in. Doniphan and Valance are sitting at separate tables, eyeing each other. Rance walks through with a steak on a platter for Doniphan when Valance purposely trips him and sends the steak flying to the floor. The drama quickly escalates as Doniphan and Valance face off, hands on their weapons. Doniphan demands that Valance pick up the steak. Liberty refuses. Rance stands up between them, unafraid and angry, and demands to know how a man's life could be worth a steak. He drops to the floor and picks up the steak himself, and while the tension is not defused, violence is averted. He has made his point: there is a better way to settle

disputes and to right wrongs. The time of the gunslinger is passing.

In the movie's final scene, decades later, Rance and his wife (Hallie, of course) are on a train traveling from a much quieter, safer Shinbone back to Washington, where he has been a Senator for many years. "You know," says Rance, "I've got a hankering to go back to Shinbone and open up a law office." *The Man Who Shot Liberty Valance* gets four gavels (out of a possible five).



## Thank You!

### Lawyer Hotline Volunteers:

Jim Guckenberg  
Jacques Mann  
Benita Anderson  
Fred Tabak  
Tim Schmidt  
Charlie Barr  
Catherine LaFleur  
Laura Jozwiak  
Paul Johnson

### 2010 Law Day Volunteers:

Dan Schneidman  
Toni Davidson  
Jon Safran  
Ann Jacobs  
Jonathan Gruhl  
Bob Welcenbach  
Michael Balter  
Kiley Zellner  
Doug Blegen  
Carrie Dinwiddie  
Todd Korb  
Cathy LaFleur  
Sigrid Dynek  
Tim Johnson  
Jeff Wilson  
Ryan Blay  
Nathaniel Blair  
James Santelle  
Jacques Mann  
Crystal Johnson  
Carmen Ortiz  
David Saucedo  
Joshua Kons  
Ann Bowe  
Corinne Balter

# Message From the President

Rachel A. Schneider, Quarles & Brady



In my first column, I start by thanking you, the members of the MBA, for giving me the opportunity to serve as President. I am grateful for the stellar MBA staff and the excellent Board of Directors;

without them, this job would be a daunting task indeed.

As I noted in my remarks during the Annual Meeting, in the upcoming year I will focus on strengthening our community by ensuring the future of the Milwaukee Justice Center. We will be asking all of you to support the MJC, not just with your time, but also with your money.

When the MBA launched the MJC, we sought to establish an endowment of \$1.5 million to fund a full-time MJC administrative director. As the economy turned south, the MBA Board made an important decision to use the limited funds we had already raised and hire that full-time administrative director. In the one year Dawn Caldart has been in that position,

she and Amy Wochos, in partnership with the Clerk of Court's Office and Marquette University Law School, among others, have expanded the hours of operation of the MJC's self-help clinic and have added two afternoons of brief legal advice clinics.

If we were to do nothing further at this juncture, we could maintain the status quo of today's Milwaukee Justice Center for about three years. That is not acceptable.

The MBA has a strong of history creating and supporting important civic institutions in Milwaukee. Both the Legal Aid Society and the Marquette University Law School are here today due in part to the early efforts of the MBA and its members. The MJC can be the next enduring Milwaukee institution founded with the help of the MBA. The MJC is an institution that seeks to improve access to justice—not only by improving access to information and resources, but also by providing brief legal advice and, in the future, *pro bono* referrals—while working in concert with the network of social and legal services providers in our community.

Making the legal system more understandable and navigable is the first step to re-establishing in the minds of our citizenry the crucial importance of the American legal system. We lawyers can sometimes overlook the

significance of some of the most fundamental things that happen every day in our justice system—contracts are enforced, laws are upheld, and property rights are defined. We can take it for granted.

My dad and stepmom recently completed a two-year stint in the Peace Corps in Ukraine. To them—a lawyer and a commercial loan officer—it was abundantly apparent how detrimental it is to not have a truly functional legal system. Things can appear okay on the surface but, over time, when contracts are meaningless and there is no institution that consistently interprets and upholds property rights, there is a pervasive sense of decay and pessimism.

It is up to us to uphold and protect our legal system. One way we can do so is by assisting those who interact with the justice system to navigate it competently – in order to effect the fair and efficient administration of justice for the benefit of all.

Thus, my highest priority for the next year must be- and will be- a renewed and rigorous fundraising campaign to build the endowment for the Milwaukee Justice Center. I look forward to your support in this important endeavor. Our goal is to raise \$1 million for the MJC endowment from our members. Let's meet that goal and raise a toast to our members at next year's Annual Meeting. The champagne will be on me!

## Auction continued from p. 6

detention facilities. I hope to develop a deeper understanding of practicing juvenile law.”

**Ben Reyes, National Immigrant Justice Center – Impact Litigation Project (Chicago, IL):**

“I chose to work with NIJC to continue assisting immigrants and refugees who lack sufficient resources in legal proceedings. The impact litigation group works to effectuate systemic changes to U.S. immigration law and policy.”

**Ashley Roth, Catholic Charities Legal Services for Immigrants:**

“My Latin American studies and prior volunteer experience exposed me to the unique legal challenges that face immigrants. I will be able to work directly with

Milwaukee's immigrant community while gaining the skills I need to be an effective legal advocate in the future.”

**Steven Scott, Cook County State's Attorney's Office (Chicago, IL):**

“I will support the assistant state's attorneys by performing legal research, drafting, preparing for the following day's caseload, and assisting in the courtroom. This fellowship will provide the opportunity to gain practical experience, and to meet and learn from many outstanding attorneys and judges.”

**KristyAnne Thompson, The Senior Source (Dallas, TX):**

“I believe it is important to serve and promote the needs of elderly. I will work with the Advocacy Group for the Elderly and Guardianship and Money Management

programs. My goal is to learn more about the legislative and guardianship processes.”

**Zachary Willenbrink, Legal Aid Society of Milwaukee:**

“I chose to work at Legal Aid because I know that I will gain hands-on experience while working with real clients and legal matters over the summer. I hope to learn about client relations, substantive legal issues, and what it is like to practice public interest law.”

**Annie Walsh, Milwaukee Area Technical College:**

“I will be working to ensure that MATC's doors remain inviting and accessible to all by researching ways to improve MATC's diversity plan and to enhance the recruitment and retention rates for minority and economically disadvantaged students.”

# Marquette Law School Opens Its Doors to the Public

Christopher Placek

For the thousands who travel through the Marquette Interchange in downtown Milwaukee every day, the Marquette Law School's new facility is hard to miss.

The four-story, 200,000-square-foot Eckstein Hall will be the new home for the school's faculty and students when it opens this fall. But as the large glass windows overlooking the convergence of roadways suggest, the new facility won't be closed to the general public.

As a center of civic discussion and hub for public service, Marquette Law School is indeed open to the public.

"We hoped that [the building] would have a way of making a statement about Milwaukee, the university, the law school, and the law," said Mike McChrystal, a Marquette Law professor and the school's chair of strategic planning. "The law is about people and the community. It's not a cloistered occupation."

McChrystal and Marquette Law Dean Joseph Kearney have said the new building is one detail—albeit an important one—in the school's overall academic work and service to the community.

The "real stuff" of the Law School, according to Kearney, is service programs such as the Marquette Volunteer Legal Clinic and the public policy discussions hosted at the school by journalist Mike Gousha. He said the school is aiming to become the "intellectual commons" of the region.

"We want to be perceived as having a much more robust role serving not only the bench and bar of the region, but the whole community," Kearney said.

## Public policy

Marquette's president, Fr. Robert A. Wild, agreed that the new building will be a resource for the community at large.

"The Law School, led by its dean and with quite good support from faculty, really [has] a desire to provide a forum in which public policy can be discussed, debated, and explored in what we hope will be fair and neutral territory," Wild said. "The hiring of Mike

Gousha sent that message loud and clear."

When Gousha left WTMJ-TV as its primary anchor in the spring of 2006, Kearney was one of the first people to call him.

"You know, I'm not an attorney," I told him," Gousha recalls.

What followed was a breakfast meeting with the top Marquette Law brass—Kearney, McChrystal and former Wisconsin Supreme Court Justice Janine Geske—who encouraged Gousha to come to the Law School to work on public policy issues.

Since beginning his town hall-style interview series "On the Issues" in 2007, Gousha has brought in dozens of newsmakers and policymakers to interact with students, faculty, and the public in lecture hall settings.

"We want the Law School to be the clearinghouse for the big ideas of the day," Gousha said. "Too often, Milwaukee has the same conversations over and over again. We feel the Law School can help move those conversations forward."

In the fall of 2009, former *Milwaukee Journal Sentinel* education reporter Alan Borsuk joined Marquette Law to research issues of public policy and write for the school's *Marquette Lawyer* magazine and faculty blog. Both he and Gousha are fellows in law and public policy.

Kearney said the school is uniquely situated to foster intellectual discussion among academics and community stakeholders in the region and help solve difficult questions of public policy.

## Public service

In 2005, Marquette Law established an Office of Public Service to emphasize the work started by the school's former dean, Howard Eisenberg, who was committed to serving the community through *pro bono* efforts, according to Daniel Idzikowski, the Law School's Assistant Dean for Public Service.

About 70 percent of Marquette Law students are involved in some type of legal volunteer work through the various service opportunities



Marquette Law School on the Issues with Mike Gousha.

Photo courtesy of Marquette University Law School

offered at the school. Their service gives them the chance to build skills they may use in their professions, Idzikowski said.

"We hope it instills in them public service later in life. It flows out of the mission of Marquette University," he said.

Nearly half the student body engages in *pro bono* work. Others take externships for class credit. There is no formal requirement, but Idzikowski said many students are eager to embrace the work.

Many of the service opportunities, such as the Volunteer Legal Clinic and Foreclosure Mediation Program, give students the opportunity to work with attorneys on actual legal matters. And while the new Eckstein Hall may help the school better engage with the community, much of the service work will still be done at the courthouse and in neighborhoods.

Much of students' volunteer work involves dispute resolution—an important skill set for future lawyers to learn since most of what attorneys do is help settle disputes, Idzikowski said. Marquette's dispute resolution program was ranked sixth in the nation by *U.S. News & World Report*.

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# Working With an Expert Witness: a Lawyer's Guide

by Bob Greenstreet, Dean of the School of Architecture and Urban Planning, University of Wisconsin-Milwaukee

## Introduction

Expert witnesses form an integral part of many legal proceedings where provable, substantiated fact must be backed up by subjective, professional opinion. While many experts have an extensive background in such work, it is sometimes worth remembering that most of them are likely to be far more familiar with their own professional territory. The realm of law with its own rules and protocols can sometimes take them unawares, reducing their credibility during deposition or in court. The simple admonition “communicate convincingly with credibility” may not be enough, and a few basic questions by the attorney in advance may be helpful to ensure the appropriate selection and performance of each expert witness.

## 1. Is the expert suited to the job?

All potential expert witnesses should be assessed carefully, not only in terms of their credibility, but also for their suitability to the case in question.

### A. Credibility

Initially, credentials play a big part in establishing the foundation of credibility for each expert witness, so qualifications are important to check out. Degrees from reputable academic institutions are important, but a record of subsequent specialist courses and ongoing continuing education helps to build an impressive profile of long-term, sustained learning and knowledge. This is

enhanced if the individual has also taught at the college level, has given lectures to professional groups, or has written articles or papers within the subject area. In the latter case, it would be advisable to ask for copies of any written work that might relate to the present field of dispute. Should they contain opinions at variance with the ones likely to be proffered in the current case and the opposing counsel becomes aware of their existence, the consistency of the expert's opinion may be called into question. As an additional safeguard, it would be prudent to confirm that the expert's curriculum vitae is accurate and contains no exaggeration or embellishment that could potentially be brought to light during questioning. Any discrepancies could effectively weaken an expert's perceived validity.

Solid credentials need to be backed up with extensive experience, and a lengthy track record of comparable professional work is helpful. In addition to work in the field, a demonstrated proficiency in undertaking expert witness work may also be useful, although the two areas should appear balanced. An expert boasting a long list of reports may give the impression of being primarily a professional witness and becomes vulnerable to the claim that he or she is nothing more than a “hired gun,” having a primary source of income in undertaking expert work, and being therefore less likely to provide a detached, objective viewpoint.

Experts who can demonstrate that they are primarily involved in practice but undertake the occasional expert report can arguably demonstrate a greater degree of professional detachment and less financial dependency, and they can therefore be more convincing expert witnesses than those perceived to be “hired guns.”

In some instances it may be advisable to seek out an expert who has a primarily academic background—i.e., teaching and researching at a major university. Certainly, the credibility of such individuals is enhanced by the academic connection, both in the credentials they possess and the sense of objective detachment from the professional world that their professorial role may engender. However, they may be questioned on their lack of actual experience, and their theoretical perspective should be introduced only where appropriate, or where a reasonable balance of academic and practical experience can be demonstrated.

### B. Applicability

A quick cruise through Google will confirm that there is no shortage of expert witnesses in a variety of professional fields, offering their services to the legal profession, either directly or through placement agencies. The trick is to find one that matches the profile of the case as closely as possible. Opposing counsel will immediately try to probe for a lack of appropriate experience relevant to the details of the case, so check the background of the potential expert witness first to ensure a suitable match. Ask for copies of previous reports written for similar cases. This will give an indication of the individual's writing skills (an important criterion in itself), and it may also reveal any inconsistencies of opinion that might later arise. An expert providing a persuasive opinion in one report that is contradicted by a previous one with similar case facts may appear disingenuous. This situation, coupled with the obvious fact that he or she is being paid handsomely by the party who is helped by the opinion, may diminish his or her credibility.

The match between expert witnesses and case facts may not be perfect, but they may be hired anyway. (Time deadlines may be approaching, for example.) In this case, do not be tempted to ask experts to render opinions that may fall outside their respective realms

*continued page 19*



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Now with our new website for policyholders, MyLawyersMutual.com we are introducing Electronic Policy Delivery. No more waiting for your paper policy in the mail, once you've retained coverage, you will receive an email with your login credentials informing you your policy is ready for viewing within your own secure “My Policy” page.

Better yet, we re-designed and re-launched Practice Assets as My Practice Assets™ all within MyLawyersMutual.com. It still has all the same helpful forms, letters and documents as before, but with a more friendly interface and simpler navigation. Imagine being able to manage your policy online from anywhere, at anytime.

# The Living, Breathing Local Rules

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court



One of the objectives of the Local Rules Revision Project was to develop a process for the rules to be regularly updated as needs and circumstances change. This is preferable to waiting for a revision committee to meet every

few years and revise and republish a whole new volume of rules; or worse, to allowing the rules to be amended by interim directives, standing orders, and administrative bulletins tucked between the pages of the rule book until a new, clean, consolidated version of the rules is issued.

(The rules could be left open to interpretation, I guess, and we might rely on providence and interpretative wisdom to keep the rules current. But there is only so much stretch you can build into local rules, which, unlike constitutions and statutes, are of little use if they are not highly detailed. Indeed, our view is that rules that are open to interpretation simply need to be written more unambiguously.)

The concept is working, and here is some proof:

- The revised Family Division Rules have now been approved and are officially in effect (more below on some of the highlights). But rather than waiting to introduce these until some auspicious date when we are ready to issue a whole new edition of all the rules, we merely added these rules to the updated rules for the Criminal and Civil Division, all of which are published and readily available, on the State Bar website, [http://www.wisbar.org/AM/Template.cfm?Section=Milwaukee\\_County1](http://www.wisbar.org/AM/Template.cfm?Section=Milwaukee_County1), and on the Chief Judge's webpage of Milwaukee County's website, <http://www.county.milwaukee.gov/ChiefJudgeCircuitCou10519.htm>.
- Soon after publishing the Family Division rules, we learned that they already needed to be updated. Rule 5.38 sets a ten-day deadline for seeking *de novo* review of a court commissioner's decision regarding a harassment or domestic abuse TRO or injunction. However, last month the Legislature created a statutory deadline for filing such motions, and gave parties more

time to file – 30 days in all. See Wis. Stat. § 813.126. Because state statutory deadlines trump conflicting deadlines in local rules, see *Hunter v. AES Consultants, Ltd.*, 2007 WI App 42, ¶ 7, 300 Wis. 2d 213, 218, 730 N.W.2d 184, 187, *abrogated on other grounds by Hefly v. Strickhouser*, 2008 WI 96, 312 Wis. 2d 530, 752 N.W.2d 820, a change to make our rules conform to the statute is necessary and will be approved shortly.

- Chief Judge Kremers recently took steps to bring some budget discipline to the payment of fees to counsel we have appointed at county expense (for example, to serve as GALs or to represent indigent criminal defendants). Those seeking reimbursement were not always swift in submitting their bills. Some bills were coming in many months and, in a few instances, years after the work was performed, creating a budgeting headache. Accordingly, the rules were recently amended to add Rule 1.29, which sets a **90-day deadline for appointed counsel to seek reimbursement**, or else, and spells out the paperwork that must be filed before a fee application can be approved.

## More highlights of the new Family Division Rules

The previous *Messenger* touched on some of the highlights of the updated Family Division Rules. Here are a few more:

- Rule 5.6.C. comes to terms with the new era of unbundled legal services. Attorneys are permitted to make **limited appearances**, but the scope of the representation must be disclosed in the notice of appearance. When the limited purpose of the appearance has

been satisfied, the attorney may withdraw by submitting an order under the five-day rule.

- Under Rule 5.16, governing suspension of the proceedings while the parties **attempt to reconcile**, parties may ask the court to suspend the proceedings for up to 90 days, but the court's order will provide that if the parties do not make any further requests for relief within 120 days, the case will be dismissed.
- The Family Court Commissioner will hear all **postjudgment motions** in the first instance. There are only six exceptions, all listed in one rule, Rule 5.27.A.

Questions about the local rules? Perhaps your question is one that others have, as well. Send your question by email ([richard.sankovitz@wicourts.gov](mailto:richard.sankovitz@wicourts.gov)) and I will answer it promptly. If the information is helpful to others, I will publish the question and the answer.

## Milwaukee Bar Association 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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# EDWBA *Annual Meeting*



EDWBA President Cristina D. Hernandez welcomes attendees to the 8th Annual Meeting.



Judge William J. Bauer moderates a lively discussion: Guarding Federal Judicial Independence—Congressional Controls, Judicial Recusals and the Politics of Appointment.

## 2010 *memorial service*



Rabbi David Cohen opens the Memorial Service with an invocation.



Chief Judge Jeffrey A. Kremers and MBA President Fran W. Deisinger honor the deceased.

## *Judge Myron Gordon Memorial*



Photo by Jack Zemlicka, WI Law Journal

Federal Judges join in warmly remembering Judge Myron Gordon on June 17.

## **MBA at the Marquette Law School**



Marcia Facey, Charlie Barr and Fran Deisinger share experiences with Marquette law students.

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# 2010 MBA *Annual Meeting*



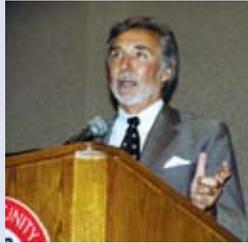
Chief Judge Jeffrey A. Kremers administers the oath of office to new officers and board members.



Rachel Schneider is sworn in as the 2010-2011 president.



President Fran Deisinger presents Don Christl with the Distinguished Service Award.



Peter Bruce talks about his career as he accepts the Lifetime Achievement Award.



Debra Tuttle receives the Lawyer of the Year Award on behalf of the Milwaukee Foreclosure Mediation Program.

## MBA 2010 Election Results:

### Vice President

Charles H. Barr, *Croen & Barr*

### Directors

Marcia E. Facey, *Northwestern Mutual*

Susan E. Lovern, *von Briesen & Roper*

David G. Peterson, *Godfrey & Kahn*

### Judicial Selection Committee

Anthony S. Baish, *Godfrey & Kahn*

Raymond M. Dall'Osto, *Gimbel, Reilly, Guerin & Brown*

Anne Berleman Kearney, *Appellate Consulting Group*

### American Bar Association Delegate

Hon. Charles N. Clevert, Jr., *U.S. District Court for the Eastern District of Wisconsin*

Annual Meeting photos by Jack Zemlicka *WI Law Journal*

## Law Day 2010



Attorneys Tim Johnson, Jeff Wilson, and Joshua Kons offer free legal information during the MBA's Law Day web chat on Fox 6.



Husband and wife team Michael and Corinne Balter work the free legal clinics on May 1, 2010, National Law Day.



Milwaukee Bar Association attorneys spoke to the public for free for over four hours answering questions during the Law Day Fox 6 phonebank.



Boy Scouts earned their Legal Badge in celebration of Law Day at the Milwaukee Bar Association. Attorney Mike Tobin, Judge Joseph Donald, and MPD LT Charles Berard present to the Boy Scouts.

## 2010 MBA Award Winners:

**Lifetime Achievement Award:** Presented to the lawyer whose career achievements in both the practice of law and community service demonstrate a consistent level of excellence.

**Recipient:** Peter W. Bruce, Davis & Kuelthau, in celebration of an outstanding legal and business career at Northwestern Mutual Life Insurance Company, and service to the community as a member of Davis & Kuelthau.

**Lawyer of the Year:** Awarded to the lawyer whose activities and extraordinary accomplishments over the previous year reflect well not only on the award winner, but also on the profession in general.

**Recipient:** Milwaukee Foreclosure Mediation Program, in recognition of a successful partnership between the City of Milwaukee, Legal Aid Society of Milwaukee, Marquette University Law School, and the Wisconsin Department of Justice to address the growing number of area residents facing foreclosure.

**Distinguished Service Award:** Given to a member of the bar whose extraordinary service to the bar over the years has helped to support and better the profession.

**Recipient:** Donald J. Christl, Reinhart Boerner Van Deuren, for his leadership, years of service, and contributions to both the Milwaukee Bar Association and the Milwaukee Bar Association Foundation.

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## WI SOLO & SMALL FIRM CONFERENCE

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# Portrait of an Attorney as a Visual Artist

Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer before



after

I recently wrote a brief and argued before the Seventh Circuit Court of Appeals. The rules concerning the brief were exacting. It was not only the page limits, word count, citation protocol, special rules for the various sections of the brief, requirements for searchable electronic copies, or the nuances concerning computation of time. What struck me most was the Seventh Circuit's focus on, attention to, and recommendations concerning the appearance of the brief.

Judges read briefs for living. Reading so many briefs, states the *Seventh Circuit Practitioner's Handbook*, is a chore. A well designed brief lessens that chore. Lawyers, suggests the *Handbook*, will be better advocates if the presentation in the brief is visually effective. A brief that is visually effective, moreover, will be a brief that is easier to read.

What does it mean to be visually effective? The Federal Rules of Appellate Procedure and the Seventh Circuit Rules mandate certain elements of visual effect. These include requirements concerning line spacing and font size. In the Seventh Circuit, however, this is not the end of the discussion. The *Practitioner's Handbook* contains pages

of commentary, instruction really, about the visual effects of a brief, reference to scientific studies regarding presentation, and citation to an article on the subject that has so impressed the judges that it is posted on the circuit web site.

The article, by Ruth Anne Robbins, is called *Painting with Print: Incorporating Concepts of Typography and Layout Design into the Text of Legal Writing Documents*. Complemented by the *Practitioner's Handbook*, is full of practical ideas. Both Robbins and the *Practitioner's Handbook* make a compelling case that by using a few easy-to-master tips, any lawyer can become a visual artist and, in turn, a better advocate. These principles include:

**1** The use of proportionately spaced serif typefaces that are designed for books. "Serifs" are the small finishing strokes on the end of a character. "Sans serif" fonts do not have these small finishing strokes. The circuit particularly likes the Bookman and Century families of typeface. The circuit advises avoiding Times New Roman—a typeface designed for newspaper articles, letters, and other short reads.

**2** The use of a second typeface for headings and the avoidance of all caps. The heading-specific typeface can be a sans serif typeface – such as Arial.

**3** The use of italics, and the avoidance of underlining or bold type, for case names or emphasis.

**4** The use of only one space after punctuation.

**5** No text justification without text hyphenation.

**6** The indentation of the first line of each paragraph by one-quarter inch or less.

**7** The avoidance, if possible, of long footnotes and block quotes.

# Nominations for Solo and Small Firm Service Award Sought

Nominations are now being accepted for the John Lederer Solo and Small Firm Service Award, which will be presented at the Wisconsin Solo and Small Firm (WSSF) Conference October 28-30, 2010, in the Wisconsin Dells. The conference is co-hosted by the Milwaukee Bar Association and the State Bar of Wisconsin.

The award will be presented to an individual, group, or organization exemplifying the leadership, spirit, and dedication of Oregon, Wisconsin attorney John Lederer, who saw it as his mission to help solo and small firm lawyers master the skills and technology needed to build their practices. Lederer passed away in March of 2009.

Nominations, which are due August 2, 2010, will be judged on their sustained, selfless service to projects, efforts, or organizations of benefit to solo and small firm practitioners across Wisconsin. Nominees' efforts should have contributed to the advancement of solo and small firm practitioners in the areas of technology, legal education, practice management, ethics, or quality of life.

More information about the award and the nomination procedure can be found at [www.wssf.org](http://www.wssf.org).

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## Calendar of Events

**August 4**  
Golf Outing

**October 13**  
State of the Court Luncheon

**October 28th-30th**  
2010 WI Solo & Small Firm Conference

continued page 22

# Lawyer Lincoln's Only Visit to Milwaukee: the 1859 Speech at the Wisconsin State Fair

Hannah C. Dugan

The pride of the American legal profession visited Milwaukee only once, and for merely a day. Illinois lawyer Abraham Lincoln came to Milwaukee not at the behest of Wisconsin bar colleagues,<sup>1</sup> but rather at the behest of the State Agricultural Society of Wisconsin. He came not as a skilled litigator, but rather as a celebrity. And he did not disappoint. He came to the 1859 version of the Wisconsin State Fair, during which he earned some speaker's fees and gained some political friends. Within five months, he headed to New York to deliver his career-changing Cooper Union Speech, and within 18 months he was off to Washington, D.C., to deliver his first presidential inaugural address. But first he came to Milwaukee to talk about agriculture, a topic dear to Wisconsin. This article takes a brief look at the occasion of Lincoln's day in Milwaukee and the message his speech delivered.

## Context

It is documented that Lincoln was in Wisconsin twice. He fought in the Blackhawk War as a captain in 1832 in the Janesville area; and he delivered a speech at the Wisconsin State Fair in Milwaukee in 1859, traveling the next two days to Beloit and Janesville for political purposes.<sup>2</sup>

The current records of Lincoln's Milwaukee visit contain the *post facto* mythology that seems typically to follow Lincoln. Different accounts about the details surrounding his visits were recorded throughout the years by various Wisconsinites who attended the fair and other gatherings. Local newspaper articles, some as late as 1932, appeared at various intervals for years. The interviewees' accounts are inconsistent and often self-promoting, and therefore demonstrate the historical unreliability of memory and memoirs.

The most reliable account of the future president's Milwaukee visit ends up being, by default, the most consistently reported facts. The first and foremost verifiable fact about the speech is the content of the speech itself. Lincoln wrote the speech in his own hand. In addition, the speech was reprinted in the *Milwaukee Sentinel* the day after its delivery<sup>3</sup>; in the "Transactions of the Agricultural Society of Wisconsin (1858-1859)," in the *Wisconsin Farmer and*

*Northwestern Cultivator* (November, 1859); and in a compilation of Lincoln's works, published in 1907. While the *Milwaukee Sentinel* did not actually cover the speech, the *Wisconsin Pinery* of Stevens Point did. Henry Bleyer, the *Pinery's* representative, who received the manuscript copy of the speech from Lincoln, reprinted it in an article entitled "Old Abe." The newspaper's comments included the following:

Lincoln delivered a short address which he had nicely written out, folded in the Wisconsin, and tucked away under his left arm, when first I saw him. His heart and other internal arrangements are a long way from his head. He looks as if he was made for wading in deep water.... He looks like an open-hearted, honest man who has grown sharp in fighting knaves. His face is swarthy and filled with very deep, long thought-wrinkles. He inspires confidence.... His voice is not heavy, but has a clean trumpet tone that can be heard an immense distance.... He thrust a stiletto into Hammond's "mud sill" theory. It did not please everybody, I suppose, and therefore it was something positive and good.

## The 1859 Wisconsin State Fair

The ninth year of State Fair of Wisconsin was sponsored by the Wisconsin Agricultural Society, a group led by prominent Wisconsinites whose approach to agriculture was largely academic rather than practical husbandry.<sup>4</sup> The Society's interests reflected the emerging scientific study of agriculture later promoted by the state's college system. For nearly a decade the fair had been held in different Wisconsin cities; it would continue its traveling nature until 1892, when it finally settled in its permanent and current location in West Allis.

The enormous Cold Spring Race Track became the location of the 1859 State Fair.<sup>5</sup> In the center of the grounds, small buildings and the judges' stand were sited on two Indian mounds. 100 stalls for cattle were sited on the south side of the grounds, and refreshment stands were sited on the west side, strategically distanced from the animals. The grounds included a number of other buildings for agricultural machinery; a grandstand for 500 people; a racetrack for horse competitions; and tents for exhibits

of horticulture, agriculture, and dairy products. The grounds were surrounded by a temporarily constructed high board fence. The Menomonee River hosted the fireman's tournament and the regatta contests. The events were held from September 26 to September 30. The featured event of the fair was not Lincoln's speech; it was the plowing match.<sup>6</sup> Over 15,000 persons attended the fair (equaling one-third of the city's population), and about 1,400 entries were judged in the various competitions.

## The Invitation to the Fair

Lincoln spoke on the final day of the fair. He was invited to be a "draw" to the fair, in particular because of his celebrity following his impressive performance during the 1858 Lincoln-Douglas debates. For years Lincoln had been delivering speeches on a variety of subjects to hone his skills and increase his public presence. A prominent speech in his repertoire, entitled "Discoveries and Inventions," demonstrated his ability and agility with subject matters beyond his professional field. The fair organizers specifically, and perhaps boldly, asked him to give an address about agriculture.

While various people claim credit for Lincoln's presence at the fair, letters were discovered in 1921 establishing David J. Powers, a farmer in Madison, Society Secretary, and editor of the *Wisconsin Farmer*, as the man who procured the celebrity speaker.<sup>7</sup> Powers wrote an unanswered letter in July 1859 and followed with a second letter a few weeks later. Lincoln responded:

Dear Sir: —Reaching home after an absence nine days I find yours of the twelfth. I have also received that of Jul 27; and, to be plain, I disliked to decline the honor you tendered me. Two difficulties were in the way—first, I could not well spare the time from the courts; and secondly, I had no address of the sort prepared and could scarcely spare the time to prepare one; and I was waiting, before answering yours, to determine whether these difficulties could be surmounted. I will write you definitely on the first day of September, if you can safely delay so long. Yours very truly, A. LINCOLN

*continued page 20*

# Lending a Helping Hand at the Bankruptcy Court

Shay A. Agsten, von Briesen & Roper

The *Pro Se* Help Desk began as the brainchild of U.S. Bankruptcy Judge Susan V. Kelley and Attorney Andrew Herbach of Howard, Solochek & Weber, and was inspired by a *pro se* clinic in the Chicago Division of the Bankruptcy Court for the Northern District of Illinois. The idea behind the program is to provide *pro se* Chapter 7 debtors with a place to get basic information about the bankruptcy process. While the services of the *Pro Se* Help Desk are not available to debtors who are filing bankruptcy under other chapters of the Bankruptcy Code, the Help Desk does provide referrals for debtors seeking assistance under those other chapters.

A Chapter 7 bankruptcy is a liquidation bankruptcy proceeding, and the types of debtors the *Pro Se* Help Desk serves are those persons who cannot afford an attorney and are attempting to navigate the bankruptcy process alone. A Chapter 7 bankruptcy proceeding, like all bankruptcy proceedings, requires a debtor to comply with numerous rules and disclosures. A *pro se* debtor can quickly become lost in

the morass of procedure, and the failure to follow protocol draws objections from the Chapter 7 trustees. These objections can be easily dealt with if the debtor simply has the information necessary to proceed according to the rules. This is where the *Pro Se* Help Desk steps in to fill the information void. The Chapter 7 trustees and the Bankruptcy Judges refer debtors to the Help Desk so they can obtain information about the bankruptcy process.

The *Pro Se* Help Desk assists persons who are preparing to file a Chapter 7 bankruptcy, as well as those who have already filed. Attorney Herbach estimates that the program has served between 750 and 1,000 individuals per year for the past two years. The attorneys who staff the *Pro Se* Help Desk do not enter into an attorney-client relationship with the debtors they serve; they provide legal information only, not advice, about the basic concepts of the bankruptcy proceeding. The *Pro Se* Help Desk provides an informational video to people who are contemplating bankruptcy, or have just filed

bankruptcy, which serves as a primer to assist those persons going forward. The program assists debtors in filling out their bankruptcy schedules properly, so as to disclose all of their assets, liabilities, and other information required by the Bankruptcy Code. The attorneys at the *Pro Se* Help Desk also assist debtors in fixing mistakes that they have made in their bankruptcy schedules and explaining the meaning of court rulings.

The *Pro Se* Help Desk is open every Thursday from 9:00 a.m. to 10:30 a.m. at the U.S. Courthouse, 517 East Wisconsin Avenue, Room 153, in Milwaukee. The Help Desk accepts clients on a first come-first served basis. The project benefits from the generous volunteer hours of Andrew Herbach; Marie Nienhuis of Beck, Chaet, Bamberger & Polsky; and other bankruptcy attorneys. Law students are also eligible to volunteer at the *Pro Se* Help Desk, and their participation is encouraged. If you are interested in volunteering, please e-mail Andrew Herbach at [aherbach@hswmke.com](mailto:aherbach@hswmke.com).

## Milwaukee Justice Center Continues to Expand Services to Self-Represented Litigants

Since its inception in April 2009, the Milwaukee Justice Center (MJC) has made a significant impact on the experience of self-represented litigants in Milwaukee County. In 2009 alone, the MJC served 6,653 self-represented litigants in the areas of family law, small claims, large claims, foreclosure, and probate. This was accomplished through the efforts of the MJC's committed network of more than 170 volunteers, who put in a combined total of 3,897 hours of service. In 2010, the MJC expects the number of clients served to exceed 9,000.

In light of a growing demand for self-represented litigant services in the Milwaukee County Courthouse, the MJC expanded its services to meet that demand. Through its collaborative partnership with the Marquette Volunteer Legal Clinic, the MJC began offering a Brief Legal Advice & Referral Clinic in October 2009. Five months into

this successful project, the MJC expanded it by adding a second Brief Legal Advice & Referral Clinic, staffed largely by Foley & Lardner attorneys.

In July, the MJC will be launching [www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com), in a continuing effort to bring better access to justice to self-represented litigants. The website will provide those litigants with forms and step-by-step instructions on the filing process, 24 hours a day, seven days a week. By expanding services to the internet, self-represented litigants who are unable to come to the center during the work day can still access the information they need to navigate the court system.

For more information, or to get involved with the Milwaukee Justice Center, please visit [www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com).

### MBA Mentoring Program Kick-Off Meeting & Reception

**WHAT:** A new program launched by the MBA that matches new and experienced attorneys together. This match includes areas of practice, size of firm, interests, etc. The goal is to gain insight and guidance on what to expect and how to thrive in the legal profession.

**WHO:**

**MENTORS:** Those who have 5+ years of legal experience, are members of the MBA, and are in good standing with the Office of Lawyer Regulation.

**MENTEES:** Those with less than 5 years of legal experience, who are members of the MBA, and are in good standing with the Office of Lawyer Regulation.

**WHEN:** Wednesday, July 28, 5:30 – 7:00 for hors d'oeuvres, wine, beer, soda, and discussion with your mentor/mentee. There will be a brief program at 5:30 to discuss the program and expectations, introductions to follow, and then a reception from 6:00-7:00.

For more information, to RSVP, or for an application please contact Britt Wegner at [bwegner@milwbar.org](mailto:bwegner@milwbar.org), or Amy Enger at [aenger@milwbar.org](mailto:aenger@milwbar.org).

# Mortgage Foreclosure Cases in Milwaukee County Continue to Surge

New mortgage foreclosure filings in Milwaukee County continued their significant upward trend in 2009, increasing by 11% from 2008. Although the pace of the increase in filings slowed somewhat compared to previous annual increases since 2005, mortgage foreclosure cases shot up by a staggering 166% in the five-year period from 2005 through 2009. Civil Division filings increased by 19.5% during those five years, in contrast to decreases in three other divisions served by the Clerk's office. The Children's Division saw a 22% slowdown in filings, while filings in the Family and Criminal Divisions dropped by eight percent and 6.5%, respectively, over the same time period. Overall, filed cases in these four divisions increased by more than nine percent between 2005 and 2009, while according to U.S. Census Bureau estimates, Milwaukee County population increased by about half that amount during substantially the same time period.

The five-year snapshot of the Milwaukee County Circuit Court is a highlight of the 2009 Annual Report prepared by the Administrative Services Division of the Clerk's Office. John Barrett, Clerk of Circuit Court and Director of Court Services, transmitted the report to Chief Judge Jeffery A. Kremers on February 22, 2010. The 2009 Annual Report also contains more detailed breakdowns of cases filed and cases disposed of in each circuit court division in 2008 and 2009, statistics on jury management in 2009, a five-year history of appeals, and an analysis of the age of pending cases at the end of 2009. The report also covers a fifth division—Probate—but includes statistical data on that division only since 2007, the year offices of the Clerk of Courts and Register in Probate administratively merged.

In addition to the eye-popping increase in mortgage foreclosures, other large claim contract and real estate filings expanded by 63% during the same five-year period, contributing to an overall 59% bump in large claims civil filings. Small claims filings increased at a more modest seven percent pace. Small claims contract and eviction cases experienced 19% and six percent increases, respectively, but small claims replevin cases dropped almost 54%.

The Civil Division accounted for 44% of new cases filed with the Clerk's Office in 2009, with small claims cases alone accounting

for 30% of that total. (More than 13% of new large claims filings, however, were petitions for domestic abuse TROs, which are counted as civil cases but assigned to Family Division judges.) Most of the remaining 2009 filings (40%) were criminal matters, with misdemeanor and traffic cases accounting for the lion's share (36%). The remaining 16% of new cases in 2009 were divided among family (seven percent), probate (six percent), and children's cases (three percent). Small claims and misdemeanor/traffic cases together constituted two-thirds of the Milwaukee County Circuit Court's caseload in 2009.

The big news in the Family Division was a sharp increase in new paternity cases, which rose by almost one-third from 2008 to 2009. This bucked a trend of annual declines in such cases since 2005. Divorce and other family matters followed the same pattern, but much more modestly (an increase of less than two percent from 2008 to 2009). Over the five-year period from 2005 to 2009, however, family law filings were down eight percent.

In criminal cases, charges for offenses against persons dropped 34% in the five-year period, while charged offenses involving property, public order, and narcotics dropped by about 19%, 29%, and 25%, respectively. Traffic cases, by far the most numerous in the county's criminal justice system, experienced an uptick of about one percent. But misdemeanor moving traffic cases, which had jumped more than 28% from 2005 to 2006, continued to decline, albeit at a slower pace than in 2007 and 2008. Such cases were off 21% from their 2006 peak, perhaps reflecting the continuing influence of the Center for Driver's Recovery and Employability, which had its genesis with the Milwaukee Bar Association.

Children's Division statistics were notable for the steady decline in delinquency filings, which in 2009 were 28.5% less than in 2005. Also, CHIPS petitions declined by 16% in that five-year period. Probate filings, on the other hand, increased by six percent in the three-year period between 2007 and 2009. An 11% increase in filings for protective actions offset a 10% decrease in estate filings.

The Milwaukee County Circuit Court once again kept current with its overall caseload in 2009 by disposing of 1,218 more cases than were filed in that year. The Criminal and Children's Divisions boasted case dispositions in excess of filings, which offset shortfalls

in the Family Division of six percent, the Probate Division of two percent, and the Civil Division of about 0.5%.

Juries tried 404 cases in Milwaukee County in 2009, down five percent from 2008. Of these, 70% were criminal cases, and almost 60% were felony cases. A verdict resulted in 86% of jury trials. About five percent of jury trials ended in a mistrial or hung jury. Jury trials comprised four percent of felony cases and 0.1% of misdemeanor and traffic cases disposed of in 2009. One-tenth of one percent of civil cases disposed of in 2009 went to jury trial.

Appeals jumped 24% from 2008 to 2009, reversing declines in the previous two years. Well over two-thirds (69%) of the 878 appeals were in criminal cases, while less than one in four (23%) were in civil cases. Children's and probate cases accounted for the handful of remaining appeals.

Copies of the 2009 Annual Report are available from the Administrative Services Division of the Clerk of Circuit Court (phone 414-278-5357).

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# Creating a Strengths-Based Legal Profession

Paula Davis-Laack, *The Marie Elizabeth Company*

If you had asked me several years ago what my strengths were, I probably would have told you how much I could bench press. It wasn't until I decided to start my own business that I even thought to formally identify what I was good at. Once I made the strengths connection, however, I could direct my time and energy in ways that made me more productive. For many attorneys and many law firms, thinking from a strengths perspective might be new because the focus of an attorney's daily work often involves just the opposite; however, creating a foundation built on strengths has bottom-line financial and emotional impact.

Your brain takes in more information each day than it can accurately process. To manage, you take mental shortcuts, multi-task, and filter information. Many times, the shortcuts are wrong and have unwanted consequences called thinking traps (for example, jumping to conclusions about an event without having good evidence). This process is a waste of time and energy; however, knowing your strengths allows you to pursue the challenging activities and

projects that match your skill set. When there is a good match, this "sweet spot" is called flow. It's a state of high engagement, efficiency, and productivity where you're dialed into whatever it is you're working on.<sup>1</sup>

Over the past 30 years, the Gallup Organization has investigated the nature of talents and strengths in the workplace by asking millions of people whether they agree with this statement: "At work, I have the opportunity to do what I do best every day." Only 33% of those surveyed responded to that question with "strongly agree."<sup>2</sup> Working to improve your strengths does not mean that you should ignore your weaknesses. Rather, weaknesses need to be understood and managed, but talents and strengths should also be focused on and optimized.<sup>3</sup>

Focusing on development of your strengths is important for a number of reasons. First, once you identify your strengths, you have a foundation from which to view your potential.<sup>4</sup> Mentors, advisors, and partners can then play a vital role in helping to develop this potential. Second, strengths development leads to higher engagement at work. Specifically, at workplaces where employees believe they have the opportunity to showcase what they do best, there is a significantly higher rate of loyalty, employee retention, and productivity.<sup>5</sup> Third, in a profession known for its high rates of depression,<sup>6</sup> discovering and using your signature strengths in new ways has been found to increase happiness and decrease depressive symptoms.<sup>7</sup> Fourth, the best leaders recognize that they will never be good at everything; instead, they concentrate on developing their strengths and find others who can make up for their limitations.<sup>8</sup> Finally, Gallup has conducted a number of studies in different companies and industries comparing groups

of workers who were given different strengths interventions with other groups who were not given any particular strengths tests or feedback. The differences observed at the company level were substantial in that the groups given the strengths assessments and feedback grew in productivity by 50% more than the group not given any assessments or feedback. Translated into practical terms, the differences in employee engagement amounted to differences in dollar value of productivity of more than \$1,000 per person.<sup>9</sup>

I recently had lunch with a former attorney colleague of mine, and as we discussed the topic of strengths, she said, "You know, we don't really have a strengths language in this profession." She's right. I challenge each of you to start such a dialogue today.

*Paula Davis-Laack, J.D., is the founder and CEO of The Marie Elizabeth Company, LLC, which helps attorneys and law firm executives build strong lives and strong companies by developing resilience skills, assessing personal and professional strengths, and identifying the pathways and motivation needed for goal accomplishment. Paula recently completed the coursework for her master's degree in positive psychology at the University of Pennsylvania. Paula can be reached at paula@marieelizabethcompany.com.*

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<sup>1</sup>Mihaly Csikszentmihalyi, *Flow: the Psychology of Optimal Experience*, p. 6 (Harper Perennial 1990).

<sup>2</sup>Tom Rath, *StrengthsFinder 2.0*, pp. i-vii (Gallup Press 2007).

<sup>3</sup>Donald O. Clifton & James K. Harter, "Investing in Strengths," *Positive Organizational Scholarship*, p. 112 (Kim S. Cameron, Jane E. Dutton, & Robert E. Quinn eds., 2003).

<sup>4</sup>*Id.* at 113.

<sup>5</sup>James K. Harter, Frank L. Schmidt, & Theodore L. Hayes, "Business-Unit-Level Relationship between Employee Satisfaction, Employee Engagement, and Business Outcomes: a Meta-Analysis," 87 *J. Applied Psychol.* 268, 273-274 (2002).

<sup>6</sup>See William W. Eaton, et al., "Occupations and the Prevalence of Major Depressive Disorder," 32 *J. Occupational Med.* 1079, 1085, table 3 (1990).

<sup>7</sup>Martin E.P. Seligman, Tracy A. Steen, Nansook Park, & Christopher Peterson, "Positive Psychology Progress: Empirical Validation of Interventions," 60 *Am. Psychologist* 416 (2005).

<sup>8</sup>Danny Morris & Jill Garrett, "Strengths: Your Leading Edge," *Oxford Handbook of Positive Psychology and Work* 97 (P. Alex Linley, Susan Harrington, & Nicola Garcea, eds., 2010).

<sup>9</sup>*Supra* n.2 at 116-118.

## **Witness continued from p. 10**

of expertise, and do not expect them to exaggerate or even provide false testimony to help your case. If they are tripped up in cross-examination on one point, all their testimony may be called into question, even in the areas where they are proficient. Similarly, give the expert all relevant information pertaining to the case in a timely manner. Leaving out facts that may inconveniently temper the conclusions of the report may make for more emphatic reading, but if the opposing counsel picks up on the omission, the expert will be forced to reassess his or her opinion, possibly in a recorded or public venue, and invalidate his or her previous position. A wrong-footed expert, forced to publicly recant or revise an opinion based on new evidence, should be avoided at all costs.

### **2. Can the expert perform?**

While the primary value of expert witnesses will lie in the preparation of the written report, they may be called upon to defend their written opinions by submission to rigorous questioning. Accordingly, potential expert witnesses should be assessed for both for their writing and presentation skills before engagement. Asking them how many times they have been previously submitted to deposition and have appeared in court would also be prudent.

#### **A. How well does the expert write?**

As so many disputes are concluded outside the courtroom, a persuasive report is initially the expert witness's most valuable offering. As previously mentioned, check out previous reports, articles, books, and papers for basic writing skills before you hire. Can he or she write clearly and concisely, with a lack of confusing jargon or technical references, and in a style that is appropriate to the intended audience? Can he or she avoid questionable metaphors, colorful turns of phrase, exuberant adjectives, or sweeping statements? Is the impact of his or her words objective, reasonable and, above all, persuasive? While some professional fields produce consistently competent writers, others (design professionals come to mind) have less writing experience in their day-to-day lives and should be checked more carefully before they are hired to write a report that will, after all, be carefully scrutinized for weakness, ambiguity, or inconsistency if the case proceeds to deposition.

#### **B. How well does the expert speak?**

Once the expert has completed the report, he or she now enters the legal world, the

territory of the attorney. The latter is far more experienced in the give and take of deposition and cross-examination, so some preparation is advisable.

#### **i. At deposition**

Remind your experts to prepare extensively before the deposition, refreshing their memories on reports and any associated material. Of course, they may refer to materials during deposition, so remind them not to answer a question without reference to their notes or other documents if they are unsure of the subject in question. Every answer will be recorded by a stenographer, and must to be as accurate as possible. Experienced expert witnesses will be conversant with techniques for dealing with deposition tactics, but a review of basic principles is never amiss. Remind your witnesses to stay cool and not to get flustered under a barrage of questions. Tell them to think carefully before answering every question (counting to five before every answer regardless of how easy the question appears is not a bad strategy), and not to worry about being accused of wasting time or creating silences. Tell them to ask for questions to be repeated as often as they like, to ask for breaks, and to answer each question as briefly and accurately as possible. Instruct them never to volunteer extra information even if the questioner remains silent; remember, the silence belongs to the opposing counsel, not the witness.

Remind your experts never to interrupt the opposing counsel, and to be comfortable with saying "I don't know." While repetition of the phrase may concern them if they feel that it weakens perceptions of them as experts, explain that it would be far more damaging to answer questions outside their areas of expertise and be proven inaccurate. Above all, impress upon them the need to proceed with caution now that they are venturing into territory that is not their familiar habitat. Attorneys are trained for deposition and cross-examination. They do it regularly and they are often very good at it. Instruct your experts not to try and outsmart opposing counsel – they will lose – and remind them that every word spoken adds to the content of their reports to create an overall impression of professional expertise. Humorous asides, defensive outbursts, or boring, unnecessarily detailed ramblings during testimony, either recalled from a deposition or delivered on a witness stand, can only serve to diminish the overall professional impact that the expert witness needs to demonstrate.

#### **ii. In the courtroom (or hearing room)**

Statistically, the majority of disputes are resolved well short of an appearance before a judge, jury, or arbitrator, so expert witnesses, even the experienced ones, are likely to have spent limited amounts of time in such venues. While many of the pieces of advice in the previous section of this article still apply, the expert now has the added pressure of cross-examination, potentially in front of an audience. Again, some preparation is advisable.

Appearance and performance are both important, so instruct your experts accordingly. They need to project an impression of balanced, reasonable, and almost detached professionalism to enhance the credibility of their report opinions. Accordingly, their testimony and responses need to be delivered calmly, accurately, and objectively without exaggeration or complex technical jargon. Likewise, obscure abbreviations, baffling acronyms, and expressions that will be unfamiliar to a lay audience will only serve to confuse the issue. In short, the reliable expert witness should stick to concise, lucid answers that respond directly to each question without any additional commentary or unnecessary speculation. A practice session before the actual hearing might be valuable. It would be unfortunate to incur the considerable expense of a detailed report, only to have its valuable content invalidated by a poor verbal performance, so familiarize your experts as much as possible beforehand with what to expect and how to react.

### **Summary**

Expert witnesses form an integral part of many legal proceedings where factual evidence must be supplemented with professional opinion. They are not cheap, and their time should be used appropriately to optimize their effectiveness. Regardless of the experience of expert witnesses, always remember that when they commit to a case, they are moving from their professional realms to yours, where they are less familiar with the rules of engagement and less skilled in dealing with the combative style of deposition and cross-examination. Given the investment involved in engaging their services, it is prudent to select them carefully based upon their fit to the case and their demonstrated skills and experience, and then to prepare them carefully at each stage to ensure that their expert opinions are defensible and not invalidated by inconsistency or poor performance.

## Lincoln continued from page 15

Powers immediately understood that Lincoln was asking about a speaker's fee. And due to recent circumstances, Lincoln had to so inquire. His rising political and public star had taken him away from his lucrative practice. He had lost the Illinois senatorial race (although he won the debates), and his Republican colleagues had expected him to replenish the coffers depleted by his campaign. Powers immediately responded that Lincoln would receive \$100.00 for the engagement, and the Illinois lawyer immediately accepted the invitation. He would speak on September 30, the final day of the fair.

### The Speech

The hospitality upon Lincoln's September 29 arrival was less than gracious. His accommodations at the Newhall House were botched, reportedly resulting in a sheet being hung across a public space to create a "room" for privacy. In addition, his escorts were disorganized, such that Lincoln's scheduled 10:00 a.m. speech did not happen until noon. A platform wagon, procured as a stage for the speech, was set under a tree. Of course, the tree provided shade from the hot, noonday sun, but Lincoln's height on the tree-covered "stage" posed a different comfort concern.<sup>8</sup> Hundreds were in attendance.

It is somewhat ironic that Lincoln spoke about agriculture because he loathed farming. His father, Thomas Lincoln, had cleared land for farming three times in Kentucky, he moved the family to Indiana in 1816 to clear land to farm, and moved to Illinois in 1830 to yet again clear land for farming. Under the cultural and economic norms of the time, all Lincoln's work and wages were obligated to his father until he was 21.<sup>9</sup> He was a decidedly reluctant and disinterested farmer, although his famous rail splitting was honed by the farm fences he helped construct. He left farming and his father as soon as he could, in 1830, each settling in different places in Illinois. But his State Fair speech is filled with husbandry language; he imparted his knowledge about farming, despite himself.

Superficially, the speech appears deliberately not to be political, avoiding the subject of slavery that had dominated the previous year's Senatorial debates. However, the speech does reveal insights into Lincoln's view of economics, labor, and the individual in society. And it includes flashes of lines he retooled and integrated in later, more significant speeches.

Lincoln began his 14-page speech with a page's worth of disclaimers about his ignorance of the topic, and a celebration of agricultural fairs as means for sharing ideas and community and bringing together the agricultural and industrial arts. He compared fairs to the Patent Clause in the Constitution: both stimulate discovery and invention into extraordinary activity.

The famous lawyer then launched into the substance of his speech, encompassing a wide range of agricultural topics. He began with detailed statistical information about farm yields and pushing the soil to "up to something near its full capacity." He argued that the price a farmer would have to pay for the increased crop was "more labor to the acre but not to the bushel." More intensive, smaller farming created efficiencies and yield that allowed for savings by buying less land, yet getting more yield. He called this effect "thorough farming." Intensely cultivated small farms, rather than larger ones, made the best economic sense. Lincoln then described the net effect on farmers following thorough farming principles: a full crop with less labor and fatigue results in more pride and success.

"The ambition of broad acres leads to poor farming even with men of energy." So mammoth farms were undesirable; they worked against the "family farm" and against one's independence. Lincoln, economically, was trying to convince the farmers to adjust to the end of the country's geographical expansion.

Immediately after discussing large-scale agriculture as economically unfeasible, Lincoln continued by urging mechanization. He launched into a longer discussion about a steam plow because "steam had conquered the face of nature" with steamboats and trains. But he then entered into a discussion about steam plowing's technical difficulties, and concluded with reservations about the whole idea.

After this portion of the speech Lincoln launched into a long discussion about labor and capital. He stated that the "the world is agreed that labor is the source from which human wants are mainly supplied," but from this point "men immediately diverge." He described the "mud sill theory" that no one labors unless somebody else owning capital induces him to do so. "That whomever is once a hired laborer is fatally fixed in that condition for life and thence his condition is as bad as or worse than a slave." Then he

asserted the opposing view: that there is no such labor/capital relationship as the mud sill theory states, and that labor is superior to capital. He characterized the theory of "free labor" as being companioned with education, and therefore opposed the mud sill theory. He asserted that labor and capital are not incompatible.

Lincoln, a true politician, stated that he had:

so far stated the opposite theories of "Mud-Sill" and "Free Labor" without declaring any preference of my own between them. On an occasion like this I ought not to declare any. I suppose, however, I shall not be mistaken, in assuming as a fact, that the people of Wisconsin prefer free labor, with its natural companion, education.

Though not recorded, such a statement no doubt was a crowd-pleaser.

Lincoln concluded by stating that "men deriving a comfortable subsistence from the small area of soil can never be the victim of oppression." He ended with the inspiring words:

Let us hope rather that by the best cultivation of the physical world beneath and around us and the intellectual and moral world within us we shall secure an individual, social and political prosperity and happiness whose course shall be onward and upward and which, while the earth endures shall not pass away.

While ostensibly his speech is apolitical, it actually is not, according to Gabor Boritt.<sup>10</sup> The premises of his economic statements and labor analysis reflect the same moral bases and opinions regarding slavery. The radicals of his party denounced slavery on purely moral grounds and the conservatives denounced it on grounds of economics. Because Lincoln's ideas unified these extremes, he was in the very center of his party—the perfect compromise choice for a presidential nominee. The speech lasted one hour.

### Post Speech

Afterwards, Lincoln was feted by the Wisconsin Horticultural Society with a fabulous lunch in front of an elaborate wall of live foliage. He toured the grounds and exhibits, watched the plow contest and congratulated the winner, and tried his hand unsuccessfully at a sledgehammer contest. He returned to the Newhall House for a tea with dignitaries who prevailed upon him for a speech on "The Irrepressible Conflict." He left Milwaukee the next day for political gatherings and speeches in Beloit and

*continued page 22*

# Pro Bono Corner

The *Pro Bono* Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need *pro bono* attorneys. More organizations looking for attorney volunteers are listed in the MBA's *Pro Bono* Opportunities Guide, at [www.milwbar.org](http://www.milwbar.org).

## Kids Matter, Inc.

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Kids Matter, Inc. is a nonprofit organization dedicated to improving opportunities and outcomes for children in foster and kinship care. There are more than 3,000 Milwaukee children in foster care. According to the recent census, more than 20,000 additional children are being raised by someone who is not the child's parent—often a grandparent, relative, or family friend. These caregivers often need legal help so that they can obtain medical care, special education, or counseling services for the children in their care. That's where Kids Matter comes in.

With a relatively small legal staff, Kids Matter benefits from the services of *pro bono* attorneys in several ways. Notably, it was one of four organizations throughout the country selected by the *Pro Bono* Institute at Georgetown University Law Center to pilot the Second Acts program. That program engages retired attorneys—and those transitioning to retirement—to perform *pro bono* legal work. According to Anita Cruise, Kids Matter's Legal Director, roughly one in five people in the U.S. workforce is over the age of 55. Attorneys in that group can accomplish a great deal. Cruise notes that if only five percent of them were to participate in legal services work, that would double the number of lawyers involved primarily in public interest work.

The Second Acts program at Kids Matter recently launched a Children's Court mediation project with assistance from Foley & Lardner and Quarles & Brady. The project trains volunteer attorney mediators to help families resolve contested guardianship cases. Many *pro se* guardianships are filed by relatives, so the mediation project fills a real need, says Cruise. "Because of the family dynamics involved, it is difficult for

judges to resolve the matters to everybody's satisfaction, and those matters can be very time consuming." Cruise adds that volunteer mediators help find solutions that work for all of the family members.

"So far my experience has been very positive," says Susan Gramling, who has handled several mediations through the Kids Matter project. Gramling, a sole practitioner who concentrates on school law, family law, and other matters involving children, adds that "when the parties can work out guardianships between themselves, ultimately that's the best thing for kids." Margadette Demet, another mediation project volunteer and practitioner in probate, guardianship, and family law, agrees: "The beauty of mediation in Children's Court is that it's possible to reach solutions that can't be reached through the court process.... It is an opportunity to help people who really need assistance."

Kids Matter offers two additional types of opportunities for volunteer lawyers. Its Volunteer Lawyer Project connects volunteer attorneys with caregivers to assist with obtaining guardianships and accessing benefits such as medical care, kinship benefits, and special education. The

Milwaukee CASA (Court Appointed Special Advocate) program recruits attorney and non-attorney volunteers who are trained and then appointed by the court to advocate for an individual child or sibling group in the child welfare system.

Free training and support are available for all Kids Matter volunteers. For more information, visit [www.kidsmatterinc.org](http://www.kidsmatterinc.org).

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## Lincoln continued from page 20

Janesville. Throughout the rest of the year, Lincoln traveled east for more engagements, increasing his presence and, as it turned out, the prospects for his nomination and presidential election.

### Post Script

In 1862 this attorney, who escaped a life of agriculture and husbandry as soon as he could, signed legislation creating the United States Department of Agriculture.

<sup>1</sup>The Milwaukee Bar Association was founded one year earlier in 1858.

<sup>2</sup>Undocumented is a story that Lincoln rented housing and offices in Port Washington in 1835 for law practice but never returned to live or practice in Wisconsin. Olson, Julius E., "Lincoln in Wisconsin," *Wisconsin Magazine of History*, Vol. 4/Issue: 1 (1920-1921), pp. 45-51.

<sup>3</sup>The comment in the *Milwaukee Sentinel* accompanying the reprinted speech stated that "it is in every sense a practical and readable effort, and will repay attentive perusal." Olson, *op. cit.* n.2, p.53.

<sup>4</sup>The fair had its own intrigues, with the Wisconsin Horticultural Society apparently trying to "take over" the annual event. But that's another story.

<sup>5</sup>The original race track was sited at what is currently the north side of Wisconsin Avenue near 13th street in Milwaukee.

<sup>6</sup>The plow match was near the fairgrounds but off premises. Each contestant was given one-fourth acre to plow and was judged on the basis of who did the best work with respect to straight furrow lines and clean turns in the shortest time. "The State Fair that Lincoln Attended," *Milwaukee Journal* (8/21/27); "When 'Jimmie' Bryden Won Plowing Contest and Young Lincoln Made Milwaukee Address," *Milwaukee Journal* (6/18/22).

<sup>7</sup>"Letter Tells of Lincoln's Visit," *Milwaukee Journal* (9/4/21); "Lincoln Persuaded, In 1859, To Address Badger State Fair," *Madison State Journal*; "Lincoln Letters Recall Days Here," *Milwaukee Sentinel* (9/8/22).

<sup>8</sup>The speech was sited at what is currently the northwest intersection of 12th and Wells, the location of the former George Webb's diner and across from Angelo's Pizzeria.

<sup>9</sup>During Lincoln's young adult years, his father allowed him to work for a local businessman, delivering produce down river on a flatbed and operating a local ferry service.

<sup>10</sup>Boritt, Gabor, *Lincoln and the Economics of the American Dream*. Memphis State University Press (1994).

## Marquette continued from p. 9

Another Marquette Law initiative getting national attention is the Restorative Justice Institute. The program is the brainchild of Janine Geske, who said she created the program in 2004 as a way "to teach students how to be peacemakers and lawyers who deal with conflict in a positive way."

By setting up victim-offender dialogues and "healing circles" of community members affected by crime, Geske said RJ's programs can help solve tough problems through creative solutions.

### Marquette Law's open doors

The new building will allow greater space for programming, such as civic discussions and public service conferences. Students will still learn the craft and cram for exams in the new building, but the Marquette Law faculty want the school to be so much more than that. Geske said the school's doors are open, and people in the community will respond favorably.

Said Idzikowski: "There are all sorts of ways we have embraced the community in Milwaukee and Wisconsin. The building can be the epicenter for that."

*The writer is a 2010 journalism graduate from Marquette University.*

## Portrait continued from p. 14

As Ruth Anne Robbins points out, an argument presented in a visually effective manner enables the reader to more easily understand the argument and retain the material. According to Robbins, visual effects may be as critical an element of persuasion as proper grammar, adherence to the rules of court, and citation form.

With just a little extra effort, our briefs can look better and read easier. This should make them more effective. Our credibility may be at stake. It certainly is before the Seventh Circuit and, I suspect, many other courts. States Robbins, "A reader who knows something about basic design principles may react negatively to a document that does not incorporate those basic principles. Lawyers are taught to use every part of a document as an opportunity to persuade. Textual design of the document should be approached with the same attitude." This reminded me what one senior lawyer told me years ago about the use of split infinitives: most readers don't care, but those who care, care deeply. It's probably best not to treat these guidelines as precatory.

Not so long ago, lawyers by necessity would outsource the production of briefs to printers who knew the tricks of the trade. Now, with our personal computers, we are all printers—earnest but untrained. Like it or not, competent visual artists we must become.

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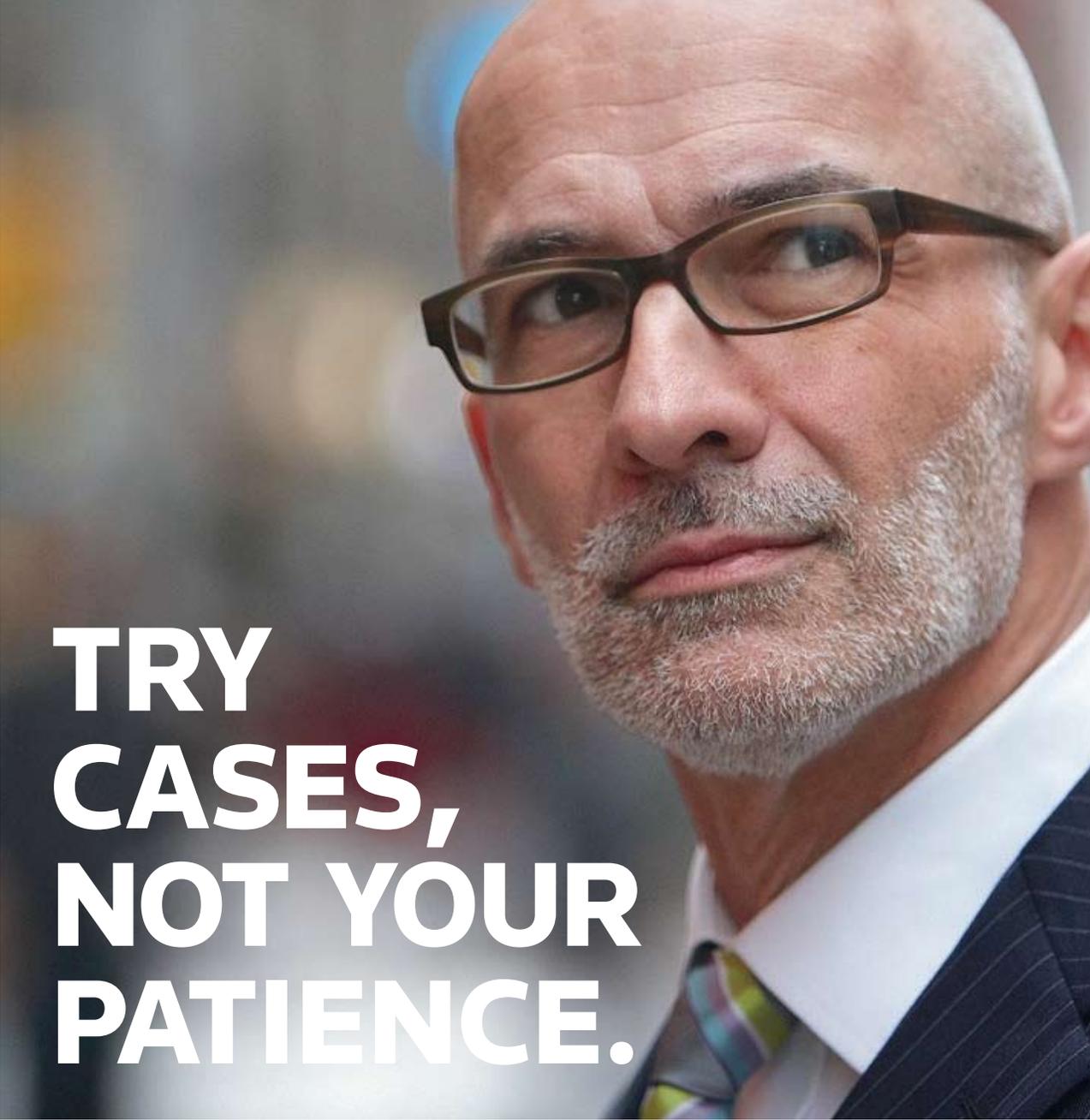
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