

Law Review Annual Banquet: Remarks by the Dean

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Repository Citation

Joseph D. Kearney, *Law Review Annual Banquet: Remarks by the Dean*, 90 Marq. L. Rev. 1069 (2007).
Available at: <http://scholarship.law.marquette.edu/mulr/vol90/iss4/8>

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MARQUETTE LAW REVIEW ANNUAL BANQUET

PFISTER HOTEL
MILWAUKEE, WISCONSIN – APRIL 13, 2007

REMARKS OF JOSEPH D. KEARNEY

DEAN AND PROFESSOR OF LAW*

Permit me to begin by thanking my part-time faculty colleague, the Honorable Steven Biskupic, for his remarks this evening and my full-time colleagues, Professors David Papke and Jason Czarnezki, for their undertakings this past year as the Law Review's faculty advisors. The Law Review (to say nothing of the Law School) is fortunate for your interest in it.

I wish to address my remarks to our students. I asked to speak at the end of the evening, rather than earlier, because I wanted to share a thought or two with you about the lasting value of your accomplishments over the past year (and in some cases two years). I wanted, I admit, the last word.

You have been stewards of the *Marquette Law Review*. I think that, as time goes on, you will come to an even richer appreciation than you can have today of what a significant responsibility this is. For among the many things the Law Review does is to serve as our school's most accessible and permanent written institutional memory. To pull down the volumes of the *Marquette Law Review* is the only way that I know to connect quickly with the Law School of the distant past. It is an imperfect means, of course, as are all of our efforts to be borne back in time, no matter how much on occasions we might fervently wish for this possibility. It is imperfect because no part of the school can reveal the richness of the entire program: reading Volume 1 of the *Marquette Law Review* will not fully inform us about the Law School of 1916. But it is what we have, in addition only to a few papers from past deans, and a few others, mostly squirreled away in never-seen parts of the Marquette University archives.

* This is an edited version of the dean's remarks.

And it is something: as our editor in chief, Ben Proctor, remarked at the beginning of the evening, with specific reference to the inaugural piece in the first issue, the editors of the Law Review throughout its history have sought to help the school “expand and fulfill its mission” by “mak[ing] known its ideals and communicat[ing] its spirit.”¹ Without question this is why, in the tradition of American law reviews, throughout its history the *Marquette Law Review* has included not only scholarly articles but also student notes and even memorial essays and speeches.

So by editing the *Marquette Law Review* you have helped, in the tradition of your predecessors, to establish and perpetuate the memory of our community. I had the privilege to work with some of these predecessors a few years ago in preparing the memorial issue of the Law Review in honor of the late Dean Howard Eisenberg. I noted there that “law reviews have a capacity to speak across the generations—to all those lawyers, academics, and students, for example, who share the venerable tradition of simply paging through old issues of law reviews and looking for familiar names in past mastheads.”² But there can be a greater voice within the pages than simply in the masthead of the past. This is why, for as long as I have been dean, I have shared a copy of this memorial issue of the Law Review with each of our students—each of you—the summer before they have joined us as first-year students and future Marquette lawyers.

This perpetuation of memory is among the oldest traditions of our law review. There even was a time when the review indexed the memorials contained in the Wisconsin Reports. The writer had no expectation that his work would be for anyone “a direct help in winning cases or properly advising clients.”³ It was sufficient for him, a faculty member at the time, to hope that his index would be “of some utility to the historian by furnishing him with facts, to the young attorney by giving him inspiration and to the older practitioner as a memorial of men whom he has fought against, competed with and practiced before and whom, in addition, he has admired, respected and even loved.”⁴ More than eight decades since those words were written, it remains within the purview of the Law Review, as I have suggested, in

1. W.A. Hayes, *Foreword*, 1 MARQ. L. REV. 5 (1916).

2. Joseph D. Kearney, *In Memoriam Howard B. Eisenberg: Foreword*, 86 MARQ. L. REV. 203, 207 (2002).

3. Carl Zollman, *Lawyers Memorialized in Wisconsin Reports*, 9 MARQ. L. REV. 106, 107 (1925).

4. *Id.*

appropriate instances to provide “a reminiscence today and perhaps an aide-mémoire tomorrow.”⁵

All of this means, among other things, that as dean I especially feel a connection to the Law Review, even apart from the few things that I published in it before assuming this position for a while. That can bring the occasional touch of melancholy, as I felt this past December when Rob Pluta, an associate at Quarles & Brady, a former research assistant of mine, and the editor in chief of the *Marquette Law Review* from the Class of 2001, died quite unexpectedly at a young age. During the funeral Mass I sat in Gesu Church, next to Pat Ryan, a Marquette lawyer from the Class of 1969, the managing partner of Quarles & Brady, and himself a former editor in chief of the *Marquette Law Review*. I reflected on how the coincidence of the careers of these former editors in chief of the Law Review demonstrated that Marquette Law School is still serving some of its historic purposes. Just as Pat came here from a working-class family outside of Chicago, so, too, a generation later, Rob arrived from a working-class family on the south side of Milwaukee. Marquette Law School, let alone the *Marquette Law Review*, did not make their successes. These individuals accomplished themselves. But we did provide the start, and essential fuel, for their professional journeys, and I am confident that Pat would not object—and Rob would not have objected—to our taking some pride in the accomplishments of their post-law-school lives, in the one case so regrettably brief. Can there be any doubt that it is appropriate and even instructive to remember, as our Managing Editor Jodi Janecek did for Rob—for us—in her eloquent invocation before dinner this evening?

In all events, I believe that the pages of the Law Review have lasting value, beyond the life of some of the doctrine that they may discuss. This is not empty rhetoric. I have spent a considerable amount of time within the past several years writing documents addressed to the future of the Law School. It is striking the number of times, in the course of such drafting, that I have had occasion to go paging through old issues of the *Marquette Law Review* in search of either inspiration (frequently found in various essays written by the late Dean Robert Boden) or even support for specific propositions. In one such document—indeed, in the most important internal memorandum that I have written as dean, entitled “The Physical Future of the Law School”—I found myself

5. Kearney, *supra* note 2, at 206.

quoting Volume 8 of the *Marquette Law Review* from 1924.⁶ So in the near future, when you see our brilliant new building on Tory Hill, you will know that the *Marquette Law Review* from 1924 helped to form part of the case for the University's momentous twenty-first-century decision to construct the new law school. This is just an example of why I have on a shelf in my office volumes of the *Marquette Law Review* dating back nearly a century. These are not for decoration (you all have seen my office, and you can attest that virtually none of it is for decoration). They are for use. And it is not for decoration that important space has been reserved in the new building for your successors at the *Marquette Law Review*.

There is much more that could be said about the *Marquette Law Review*—indeed, that should be said. Within the past several years we have strengthened our focus at Marquette Law School on public service and public affairs. There was a time in its history that the Law Review was the center of our efforts on this front. Changing technology and information-gathering habits (a long way of referring to the internet), together with a desire for practical results (not just ideas), have meant that the Law Review has gained considerable company in our public-service efforts. Surely that is in its essence a credit to the rest of the Law School and its development on other fronts, not a discredit to the Law Review. But there is no question that there has been an erosion nationally in the leadership of law reviews in public service and even law reform efforts, a phenomenon to which we who stay on at the Law School each year should be attentive.

And yet I am optimistic about the *Marquette Law Review*. Your specific efforts this year are one of the reasons. Consider your spring issue, which will be devoted to the papers from the Law School's conference this past fall, "Is the Wisconsin Constitution Obsolete?" It represents what I hope will be a happy marriage of a conference led by a law school faculty member, reflecting our efforts directed at public policy in Wisconsin, and the Law Review's traditional role of capturing great learning and new ideas in a permanent way. It is much more than a transcript of the conference (it would be easier if it were just a transcript, but less rich). It rather will reflect amplified and well-edited scholarship—knowledge and ideas that are the best to be found on the

6. See Memorandum from Joseph D. Kearney to Rev. Robert A. Wild, S.J., President of Marquette University, et al., Jan. 21, 2005, at 7 & n.13 (quoting V.W. Dittmann, *History of the Marquette Law School*, 8 MARQ. L. REV. 298, 303 (1924)) (copy on file in University Archives).

subject. The plea-bargaining conference that will occur tomorrow at the Law School and be captured and amplified in next year's volume is another demonstration of why I should be—and am—optimistic about the future.

Our public service and law reform initiatives need the Law Review. They need it for its standards of excellence in precise expression, for its civil discourse, for its permanence, and, yes, for its erudition. Our challenge is to ensure that rapidly evolving communication platforms contribute more and not less to the Law Review as a great resource in the legal and academic worlds.

In short, I thank you for continuing one of the oldest and most revered Marquette Law School traditions and working with us to improve upon it. The tradition is so old that the review even antedates by well more than a decade another great tradition: the extension of the diploma privilege to Marquette law graduates. And, unlike a case filed in federal court yesterday in Madison, challenging the constitutionality of the diploma privilege (or at least of its denial to one particular graduate of an out-of-state law school),⁷ no piece of litigation insofar as I am aware has ever challenged the institution of the *Marquette Law Review*—and quite a number, I daresay, have relied on its authority and wisdom.

You have been good stewards. On behalf of the faculty, I extend not just my congratulations, but my sincere gratitude, to you, the editors and members of Volume 90 of the *Marquette Law Review*. Thank you.

7. See Complaint, *Wiesmueller v. Kosobucki*, No. 07 C 0211 S (W.D. Wis. Apr. 12, 2007).

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