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## Lessons Learned Since Life on the Law Review

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## LAW REVIEW ANNUAL BANQUET

### LESSONS LEARNED SINCE LIFE ON THE LAW REVIEW

CYNTHIA M. DAVIS\*

Good evening, Dean Kearney, faculty, administration, members and editors of Volume 107 of the *Marquette Law Review*, and friends. I am deeply honored to have been asked to speak at this year's Law Review Banquet. Thank you to Markus Johnson, the editor-in-chief, and the other editors for the invitation.

Exactly a month ago, I had the pleasure of having lunch at the Tory Hill Café, here in Eckstein Hall, with Markus, Cody Linday, Dallas Humphries, Emily Juneau, and Grace D'Souza. As I was walking back to the courthouse after lunch, I felt uplifted in a way I hadn't been expecting. Heading into the lunch, I had expected to meet, of course, extremely intelligent, ambitious, and curious students, all eager and optimistic as they prepare for graduation. But what I was not anticipating was the instant connection I felt with each of them simply by virtue of having shared this experience we call law review.

While it has been eighteen years and hence eighteen volumes of the *Marquette Law Review* since my time at the helm, and while much has changed in the world since then—let's just say 2006 was nearer to the dawning of the technological era, being pre-Facebook, Twitter, and Snapchat, and cite checking was done mainly in one library room with a stack of books—we nevertheless immediately became immersed in conversation that nerdy, law review members from different eras nonetheless could share. And only such individuals—I mean, who else can include “the proper use of the em dash” in a social conversation? It is amazing how that little law review bible, otherwise known as *The Bluebook*, can bring people together so profoundly.

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

From the inside perspective, however, law review is so much more. Being a part of the *Marquette Law Review* profoundly changed my life because of the educational and relational opportunities it presented. And let's be real here. For

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\* Judge, Milwaukee County Circuit Court. This is a lightly edited version of Judge Davis's remarks on April 5, 2024.

Type A personalities, which most members and editors are, the whole law review experience can be a stress-inducing, anxiety-ridden one. At least it was for me as a member and even more so as the editor-in-chief.

As I was sharing lunch with the editors, I jokingly asked them if they have dreams about *The Bluebook*, and Emily so aptly responded, “Yeah, more like nightmares.” Her response instantly resonated with me: it reminded me of the recurring dream about waking up late and missing an exam. You know what I am talking about? Well, I don’t have that, exactly; rather, to this day, I have dreams, or nightmares, about arriving to the last week of my 3L year, only to realize I forgot to publish any issue of the law review. I then wake up, my heart pounding, checking into reality and feeling grateful it was all just a dream. So there is a little snapshot of the residual trauma that you all have to look forward to.

On a more serious note, however, in educational respects, the law review experience improved both my legal research skills, by introducing me to sources I had no idea existed, and my writing skills, by requiring of me to read and edit the works of successful legal scholars. Publishing my own student comment is what gave me the confidence to continue writing and publishing after law school.

Furthermore, law review taught me time-management skills, discipline, and, above all, integrity. As every member knows, cite-checking articles for publication is a long and tedious job. With hundreds of cites to check, it was hard to rise above the temptation to skim over cites to speed up the process. However, the dictum, “character is who you are when no one is watching,” always kept me on the straight and narrow, and I still remember the great sense of pride and accomplishment upon finishing an article. It wasn’t until my 3L year, while serving as editor-in-chief, that I understood how valuable each and every member’s dedication to the integrity of the cite-checking process truly is.

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

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

This somewhat long introduction brings me to what I want to talk with you about this evening. When I asked the lunch group whether Volume 107 had any particular theme, the answer was “not necessarily, other than the volume tended to focus more on the practical application of the law.” This theme, maybe coincidentally, maybe not, seemed to jibe with Dean Kearney’s January 12, 2024, letter to the student body, where he offered suggestions that were “more practical than metaphorical.” In the interest of following suit, I decided to stick with this common theme of practicality and to offer you some advice as you prepare, whether it be this year or next, for your life as a Marquette lawyer. I use “Marquette” as an adjective intentionally, because as a graduate of this law school, you are not going to be just any lawyer. What sets this law school apart from the average law school is its integration of Ignatian values and the principle of *cura personalis*—care for the whole person—into its education. It is with that specific principle in mind that I offer you the following four tips.

TIP NUMBER 1: BE PRESENT AND BE AN ACTIVE LISTENER—IN OTHER  
WORDS, LISTEN TO UNDERSTAND, NOT RESPOND

This is a lesson that was ingrained in me during my three and a half years as a treatment court judge.<sup>1</sup> You are most likely familiar with the concept of restorative justice. Treatment courts include elements of restorative justice. For those who may be unfamiliar, the basic gist of a treatment court’s approach is that individuals who have been charged with a crime are able to stay out of jail or prison upon being accepted into the program, where they agree to follow through with treatment, take all prescribed medications, maintain sobriety, get a job, find stable housing, and restore relationships. As a judge in the treatment courts, my main role was to hold participants accountable. The worst-case scenario was that I used the hammer of a short jail sanction when participants

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1. For aspects of my remarks, I both draw and elaborate on my earlier essay in the state bar publication. See Hon. Cynthia M. Davis, *Reflections: Everything I Needed to Learn in Life, I Learned in Treatment Court*, WIS. LAW., Oct. 2021, at 37.

were not adhering to the program. But the most effective and main way to hold people accountable was through positive reinforcement and, specifically, the technique of motivational interviewing.

The technical definition of motivational interviewing is a communication style that balances active listening with advice giving and that thereby empowers individuals by helping elicit their purpose, significance, and ability to change.<sup>2</sup> In layman's terms, it means that the facilitator's job is—mainly—to shut up, listen, and be curious and respectful about what makes a person tick. The concept of motivational interviewing seems fairly commonsensical, but you'd be surprised how bad we are at it. For active listening is simply not something we as a society are accustomed to doing. Especially as lawyers, we are trained to be one step ahead, to anticipate the opponent's argument, and to attack it before it gains any momentum. While there is still a time and place to apply such skills, sometimes this adversarial approach is simply not as effective as the active listening approach.

Surprisingly, this technique of motivational interviewing is so effective that elements of it are used by the FBI to negotiate in hostage situations. For more information, I encourage you to read the book, *Never Split the Difference*, by Chris Voss—a truly fascinating read.<sup>3</sup>

You don't need to be a treatment court judge or an FBI hostage negotiator to apply this concept of active listening. In whatever job you find yourself, you are most likely going to have to deal with people, whether that be a client, a victim, or an opposing counsel. I am told by my husband that this approach would be well received in our family life. (Perhaps I could try baby steps.)

As cliché as it may sound, I urge you to remember that the best present you can give to another is your presence: in other words, your full, undivided, phone-free attention. What I have learned is that, at the end of the day, most people just want to feel that they have been heard and validated. A story that goes around the Milwaukee County Courthouse is the legend of former Chief Judge Victor Manian, who, when presiding over a serious felony calendar, would sentence defendants to extremely lengthy prison sentences, only to have the defendants thanking the judge as they were escorted out of the courtroom. As new judges, we were told, "Be that judge—the judge who gets thanked even after handing down significant prison sentences."

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2. *Understanding Motivational Interviewing*, MOTIVATIONAL INTERVIEWING NETWORK OF TRAINERS, <https://motivationalinterviewing.org/understanding-motivational-interviewing> [https://perma.cc/Y2W5-Y7U4].

3. CHRIS VOSS, *NEVER SPLIT THE DIFFERENCE: NEGOTIATING AS IF YOUR LIFE DEPENDS ON IT* (2016).

You, as a soon-to-be Marquette lawyer, have the unique position of possibly being the first person to make someone else feel valued and respected. I have witnessed firsthand, during my time in the legal profession, the profound impact that a lawyer can have on a person's life. Don't take for granted your role or your ability to make people feel they matter. It can change lives.

TIP NUMBER 2: DON'T PLAY SMALL AND DO FORGIVE YOURSELF

I like this piece of advice because it's the reason I am a circuit court judge today. When faced with an opportunity to apply for an appointment by the governor to be a judge, I initially backed down and played small because, even though it was my dream job, the mere thought of applying for this position brought me entirely out of my comfort zone. Even though I was blessed with a tremendous amount of support and encouragement, the doubts, fears, and insecurities were so strong that they were all I could hear in my head, telling me what a fool I would be for even *thinking* I could be a judge. (At the time, I was thirty-five years old, an age that I believed many would think was too young to be a judge.) Even though deep down I knew I could do the job, I was afraid of what others might think of me. Fortunately, in a moment of clarity, I decided to set aside those fears, get out of my comfort zone, and apply for the position. I am so happy I did.

Interestingly, there is a psychological term that has been coined for this self-limiting behavior. Psychologist Gay Hendricks, in his book, *The Big Leap*, coined the term "Upper Limit Problem" to explain the phenomenon of self-sabotage as the brain's way of ensuring that we stay within our safe zone.<sup>4</sup> A sympathetic commentator has explained that "what happens with your 'Upper Limit' is that you literally have a tolerance cap for how much happiness you will allow yourself. It backs up the idea that often, what we are seeking out in life is not happiness, but comfort."<sup>5</sup> Many people hit their "Upper Limit" when their long-held, "limiting beliefs begin to conflict with [their] aspirations and plans,"<sup>6</sup> which is precisely what I experienced. In his book, Hendricks details many ways to help address this Upper Limit Problem by retraining our brains to consider success and joy as normal and safe.

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4. See generally GAY HENDRICKS, *THE BIG LEAP: CONQUER YOUR HIDDEN FEAR AND TAKE LIFE TO THE NEXT LEVEL* (2010).

5. Brianna Wiest, *Hitting Your 'Upper Limit'? How to Overcome This Common Psychological Hiccup* (Sept. 18, 2018, 1:17 PM), <https://www.forbes.com/sites/briannawiest/2018/09/18/hitting-your-upper-limit-how-to-overcome-the-psychological-hiccup/?sh=4ef77ac427ce> [<https://perma.cc/X5P4-2GHL>] (discussing Gay Hendricks's "Upper Limit Problem").

6. Wiest, *supra* note 5.

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

Now, if you take my advice and don't play small, you are inevitably going to make a mistake or two along the way. I am going to wager that I may be in good company with other Type A folks who strive for perfection and are pretty hard on themselves when they fail. I have lost count of the number of times I have dwelled on a mistake for far too long. But I learned some valuable lessons about shame and forgiveness while I was a treatment court judge. I learned that shame is the overriding emotion that a participant feels after a relapse, and that it is the main reason why participants run from the program and are not honest about their substance use. In response, I would tell the participants that shame—that feeling of unworthiness and inadequacy as a person—has no place in treatment court and that their worthiness is not dependent on not making mistakes. Each one of us, after all, is human, and I exhorted that the best thing a participant could do after a relapse was to forgive oneself, learn from the experience, and move forward. That constant reminder to my participants reinforced in me that dwelling on mistakes and beating myself up does not do much good. Boy, do I still have room to grow, but applying the same technique of self-forgiveness and resiliency that I expected of my participants has helped me grow immensely both in my professional and personal life. And I encourage the same for you. As the saying goes (whatever its source), “Success is not final, failure is not fatal: it is the courage to continue that counts.”

#### TIP NUMBER 3: MAINTAIN PERSPECTIVE

In full candor, I changed the wording of this piece of advice about three times. Initially, my wording was “establish boundaries,” which I changed to “practice self-care” and then to “find work-life harmony.” I landed on “maintain perspective” because it encapsulates all of those ideas and more.

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

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

A big lesson that I had to learn is that your entire life can get turned on a dime. Not more than two months after I graduated law school, my dad drove a golf cart into a tree. Not understanding why he did not see the tree, my dad went to the doctor, who diagnosed him with a stage-four glioblastoma, a brain tumor; he passed away three years later. I include this not to be a downer but, rather, to be a reminder, that, at the end of the day, no matter how important our job is and no matter how much we dedicate ourselves to our profession, the cold, hard truth is that we are always replaceable at work, but we are not replaceable at home. So maintain your relationships with those you hold dear and do not take them for granted.

Here are two things I had to learn quickly in my career: one, you aren't receiving a cookie or gold medal for not taking your personal time, and two, you don't need to wait for some imaginary person to give you permission to take your time. Take it, advocate for yourself, so that when you do show up for work, you are fully present and fully committed.

#### TIP NUMBER 4: A LAST TIP

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

So, with that, I congratulate you on another successful volume, and I thank you again for continuing the tradition of excellence of the *Marquette Law Review*.



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