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Francis D. Morrissey: A Life in the Law, 41 J. Marshall L. Rev. xxiii (2008)

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FRANCIS D. MORRISSEY: A LIFE IN THE LAW

MICHAEL A. POLLARD*

This Issue of the Law Review is dedicated to Francis D. Morrissey, a brilliant and successful appellate advocate, a gifted and caring teacher, and a man devoted to his family,¹ and loyal both to his friends and to the institutions that nurtured him throughout his life. I was fortunate to have personally experienced Frank's brilliance, benevolence, and loyalty; for he was my partner, my mentor, and my friend. Frank had a special affection for The John Marshall Law School and its students, and it is fitting that the Law Review has chosen to honor his memory with this dedication.

A native Chicagoan, Frank Morrissey graduated from Quigley Preparatory Seminary and the University of St. Mary of the Lake. His seminary training informed his life. He was among the most moral and benevolent individuals I have ever known. He was also dedicated to the service of others, including the less fortunate and those aspiring to become lawyers.

Frank graduated from Loyola University School of Law in 1958, and he immediately thereafter joined the Litigation Department of Baker & McKenzie. Frank spent his entire career as a practicing lawyer at that firm, where he became one of the foremost appellate practitioners in the United States. In private practice, he was actively involved in firm, office, and practice management, and he held a particular affinity for issues relating to professional development (or associate training, as it was then called), and professional ethics and responsibility – two areas of expertise that he would develop further at The John Marshall Law School during his life-long encounter with the law.

Frank's commitment to professional excellence and the ethical practice of law took many forms. To ensure that lawyers who worked primarily as appellate advocates obtained the professional respect and standing in the legal community that Frank believed

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1. Frank was predeceased by his first wife, Marie. His widow, Corinne Seither Morrissey, serves as Director of John Marshall Law School's Academic Achievement Program. He is also survived by two children, Frank (a partner at the law firm of Burke, Mahoney, & Wise) and Mary, and their families.

they deserved, he, along with others, founded the Appellate Lawyers Association, an organization of Illinois lawyers that principally practice appellate advocacy. Too humble to serve as its first president, Frank became the second president of that organization. Frank also was inducted as a Fellow into the American Academy of Appellate Lawyers. He argued hundreds of appeals, and regularly appeared in the Illinois Supreme Court.

Perhaps Frank rendered no greater service to the legal profession than through the passionate work he performed as President of the Illinois Board of Bar Examiners and, ultimately, President of the National Conference of Bar Examiners. In these positions, Frank was a tireless advocate for the creation of an exam exclusively addressing questions of legal ethics and professional responsibility to be administered to prospective lawyers. Such legal ethics exams are now the norm, not the exception, having been implemented in virtually all fifty states since that time.

After his retirement from Baker & McKenzie, Frank served as Distinguished Visiting Professor at The John Marshall Law School, and he worked on a pro bono basis with the Chicago Catholic Archdiocese Office of Legal Services. Throughout his life, Frank was a generous benefactor to a number of causes and institutions. His contributions are too numerous to delineate here. He was especially proud, however, of having formed the Morrissey Scholars, a group at The John Marshall Law School that was organized to allow students to address, through discussions and the drafting of articles, subjects concerning legal ethics and professional responsibility.

I knew Frank best in his professional capacity, as we worked on hundreds of appeals together. As humble a man as he was, he would recoil from being described as brilliant. Yet, he was brilliant. He had an uncanny knack – based on rigorous preparation – for knowing just the argument that could “appeal” to the panel of judges being addressed. His approach was practical and wise: clearly articulate the relief sought; provide a path, both legally and factually, for the judges to grant the requested relief; and demonstrate that the requested result is “fair.”

As an appellate advocate, Frank argued and participated in some of the most important Illinois civil appeals of his day. One of his earliest appellate successes was a case that I studied in my first week of law school and that law students still read today – *Gray v. American Radiator and Standard Sanitary Corp.*,² which addressed the constitutional limitations on a court’s exercise of personal jurisdiction. In *Gray*, the trial court had dismissed the plaintiff’s complaint as well as the crossclaim of American

2. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

Radiator, Mr. Morrissey's client, against another defendant and a third-party defendant, Titan Valve Manufacturing Co. The trial court had granted Titan's motion to quash service of summons of both the complaint and the crossclaim on the grounds of lack of personal jurisdiction. Titan had argued that it did no business in Illinois, had no agent physically present in Illinois, and sold completed valves to American Radiator outside of Illinois. The Illinois Supreme Court reversed the order quashing service of summons, stating that "if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products."³

Frank's arguments shaped the contours of Illinois law in numerous other cases as well. In *Cunis v. Brennan*,⁴ Frank convinced the Illinois Supreme Court to adopt Judge Cardozo's formulation of legal duty as the law of Illinois. In that case, the plaintiff had sought to hold the Village of LaGrange liable for injuries sustained by a minor plaintiff who, after being thrown from an automobile during a vehicular accident, was injured by the remains of a drainpipe protruding from a village parkway. Citing Judge Cardozo's opinion in *Palsgraf v. Long Island Railroad Co.*,⁵ the Illinois Supreme Court reinstated the trial court's dismissal of the count filed by the plaintiff against the Village of LaGrange. In so ruling, the Illinois Supreme Court held that "in determining whether there was a legal duty, the occurrence involved must not have been simply foreseeable, as the plaintiff contend[ed], it must have been reasonably foreseeable. The creation of a legal duty requires more than a mere possibility of occurrence."⁶

Likewise, in *Lawson v. G.D. Searle & Co.*,⁷ Frank convinced the Illinois Supreme Court to affirm a jury's verdict in favor of the defendant in one of the first Illinois product liability cases involving contraceptive drugs, in this case, Enovid. The jury at trial exonerated the defendant, but the appellate court reversed.⁸ In reversing the appellate court's order vacating the judgment in favor of Searle and remanding for a new trial, the Illinois Supreme Court, at Frank's urging, adopted Comment k to Section 402A of Restatement (Second) of Torts (1965), which addressed

3. *Id.* at 442, 176 N.E.2d at 766.

4. *Cunis v. Brennan*, 56 Ill. 2d 372, 308 N.E.2d 617 (1974).

5. 248 N.Y. 339, 162 N.E. 99 (1928).

6. *Cunis*, 56 Ill. 2d at 375-76; 308 N.E.2d at 619.

7. 64 Ill. 2d 543, 356 N.E.2d 779 (1976).

8. *Lawson v. G.D. Searle & Co.*, 29 Ill. App. 3d 670, 331 N.E.2d 75 (1st Dist. 1975).

unavoidably unsafe products.⁹ The Illinois Supreme Court concluded that “even if the jury determined that the use of the drug Enovid involved some degree of risk it could have decided that the manufacturer’s warning prevented the drug from being considered unreasonably dangerous.”¹⁰

I worked on my first appeal with Frank almost immediately after graduating from law school. It was quite a learning experience. The case, *Jenkins v. Wu*,¹¹ was a direct appeal to the Illinois Supreme Court from a trial court’s order holding the Medical Studies Act¹² to be unconstitutional. The Medical Studies Act shielded from discovery certain communications made during the course of peer review deliberations of certain in-hospital committees. Frank knew the propensities of every justice on the Illinois Supreme Court, and he asked me to focus the brief in a manner that elicited the affirmative vote of a particular justice. Ultimately, the Illinois Supreme Court, in a unanimous opinion authored by that justice, Thomas Moran, reversed the trial court’s ruling, and held that the Medical Studies Act was constitutional.

Frank’s reputation was so outstanding as an appellate advocate and as a man of fairness that he was often sought to write amicus briefs in cases that have shaped the contours of Illinois jurisprudence today. For example, he participated as author of amicus briefs in cases in which the Illinois Supreme Court adopted the doctrine of comparative negligence¹³ and the doctrine of intrastate forum non conveniens.¹⁴ He also participated as counsel for an amicus curiae in a case in which the doctrine of comparative fault was held applicable to actions sounding in strict products liability.¹⁵

9. RESTATEMENT (SECOND) OF TORTS § 402A cmt. k (1965). Comment k provides:

The seller of such products, again with the qualification that they are properly prepared and marketed, and proper warning is given, where the situation calls for it, is not to be held to strict liability for unfortunate consequences attending their use, merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk.

10. *Lawson*, 64 Ill. 2d at 551, 356 N.E.2d at 783. Among Frank’s many other important product liability cases are *Schaeffer v. Chicago & Northwest Transportation Co.*, 129 Ill. 2d 1, 541 N.E.2d 643 (1989); *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 518 N.E.2d 387, 393 (1987) (upholding the learned intermediary doctrine); *Malek v. Lederle Laboratories*, 152 Ill. App. 3d 493, 504 N.E.2d 893 (1st Dist. 1987); *Morrissy v. Eli Lilly & Co.*, 76 Ill. App. 3d 753, 394 N.E.2d 1369 (1st Dist. 1979); *Oakview New Lenox School District v. Ford Motor Co.*, 61 Ill. App. 3d 194, 378 N.E.2d 544 (3d Dist. 1978).

11. 102 Ill. 2d 468, 468 N.E.2d 1162 (1984).

12. 735 ILL. COMP. STAT. 5/8-2101 (1983).

13. *Alvis v. Ribar*, 85 Ill. 2d 1, 421 N.E.2d 886 (1981).

14. *Torres v. Walsh*, 98 Ill. 2d 338, 456 N.E.2d 601 (1983).

15. *Coney v. J.L.G. Indus., Inc.*, 97 Ill. 2d 104, 454 N.E.2d 197 (1983).

Cases in which Frank participated, but was on the losing side, also helped define the contours of Illinois law. Like any outstanding appellate advocate, he was retained in the most difficult of cases. Nonetheless, he had the remarkable ability, in the face of adverse results, to achieve success in some other form for his clients. For example, he argued, and was on the losing side, in *Petrillo v. Syntex Laboratories, Inc.*,¹⁶ a case now widely cited throughout the United States, which prohibited defense counsel from engaging in ex parte communications with a plaintiff's treating physicians. Although Frank's arguments failed in *Petrillo*, he was instrumental in shaping the arguments for the defendant in a related case involving the same subject matter that resulted in the remittitur of nineteen million dollars of a twenty-two million dollar punitive verdict, which, at the time, was the largest remittitur in the history of the State of Illinois.¹⁷ The case never reached the Appellate Court.¹⁸

Likewise, in one of the last cases he argued while at Baker & McKenzie, Frank represented his beloved Chicago White Sox in *Coronel v. Chicago White Sox, Ltd.*, in which the Appellate Court reversed an entry of summary judgment in favor of the baseball team where a spectator had been injured by a foul ball at the former Comiskey Park.¹⁹ Frank argued with great passion on that day, citing to the law of duty in negligence cases that he had helped formulate decades earlier in *Cunis*. He also defended with vigor and encyclopedic knowledge the sport of baseball.²⁰ Further, Frank helped ensure that the adverse result in *Coronel* had a limited life. Shortly thereafter, the Illinois General Assembly enacted the Baseball Facility Liability Act,²¹ which largely shielded owners of baseball teams and facilities from liability to spectators injured by foul balls.

The personal qualities that made Frank Morrissey a brilliant appellate advocate also made him a great person. As an advocate, he was devoted to articulating a result that he and others could perceive to be "fair" to the litigants. When seeking a result that others might think was based on a technicality, Frank always

16. 148 Ill. App. 3d 581, 499 N.E.2d 952 (1st Dist. 1988), *appeal denied*, 113 Ill. 2d 584, 505 N.E.2d 361 (1987).

17. *Duddleston v. Syntex Lab., Inc.*, No. 80 L 5726 (Cir. Ct. Cook County) (remittitur of nineteen million dollars in punitive damages entered in a product liability case).

18. *Id.* (no appeal taken).

19. 230 Ill. App. 3d 734, 595 N.E.2d 45 (1st Dist. 1992).

20. Mr. Morrissey was also a member of the Nellie Fox Society, which advocated that Mr. Fox, who was the second baseman on the 1959 American League championship White Sox team, be included in baseball's Hall of Fame. Mr. Fox was ultimately voted into the Hall of Fame.

21. 745 ILL. COMP. STAT. 38/10 (2007); *see also* Ted J. Tierney, Comment, *Heads Up!: The Baseball Facility Liability Act*, 18 N. ILL. U. L. REV. 601 (1998) (discussing the Baseball Facility Liability Act).

articulated the public policy promoted by the rule. He consistently appealed to the larger purposes served by the law. Directed verdicts prevented juries from engaging in guess, speculation, and conjecture. Statutes of limitations were designed to prevent the presentation of stale claims. Privileges were designed to promote candor in those relationships that society considers most confidential. He never underestimated an opponent, or trivialized an opponent's argument. He steadfastly avoided ad hominem arguments, and, as a result, was respected and admired by colleagues, justices, and opposing counsel.

Frank touched the lives of many lawyers in his long career: colleagues, opposing counsel, judges, professors, and law students. As a result of his work, the practice of law in Illinois today is more civil, ethical, diverse, and intellectually rigorous. We are better lawyers and people for having known him.

FRANCIS D. MORRISSEY: A TEACHER AND A COLLEAGUE

ANN LOUSIN**

Michael Pollard has written of Frank Morrissey's life and legal career so eloquently that I shall confine my remarks to Frank's life from the time he joined the faculty of The John Marshall Law School in 1995.

We were lucky enough to get Frank when he retired from active practice in 1995 because we were lucky enough to get his wife Corinne in 1989. That year Dean Peter J. McGovern decided to establish an academic advising service for our students. Law schools were slow to accept the responsibility for helping new law students learn how to study law and to pass the bar exam. Corinne had experience in teaching writing skills to associates at Baker & McKenzie and in grading bar exam essays. She had the right qualifications and, more importantly, the right disposition to help students do their best.

In the next six years Frank came to know John Marshall through Corinne. He saw how much she could help our students and how hard they tried to do well. When he retired from Baker & McKenzie, he had several offers for positions that would enable him to combine his love of the law with public service. How lucky we were that he accepted Dean R. Gilbert Johnston's offer to join our faculty!

Frank introduced himself to the faculty by throwing a party for himself at the Union League Club. He called the party his

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“New Beginnings at The John Marshall Law School” party. Some of the senior members of the faculty already knew Frank, at least by reputation. The rest of us knew him only as “Corinne’s husband.” I remember his warm smile as I welcomed him to John Marshall. He was clearly at peace with his decision and eager to begin the last phase of his professional life.

John Marshall had the good sense to assign Frank to teach Professional Responsibility, the required course in legal ethics. One of the purposes of the course is to prepare students to pass the Multistate Professional Responsibility Examination, the ethics multiple-choice exam that Illinois and most states require of candidates for the bar. I wonder how many of Frank’s students realized that he was one of the originators of the exam. Frank believed that lawyers should demonstrate as much knowledge of the ethical principles of the profession as of property and torts. Frank’s students *did* know that his students had a 98% pass rate on the MPRE.

Frank was a natural teacher. Most of us are not. We have to work at learning the subject matter and then at learning to get students involved in the subject. Frank worked at learning – or I should say “refining his knowledge of” – the ethics rules about which he was already an acknowledged expert. He naturally knew how to get students involved in “the rules” and, more importantly, in the standards of the profession. He knew how to make them *want* to become good lawyers.

Frank taught students far more than “the rules.” He led discussions of cases, but not just to help students discern “the holding.” He showed them how real-life situations would arise, situations that would test their ability to resolve conflicting loyalties and to conduct themselves as true professionals. For example, he asked me to find examples of ethics issues in my teaching area, the Uniform Commercial Code, a field he personally did not know well.

Although he was “retired,” Frank had more energy than any of us. He insisted that every student spend time talking with him privately. When evening classes end at nine o’clock, most of us are happy to go home and collapse. However, Frank, even in his seventies, would remain in his office talking with students to find out what made them tick.

The students loved this attention. Some of them opened their hearts to him and shared their concerns and fears. Frank always listened, questioned, and tried to help. He would have made a compassionate priest.

Is it any wonder that the students regularly voted him their Favorite Professor?

Frank and Corinne were probably the best citizens of the law school. They attended almost every law school event, including

the black-tie Barrister's Ball. They donated brunches and dinners to the student auction for charity, and students wanted to win that donation more than any other. When the Archdiocese had four spare tickets to the Christmas night Chicago Bulls game in 1998, Frank acquired those tickets and had them auctioned off at the student auction. (They raised over one thousand dollars for charity.)

Perhaps the greatest service Frank rendered John Marshall was the creation of the Morrissey scholars program shortly after he came to the law school. Frank selected some of his best students to be a cadre of authors of case notes on ethics issues. They wrote. Frank edited. Corinne edited, too. They re-wrote. They discussed the drafts and issues with Frank. In the process they learned how to think about these issues, how to write about them, and how to edit their own drafts. These articles appeared in the Chicago Bar Association's *Bar Record* and the American Bar Association's *Professional Lawyer*.

The Morrissey Scholars have often said that their selection was the highest honor they earned in law school. In twelve years Frank selected over forty students for the program. Besides seeing their work in print, the Morrissey Scholars had the benefit of closer association with the Professors Morrissey. Every semester they had dinner at the Morrisseys' apartment in Hyde Park. Finally, each received a Morrissey/JMLS grant in recognition of their effort to foster ethics in the profession they were entering, and each saw his or her name listed under the "honors" section of the commencement program.

Frank was also a cherished colleague of everyone in the John Marshall community, faculty and staff alike. Many retired practitioners would have found it difficult to blend into a faculty of full-time law professors. Frank did not. To be sure, the John Marshall faculty are not just career academics – most of us have had a wide range of experience before entering teaching and are still far more active than most law professors in bar associations, civic organizations, and government. Frank appreciated that aspect of the law school. He felt he had much in common with us.

Frank usually came to the faculty lounge about four in the afternoon and made himself a cup of tea. Anyone who dropped in could expect genial company and stimulating conversation. He loved talking about Chicago sports, Chicago politics, and how the law was practiced years ago. We even discussed the church. A deeply spiritual man and a devoted son of the Roman Catholic Church, Frank was delighted to discuss all sincerely-held views.²²

22. For example, when I said that Pope Benedict XVI came from a unique background because he was the first pontiff in centuries who did not come from a country where Catholicism was the dominant religion, Frank said he thought that was a brilliant insight.

In fact, Frank thought almost everything his colleagues did was “terrific.” If we gave a talk, chaired a conference, or won a prize, he was the first to praise us. He never forced himself on us, but he was always there to help us.

Once I invited him to my Sales class when I was to lead a discussion on a problem involving an ethical dilemma. When the students saw Frank enter the room, their faces lit up. I first led a discussion of a Statute of Frauds issue and then began the discussion of the ethics issue: What do you do if your client admits he made an oral contract, and it had to be written to be enforceable? Then Frank took the podium. The students were so at ease with their former Professional Responsibility teacher that they insisted upon continuing the discussion well beyond the end of class and into the lunch hour. Yet, when Frank and I discussed the problem later that day, he insisted on spending the time telling me what a great teacher I was.

During his twelve years with us, the “twilight” of his career, Frank was able to spend time helping his beloved church, attending events with Corrine, and enjoying his favorite pastimes of family, travel, and golf.

Frank was a devout Catholic, but his faith was more than a set of beliefs. It was a way of life. Without imposing his beliefs on us, he let us know how much this faith guided him. He had played a role in public life, but never at the expense of his conscience. He would have said with Sir Thomas More, “I die the King’s good servant, but God’s first.” When we at John Marshall confided that we were troubled and he said he would “remember us” in his prayers, we knew that he would. He said, matter-of-factly, that he prayed just before he left for class, asking for guidance in giving his students the very best that he had to offer. He thought they deserved nothing less.

In the last dozen years, Frank helped the church-in-this-world in a very concrete way by serving as pro bono special counsel one day a week (in addition to his five days a week at the law school). He rarely spoke of the details of this service, but we knew he was a valued counselor of the Archdiocese of Chicago.

Because he was free of the demands of practice, Frank was able to spend more time, as he said, “having fun.” He loved spending more time with his children and grandchildren. He and Corinne made several trips a year, the last being a journey to Russia in May-June, 2007. He regularly indulged his love of golf. Frank and Corinne rarely missed an outstanding opera, play, concert, or the events sponsored by the Union League Club.

I am so glad Frank enjoyed those last dozen years to the fullest. He thought he had everything to make him both happy and fulfilled. But by the time he turned seventy-five, in June, 2005, some physical infirmities began to take their toll. He

required a stent in his heart, and his step was a little slower. Yet he still came to the law school every day; he remained ever cheerful and more concerned about us than himself.

Frank's collapse on a golf course in July, 2007, stunned us. We were sure he would recover. A record number of students enrolled in his fall, 2007 courses. Occasionally he even dropped by the law school, and we were all thrilled to see him. Mostly, however, he recuperated at home. Stays in the hospital became more frequent, and he could not teach that semester. It was clear that the tumors were wearing down his strength.

In October, he asked the physicians to cease their ministrations. He surrendered himself to the Lord, and on the morning of Thursday, October 11, 2007, a loving Father welcomed him.

When Corinne called me, I knew what I had to say to our law school community in the e-mail:

Professor Francis D. Morrissey died peacefully at 10 a.m. today, October 11, 2007, in the palliative care unit at Northwestern Hospital.

I say "peacefully" because if anyone has ever died in the peace of the Lord, that was surely Frank Morrissey.

The obituaries will speak of his biography and his many accomplishments as an outstanding trial lawyer at Baker & McKenzie and servant of the legal profession as the head of the Illinois Board of Bar Examiners and the National Board of Bar Examiners.

But they probably won't capture the spirit of the man whose sheer goodness, in every sense of the word, touched everyone he met. Frank had a magic wand – if you were worried or depressed, he could cheer you up just by talking with you. He made everyone feel that the world was a wonderful place.

We here at John Marshall have a special reason to know this. When Frank left his partnership in 1995, he joined his wife Corinne here at John Marshall. Together, they have served the students (and others) in an extraordinary fashion. He taught all of his students more than "Professional Responsibility." He taught them (and the rest of us) how lawyers and human beings should conduct themselves. He would sip tea with his colleagues in the faculty lounge and discuss the White Sox and how law was practiced years ago. He would take a student to lunch and offer encouragement that the student will remember the rest of his or her life.

He never missed the opportunity to be generous, to do another person a kindness.

He saw good in everyone and brought out that goodness in everyone.

While here at John Marshall, he also volunteered as a legal advisor to the Archdiocese, thus combining his devotion to the Church with his devotion to the law. He loved this law school and was its biggest booster. He also loved the people here, and we returned that love.

The funeral mass will be held at Holy Name Cathedral; when we know the details, we'll let everyone know.

Rest in peace, Frank. We miss you.

On October 15th, a sunny autumn day, five hundred of us gathered at Holy Name Cathedral to pay our respects. Few people have earned the tributes paid to Frank that day. The famous and the unknown came. The Chicago bar bade farewell to one of its best-respected members. Baker & McKenzie bade farewell to one of its senior partners.

In the Cathedral that day, it was clear that he belonged to John Marshall. In the lapel of his funeral suit was the John Marshall Law School insignia pin. Partners at Baker & McKenzie were pallbearers, and three of his faculty colleagues were honorary pallbearers. We began to miss him immediately. As one of Frank's best friends on the faculty says, when he goes into the faculty lounge about four in the afternoon, he looks around and asks, "Where's Frank?"

We were so lucky to have him for a dozen years.

