

The Minnesota Catholic



**MEET
MARY PAVEK**

Sharing the faith and following God's call | 8

**JOURNEY TO THE
GRASSHOPPER CHAPEL**

A pilgrimage to the site of a miracle in Cold Spring | 20

**SHARING THE FAITH IN A
FIERCE COMPETITION**

Representing Minnesota at the FIRST LEGO® League World Festival | 28

Lawyer as Advocate



BY BRENDAN KENNY,
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What is an advocate? The word advocate has Latin roots meaning “one who pleads for another.” So, to be effective advocates, lawyers must serve as true partners to their clients, aligning their legal representation with their goals, challenges, and needs. How does a lawyer do this? Three ways come to mind.

First, an effective advocate is their client’s voice. Few clients can effectively represent themselves—including lawyers. Hence the saying, “A lawyer who represents himself has a fool for a client.” But it isn’t enough for a lawyer to be a voice. The lawyer must be both a skilled advocate and a knowledgeable guide for their clients. That’s why Rule 1.1 of the Minnesota Rules of Professional Conduct states that “competent representation to a client” requires “legal knowledge, skill, thoroughness, and preparation[.]” Otherwise, it’s just the blind leading the blind.

Second, an effective advocate knows the art of legal jiu jitsu. Like the martial art it is named after, legal jiu jitsu is about using your opponent’s force against them rather than simply (metaphorically) bludgeoning them. Your opponent’s exaggeration or misstatement often holds the seeds of its own destruction. An effective advocate deftly takes the force of these and hurls them back at the opponent.

Third, an effective advocate is authentic. You can’t fake authenticity. That’s because the character (what Aristotle called *êthos*) of the lawyer plays a big part in persuasion. The best way to show this is by example. And the best example is from the final scene of *My Cousin Vinny*. In this scene, Vinny calls his estranged girlfriend Mona Lisa—an “out of work hairdresser” who just happened to grow up in a family of mechanics—to testify as an expert witness on cars. What makes Vinny’s questioning of her (and her answers) so great is that he not only shows what an accomplished car expert she is—he also builds up his credibility (and hers) by leaning into her personal animosity against him. And, largely because of her testimony, Vinny’s cousin is acquitted.

Vinny and Mona Lisa are both so effective because lawyers (and their expert witnesses) often lose credibility based on the judge and the jury’s perceptions that the expert is merely a hired gun. Because

Mona Lisa was unpaid, and because she was obviously personally motivated not to help him, her testimony was even more persuasive than if she was a typical expert witness.

But it isn’t enough for a lawyer to counsel their clients and advocate for them. A good lawyer is also a prudent warrior, which I look forward to discussing in my next article.

That’s all I have this month. Please contact me if you have any questions. I’d love to hear from you!

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