For the Prosecution: Denise E. O'Donnell '82 Sworn in as U.S. Attorney

UB Law Forum
where other jurisdictions may become involved, he said. “We have some cases,” Hess said, “for example if a Marine does something that really strongly implicates local interests and they arrest the Marine and have custody of him, there will be a civilian prosecution. If we get custody of him, we may prosecute as well. In general we like to say we take care of our own, and that means in a positive way as well as in a negative way.”

His office, Hess says, handles just over 2,000 prosecutions annually — fewer than in the past, “because of the higher quality of troops we have had, certainly since the 1970s.” But that is not the entirety of the Judge Advocate Division’s work. Other efforts:

- A “really terrific” legal assistance program, helping Marine Corps members with consumer affairs, matters of family law, and electronic tax filing from anywhere in the world.
- Administrative law matters, for example advising commanders what they can and cannot do and what kind of gifts they can and cannot accept.
- Operational law, a military term that comprises, Hess says, “an amalgamation of international law, the law of war, the law of peace, domestic law and policy. Every one of these Marine expeditionary units takes a lawyer with it. Commanders will not deploy without lawyers. We live in this incredibly complicated world where the Marines are called upon at one point to engage in humanitarian efforts, keeping warring parties apart in peacekeeping efforts, and in intense combat. And all of these can happen in one day — in the space of three blocks.”
- Environmental law. “The Marine Corps spends more on environmental work and remediation than we do on training.”

“Is there just a tremendous variety of practice,” Hess said. “It’s probably the last bastion where you can be a generalist. In civilian practice, my impression is that people have to intensively specialize to survive. Here, one of the attractions is the variety of the work.”

Being a military lawyer means taking on some specialized problems. During the Persian Gulf war, the Marine reserves were mobilized for the first time since the Korean War. Hess was responsible for setting up an apparatus to evaluate the claims of those Marines, active-duty or reservists, who asserted that they should be excused from combat duty because they were conscientious objectors to war.

“Certainly the Marine Corps had an interest in making sure there was not an epidemic of insincere claims,” he said. “The bottom line is that if you are in the military or even in the reserves and you don’t have a physical defect and you are signed up and activated and go to the theater of combat, there really is no other way out than to claim conscientious objector status. So that provides an temptation to people to sometimes make insincere claims. There are sincere claims and insincere claims, and we have to sort those out. We tracked every case, participated in the litigation and gave policy guidance to all the Marine Corps activities.”

It’s an odd paradox — conscientious-objector soldiers? — but Hess handles the question with aplomb.

“Sometimes the advent of a war will really crystallize your beliefs,” he said. “I have personally seen the other side of this, young people who came into the Marine Corps for challenge, excitement, adventure, and all of a sudden a war comes and they have to deal with that personally, and they realize they just cannot do it. If that is for deeply seated religious beliefs, it is good that we have a mechanism for that as well. If you can demonstrate that your conscientious objector beliefs have crystallized, we’ll let you out.

“But our fears of an epidemic of conscientious objector claims never materialized. One of the things I will always remember is how magnificently the forces performed, including the reserves.”

Indeed, it is pride in the Corps that comes through most strongly when Hess talks about his work in Washington. He is a soldier through and through. His medals and decorations include the Legion of Merit, the Bronze Star Medal with Combat V, the Defense Meritorious Service Medal, the Meritorious Service Medal, the Navy Commendation Medal and the Combat Action Ribbon.

But it is the use of the law in the service of his country that has proved so effective. “I love my job,” Hess said. “We have a great country and a particularly superb military where the rule of law is alive and well. And through a lot of outreach programs we have to other nations, I have lawyers in some of the strangest places in the world, helping them write constitutions and military codes. We still need to realize that the United States of America, with all the evil and genocide and killing that goes on in the world, is still the last best hope, and our military is certainly an instrument for good.”

The power of a prosecutor is indeed awesome,” intoned Hon. David G. Larimer, chief federal judge for the Western District of New York. Now, for the first time in its history that district has a woman in the highest position to wield that power — UB Law School alumna Denise E. O’Donnell, a 1982 graduate who on Dec. 23, 1998, was installed as U.S. attorney.

The installation capped O’Donnell’s career with the U.S. Attorney’s Office,

**Denise E. O’Donnell ’82 sworn in as U.S. Attorney**

which she joined in 1985 after serving for three years as a confidential law clerk to the Hon. M. Dolores Denman, presiding justice of the Appellate Division, 4th Department. In the federal office, O’Donnell served as an assistant U.S. attorney and appellate chief before being named interim U.S. attorney in September 1997. She succeeds Patrick H. NeMoyer, now a State Supreme Court justice.

O’Donnell brings a background in social work and civil rights advocacy to the job. She worked as a legal assistant on the successful lawsuit that resulted in the desegregation of Buffalo schools in the 1970s. She also has served since 1990 as an instructor in UB Law School’s Trial Technique program.

O’Donnell’s installation was an event both ceremonious and joyful, as the solemn oaths of federal service mixed with tributes and heartfelt words from the prosecutor and her family, friends and colleagues. Judge Larimer set the tenor for the afternoon ceremony by quoting Warren Burger, the late chief justice of the United States: “Department of Justice employees have to remember at all times that they are prosecutors, not persecutors. There is a distinct difference, as Denise well knows. I feel that Denise O’Donnell has the very unique qualifications of life experience, intelligence and common sense, and a compassionate heart, to perform as U.S. attorney with
Justice Denman, whom O'Donnell considers her professional mentor, also spoke briefly and mentioned some of the same qualities. "When she came to work for me in 1982, after graduating first in her class and summa cum laude, I knew I had a very special person — not just an outstanding lawyer but an outstanding person," Denman said. "I have never heard a word of anything but praise for Denise — as a prosecutor, as a lawyer, as an opponent, as a person to work with. Denise is a wonderful human being, kind, compassionate and a good judge of people."

Erie County District Attorney Frank Clark said he first met O'Donnell in 1971, when they both worked on the campaign for county legislator of a mutual friend. They subsequently worked together professionally for five years. "She exhibited them and does now," Clark said, "all of the attributes that we look for in somebody who is going to hold the awesome power that she holds. She has the experience, the intellect, the dedication, the training, the social conscience. But Denise is also somebody who is not in any sense selfish. She's a very giving person. Perhaps unusual in our business, her sentences don't always start with 'I' and end with 'me.' She listens. She really listens."

O'Donnell's nomination by President Clinton (it was subsequently confirmed by the Senate) is a milestone not just for the prosecutor but for women in the law, noted Gayle L. Eagen, a partner in the Buffalo law firm of Jaeckle, Fleischmann and Mugek and president of the Women's Bar Association, of which O'Donnell was a founding member. "What an honor today for me to watch my best friend, Denise, being sworn in by our chief justice of the Western District as the top federal prosecutor in the Western New York region, our newest U.S. attorney," Eagen said. She told of trading child care and family trips when their children were small, and how O'Donnell gave birth to daughter Maura just days before her last law school exam.

"You have never forgotten to look back down the ladder," Eagen said to the prosecutor, "to reach out to those who follow you, to encourage them to keep on striving to attain the goals that sometimes elude women simply because they are women. I know, because you did this for me."

In her own remarks, her voice sometimes quavering with the emotion of the moment, O'Donnell spoke of the changing role of the U.S. attorney as more crimes become federalized and the position's administrative responsibilities multiply. "But in another sense," she said, "the job hasn't changed at all that much since the time the first U.S. attorney, Charles Brown, was installed over a hundred years ago. The principal duty of the U.S. attorney remains the same: simply to do justice. This is not always a simple or easy thing. Justice is often one thing for the accused, another thing for the victim, and still another thing for the citizens who need to have faith and belief in the justice system of this country. It's not an easy thing to do justice. But the people in the Western District of New York deserve nothing less, I won't let you down."

O'Donnell, whose husband is State Supreme Court Justice John F. O'Donnell, went on to thank a long list of people important to her life and career, from the staff of the U.S. attorney's office to the instructors at the West Side Rowing Club, where she is an enthusiastic sometime athlete. The ceremony closed with words by the prosecutor's children, Jack and Maura. Said her daughter: "To us, she is Supermom. People often remark that we have big shoes to fill, but we prefer to think of it as having a great set of footprints to follow down the path."