



**ROBERT R.  
HENAK**

LEADERS IN THE LAW 2005

**HENAK LAW OFFICE S.C.**

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## 'Golden Rule' applies to prisoners, too

**M**ilwaukee criminal appellate attorney Robert R. Henak says nonlawyers, upon learning what he does for a living, regularly ask him how he can represent "those people."

To a certain extent, he can't blame them for having that attitude. Somewhere along the line, they forgot their high school civics lesson on due process; it has been supplanted by media pundits and politicians who constantly push for "getting tough on crime" and building more prisons.

What he has no tolerance for, however, is members of the judiciary or lawmakers who harbor similar attitudes.

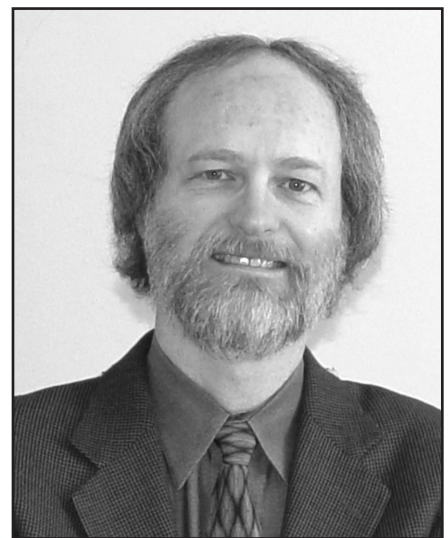
Henak has made it his life's mission to tackle the attitude of "finality uber alles" — finality above all. "It means, 'We really don't care any more whether they're innocent or whether they were properly convicted. We just want to forget about

them and keep them locked up.' I find that totally morally repugnant, and that's why I do what I do."

His practice focus is Wisconsin and federal postconviction remedies and criminal appeals. His cases have resulted in more than 70 published appellate opinions, and far more unpublished opinions.

Among them is *State v. Hall*, 207 Wis.2d 54 (1997), in which the state Supreme Court ruled that the drug tax stamp law is unconstitutional. "It was a fun case, and one where there was no reasonable way to lose. So of course, it came out 4-3," he quips.

Henak additionally represented Steven Avery in his first DNA appeal in 1997 (213 Wis.2d 228) — "The one where the court of appeals said there was no reasonable probability that he was innocent," Henak observes, with just a slight hint of irony. Avery has since been exonerated from his rape conviction via additional DNA testing.



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"The sad thing is, I know there are many more Steven Averys out there," Henak says.

He is a sole practitioner with a full caseload of paying and appointed clients. He limits his practice so he can devote his full energies to every case. At any given time, he also handles a number of pro bono matters.

He is highly regarded among Wisconsin's prison population for the quality of his work, as well as his willingness to help even those whom he does not represent. The late Dean Howard Eisenberg, of the Marquette Law School, was known for his prison "pen pals" — his willingness to offer written advice to

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**BIOGRAPHY**

**PRACTICE AREAS:** Wisconsin and federal postconviction remedies, criminal appeals  
**LAW SCHOOL:** New York University, 1982  
**ACHIEVEMENT:** Since 1983, Henak's criminal appeals have resulted in well over 70 published decisions, many of which involve pro bono and appointed clients; and he serves as amicus chair and a member of the board of directors for the Wisconsin Association of Criminal Defense Lawyers.

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virtually any incarcerated person who sought it. At the time of Eisenberg's death in 2003, Henak had already been responding to this kind of correspondence himself for many years. Henak took on one of the dean's cases, and he now appears to be the primary recipient of letters from pro se prisoners, asking for his advice.

He gives it because, plain and simple, it's the right thing to do. He grew up on a farm in Iowa, "where they take the Golden Rule seriously." That rule applies to prisoners, too, he reminds.

Henak also does it because word spreads fast in the prisons about who is an effective and responsive advocate, and who is not. In addition, he does it because he frequently learns from those who write to him that they might have written to several other attorneys before him, and received no response. It saddens Henak that there are those within the legal profession who act that way, and motivates him to do whatever he can to counter that indifference.

Henak earned his J.D. from New York University in 1982. He clerked for Judge James E. Doyle in the Western District of Wisconsin for a year, and then returned to Manhattan to do public defender trial work for four years. It was his first encounter with professional apathy. "I saw a lot of people cutting corners.

But I found I got better results when I made lawyers act like lawyers, and judges act like judges, instead of just greasing the skids of the machine."

He returned to Wisconsin in 1987, to work for Shellow, Shellow & Glynn in Milwaukee. Then in 2000, he opened his own law office.

Henak says there is nothing more exhilarating than oral arguments. He has experienced the gamut when it comes to oral argument, from tongue-lashings to a genuine "conversation with the court," where he and opposing counsel sat around a table with the judges for several hours and simply talked about a case.

An occupational hazard for someone in his line of work is to dwell on one's defeats, he adds. The fact of the matter is, most criminal appellants face an uphill battle. That makes the victories all the sweeter.

It's also helpful for Henak to have a spouse who shares his passion for criminal defense. He is married to attorney Ellen Henak of the appellate division of the State Public Defender's Office. They have two teenage daughters.

— Jane Pribek