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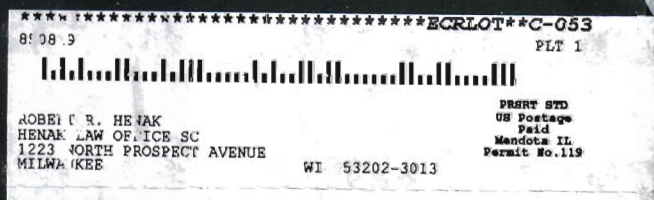
Amelia McCarthy calls
the plays

THE CRUSADER

Robert Henak fights
for the little guy

PRACTICE MADE PERFECT

How Robert
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LAW & POLITICS

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MAGAZINE

The Crusader

By William Wagner
Photograph by Larry Marcus

Robert Henak's mission is to make sure no one slips through the cracks.

The "Spite" House, built by a judge in 1880 to block the Lake Michigan view of a neighbor he disliked, doesn't seem spiteful at all. Placid is more like it. Listed on the National Register of Historic Places, the three-story yellow-brick gem sits just off the beaten path on the east side of Milwaukee. There's no hustle and bustle on this stretch of Prospect Avenue, unless walkers and joggers count. The "Spite" House looks out onto a lush park and the lake.

One of the building's occupants is Robert Henak. Contrary to what the setting might indicate, he isn't making candles or peddling antiques in there. He's a criminal defense attorney whose two-person practice, Henak Law Office, specializes in post-conviction cases. Henak's manner is as mild and pleasant as his surroundings, but his words couldn't be tougher.

"I take the Constitution seriously," says Henak, 48. "There was this whole thing during Nazi Germany when they came for the Jews: 'I'm not Jewish, so it doesn't bother me.' If you look the other way, then your rights deteriorate. If you don't stand up and fight for your rights, I guess you don't deserve to have them. It's easy for that to happen, as we've seen the past four years since 9/11. People are so willing to give up their rights for a feeling of safety that is totally ephemeral. It doesn't exist. When wrong happens, you don't just turn away and say it doesn't affect you. It does. It affects all of us."

These are the ideals that guide Henak, who views himself as more than a lawyer. He is also part crusader, reformer and social worker. His mission is clear-cut: to try to ensure that no one slips through the cracks.

"If you don't have good defense counsel raising the issues and presenting them to the court, they're not necessarily going to know that the issues are even there," Henak says. "[The courts] are not going to know there is anything unfair about a particular conviction. So my gratification is making them think and making them deal with the issues. And even if you don't win that particular case, then they're at least thinking about that issue."

Therein lies the central difficulty of Henak's profession: The moral victories far outnumber the real ones. He says he succeeds in 10 to 15 percent of his appeals — and that's considered good. Such bleak odds are enough to drive any defense attorney batty, even one as composed as Henak, whose professorial beard, matter-

of-fact tone and preference for jeans over suits project an unwavering sense of self.

"You're constantly banging your head against the wall," he says. "It's tough work. You're fighting uphill. Sometimes it gets really frustrating when you first get a decision you think is wholly unjustified. It's like, 'What the hell am I doing here? Why am I wasting my time?'"

But even if the courts aren't always listening, Henak's peers are. In March of this year, he was selected by the *Wisconsin Law Journal* as "A Leader in the Law," an honor that took him by such surprise that he thought it was a joke when he received the news. He was nominated for the award by a prison inmate who had read some of Henak's cases. Says Henak: "I was told by the *Law Journal* that this was the first time they've ever had an inmate nominate somebody, especially somebody who wasn't even represented by me."

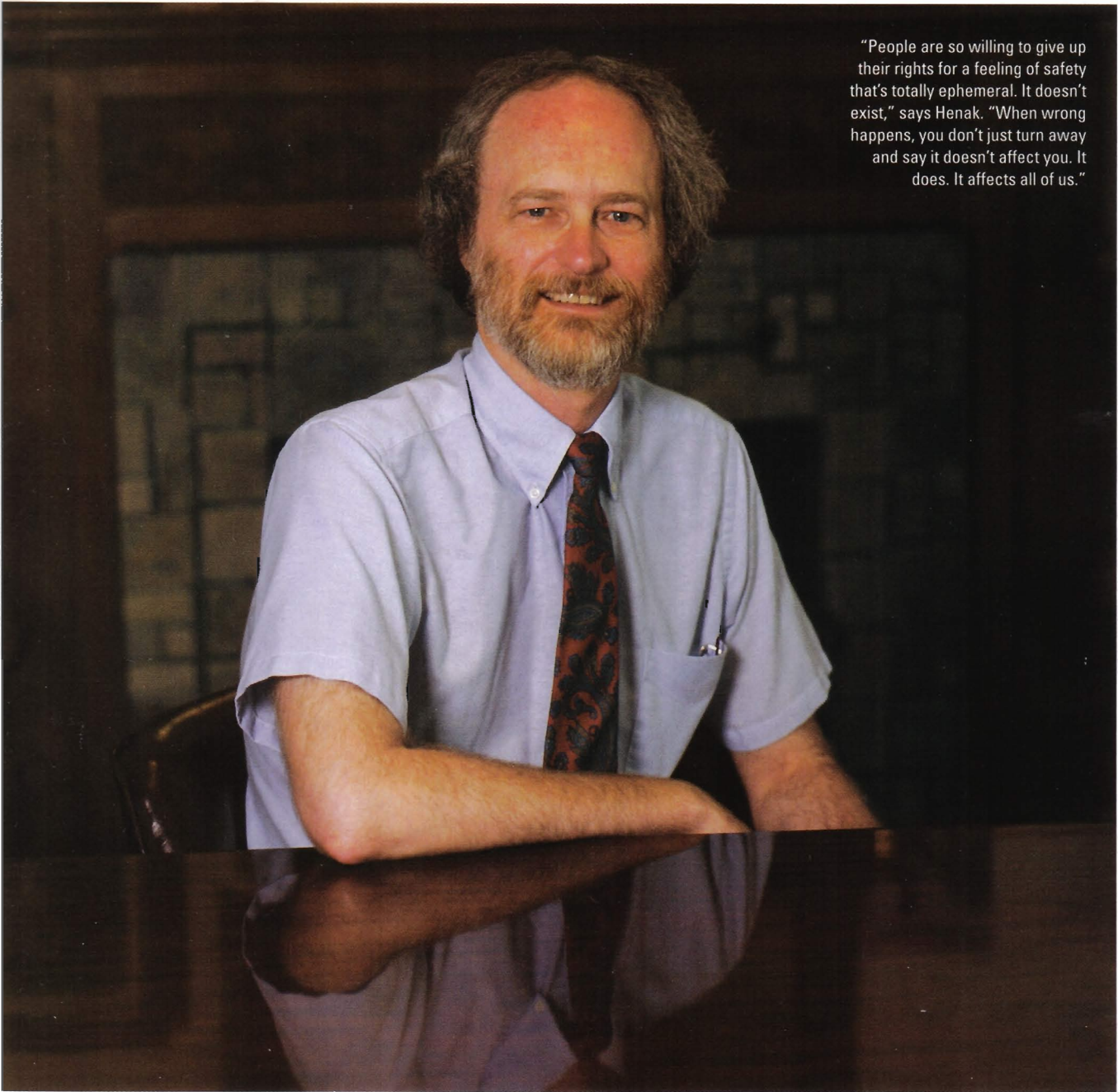
Slowly but surely, Henak's simple message — "and justice for all" — is spreading. It came through loud and clear to Milwaukee-based attorney Craig Albee when the two men worked together at Shellow Shellow & Glynn in the 1990s, before Henak set out on his own in 2000.

"It's clear Rob has a very deep and genuine concern about the fairness of the system," says Albee, who now also has his own practice, Glynn Fitzgerald & Albee. "He's one of the most passionate lawyers I know. In terms of his approach to law, he is very talented in explaining to the court why what might appear to some to be a minor technical violation of the law really jeopardizes the defendant's right to a fair trial and the fairness of the system."

As a youngster, Henak was a world away from such high-minded principles — literally. He grew up in the remote farm town of Coon Rapids, Iowa, where civil liberties and the intricacies of criminal appeals weren't exactly the topics du jour. But Henak was an excellent student.

"If you grow up in the middle of Iowa and are able to fool people into thinking you are smart, the generally accepted thing to do is become a lawyer or a doctor," he says. "Since I really didn't like the sight of blood, it kind of limited my options."

After graduating from Grinnell College in Iowa in 1979, Henak



"People are so willing to give up their rights for a feeling of safety that's totally ephemeral. It doesn't exist," says Henak. "When wrong happens, you don't just turn away and say it doesn't affect you. It does. It affects all of us."

went to New York University School of Law on a Root-Tilden scholarship. From 1983 to 1987, he worked in New York for the nonprofit Legal Aid Society, a job that opened his eyes and framed his views. "It was an interesting experience for someone who grew up on a farm in Iowa," he says. "The first time you read in the paper that one of your clients has been killed in a drug deal is pretty intense."

Even though Henak was representing some of the most hardcore characters in New York's penal system, he developed a soft touch. He saw a real opportunity to do some good amid this forlorn backdrop of crime and punishment — and not simply from a legal standpoint.

"A lot of these people were bad and deserved to be punished," he says, "but not necessarily to the degree or for the reasons the state wanted to do it. If you treat them with respect, you cut back on their frustrations and sometimes you get through to them more. Although this may be totally naïve, part of it is putting some social work into it."

But the Big Apple wasn't much of a place to raise a family — especially for someone with small-town sensibilities. He and his wife, Ellen, had a baby daughter (another would come later) and opted for a slower-paced environment. In 1987 he packed up his family and belongings and moved to Milwaukee, where he went to work for Shellow Shellow & Glynn. All the while, though, he continued to fight the good fight.

"Rob can be very creative in his approaches to appeals, in finding different angles by which to demonstrate that a conviction was unfair," Albee says. "He really gives a great deal of time and attention to his cases and clients. Rob is about the most efficient guy I know. His work output is fantastic."

Although Henak is a man of deep and serious convictions, he isn't without a sense of humor. His dry wit is reflected in his hobby. Henak has spent the past decade scouring the country for drug tax stamps, which drug dealers are required to purchase upfront from the government in order to possess their illicit

merchandise. The law makes absolutely no sense to Henak, who sees it as a perfect example of the government's inability to deal with crime in a relevant way.

"Back in the 1980s, starting in Arizona, politicians got this great idea that they could get more money out of drug dealers by charging them a tax," Henak says. "The idea was that nobody would pay it upfront because they'd be incriminating themselves. So when they were caught with the drugs, then they would add this tax on top of all the other penalties.

"There is something logically wrong with it. It was one of those fads people latched onto instead of doing something real or that would really work. You don't want to pay more money for drug-treatment programs because that doesn't show you're being tough on crime. You try to do things to make it look like you're doing something when you really aren't."

Henak has the proof in his quirky collection, which contains drug stamps from 22 of the 24 states that have required them at one time or another. Henak's collection is so comprehensive it even caught the wandering eye of *Playboy* in 2003. The magazine did a photo spread — with the headline "Stamp Out Drugs:

spill.' But you get a chance to have a more in-depth conversation at the dinner table as the kids get older. The good thing about having two lawyers doing exactly the same thing is that we understand each other. The bad thing is there's really no escape from it."

Not that Rob Henak would want to escape. As Amelia Bizzaro has learned, Henak's work is his life. Bizzaro, a 2003 graduate of Marquette Law School, was hired by Henak this year as an associate attorney and has had an up-close look at what makes him tick.

"He truly lives out his belief. ... People who can't speak for themselves need a voice," Bizzaro says. "Rob is that voice. I really like that Rob answers every letter he ever receives, whether he can help them or not. He does a lot of pro bono work, and he deals with a lot of clients who have mental-health issues. He seems to take on the tough cases."

One such case involved a convicted rapist named Steven Avery, who had been in jail for nearly a decade when Henak began representing him in 1994. Sixteen witnesses corroborated Avery's testimony — that he had been elsewhere when the crime occurred

Henak's collection of drug tax stamps — which drug dealers are supposed to buy from the government — was featured in a 2003 photo spread in *Playboy* with the headline "Stamp Out Drugs: Have You Paid Your Reefer Tax?"



Have You Paid Your Reefer Tax?" — that showed Henak's stamps in all their splendor. "I'm probably the only lawyer in Wisconsin who's had a photo spread in *Playboy*," says a chuckling Henak, whose stamps also can be viewed on his Web site, www.henak.net.

Henak's hobby is linked to his work, of course. In January 1997, he took a case all the way to the Wisconsin Supreme Court (*State v. Hall*) in which he challenged the constitutionality of drug stamps. The court struck down the law, but the state legislature reenacted it later that year, "claiming," Henak says, "that they had fixed the errors that the Supreme Court had pointed out. I didn't think so."

The good fight never really ends for Henak. His wife is a public defender in Milwaukee, so work has a way of bubbling to the surface even on the homefront.

"We often discuss work," Ellen Henak says. "Obviously not with names, because we respect confidentiality, but we will talk about issues. We probably do it more now that the kids are older. When you have small kids, it's 'Watch out, the milk's about to

— but the victim had picked Avery out of a lineup, and, according to Henak, "she was absolutely certain." Although Henak was equally certain of Avery's innocence, he was unable to get the conviction overturned. "It's a case that has really haunted me," says Henak, who spent three years working on Avery's behalf. "Going through the legal system, I was unable to help him, even though I had DNA evidence I thought showed that the trial was not fair." Henak's evidence consisted of fingernail scrapings that had been taken from the victim immediately after the crime, which didn't definitively rule out Avery as the rapist.

In 2003, however, newer and more sophisticated DNA technology was used by other defense lawyers to test a pubic hair that also had been lifted from the victim following the assault. The test proved what Henak had known in his gut all along — that Avery was not the rapist. Gregory Allen, serving a 60-year sentence for sexual assaults that had occurred after Avery was convicted, was matched to the DNA profile. Says Henak: "He [Avery] sat in prison for 18 years for something he didn't do."

When Avery was set free, Henak cried. Justice had been a long time coming — too long coming — but finally it had been done. ♦