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Notre Dame Lawyer - Summer 2002

Notre Dame Law School

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LAWYER

SUMMER 2002

Dear Friends,

THIS IS MY LAST ISSUE as editor of NOTRE DAME LAWYER. On July 15, 2002, I began a new position in Notre Dame's College of Engineering as director of women's engineering programs and academic advisor. In this new program, I have the chance to use the administrative skills I've developed over six years as director of law school relations, combined with my undergraduate and graduate education in engineering, to work with women engineering students and students to encourage them to pursue study and careers in engineering.

I leave NDLS with mixed emotions, of course. While I'm looking forward to the challenges of my new job, I will truly miss the day-to-day contact with you, our alumni and friends.

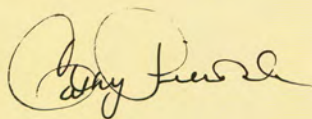
When I first started working at NDLS, I had no idea what to expect on a daily basis. While writing and editing this magazine formed the primary focus of my work, my days and months quickly filled as we worked together to develop activities that gave us the chance to support NDLS in meaningful ways: working with groups such as the Notre Dame Law Association and the Law School Advisory Council, helping classes organize reunions and keeping in touch with the many individuals who serve the Law School in innumerable ways.

What has made these past few years at NDLS most enjoyable and personally satisfying has been how so many of you have consistently responded to our call to help in whatever ways we asked — whether giving money to support our students in service, helping a student or fellow Notre Dame lawyer network during a job search, encouraging accepted students to enroll at NDLS and in so many other ways. My colleagues at other law schools always seemed to envy me when I told them how wonderfully giving you all are — how, whenever asked, you always said "yes," and then you asked what else you could do! You truly are different. I'm proud that, in some small way, I may have helped to build a stronger community of Notre Dame lawyers around the world during my time at NDLS.

I'm confident that you will give my successor this same support and, in the interim before that individual is identified, that you will support the Law School administration in whatever ways you are asked.

Thank you all for six wonderful years!

Yours in Notre Dame,



Cathy Pieronek, Editor

P.S. If you happen to be visiting campus, I'm just one building over to the east — in 257 Fitzpatrick Hall of Engineering. Please don't hesitate to stop by. My e-mail address remains the same, pieronek.1@nd.edu, but my phone number has changed to (574) 631-4385.

FALL 2002 CALENDAR OF EVENTS

August 26, 2002

Fall semester classes begin

September 6, 2002

Fall on-campus interviewing begins

September 6-8, 2002

NDLS Class of 1967 — 35th Reunion
Weekend

September 7, 2002

ND vs. Purdue

September 13-15, 2002

NDLS Class of 1972 — 30th Reunion
Weekend

September 14, 2002

ND vs. Michigan
NDLS Class of 1992 — 10th Reunion
Celebration

September 15, 2002

Nomination Deadline for NDLA 2003
Elections

October 5, 2002

Continuing Legal Education Program
ND vs. Stanford

October 11, 2002

Notre Dame Law Association Fall Meeting

October 12, 2002

ND vs. Pittsburgh

October 15, 2002

Fall on-campus interviewing concludes

October 19-27, 2002

Fall semester break

November 2, 2002

Continuing Legal Education Program
ND vs. Boston College

November 21-22, 2002

Law School Advisory Council Meeting

November 23, 2002

Continuing Legal Education Program
ND vs. Rutgers

For more information on Law School or University events, please contact the Law School Relations Office.

NOTRE DAME LAWYER



Summer 2002

LAW SCHOOL
FOCUS



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F R O M T H E D E A N

This issue of NOTRE DAME LAWYER illustrates the wide range of scholarship being produced by our faculty in our efforts to contribute actively to the intellectual dialogue within the legal community, as well as to enrich the discussions in our classrooms. The topics covered are impressive in both scope and content and feature members of our faculty at different stages of their careers.

Professor Alan Gunn, John N. Matthews Professor of Law and senior member of our faculty, joined us in 1989 after teaching at Washington University-St. Louis and Cornell. A scholar in torts and taxation, Professor Gunn's essay surveys the late-20th-century literature that relies on economic theory to analyze the law of torts. Against this backdrop, he discusses a number of intriguing 19th-century judicial decisions and well-known 20th-century decisions. In the end, he offers a telling insight not merely about the law of torts, but also about the entire legal process. Professor A.J. Bellia '94 J.D., one of the younger members of our faculty, also sweeps broadly for material to enrich his essay, surveying the basic principles underlying contract law in order to emphasize the centrality of moral concepts. A student in one of the last classes taught by our beloved late colleague, Professor Ed Murphy, A.J. recalls Ed's regular reminders of the importance of remembering the moral foundations of all law.

The remaining two contributions from our faculty are taken, quite literally, from today's headlines. Professor Matt Barrett '82, '85 J.D., who was promoted to full professor this past spring, offers his "top 10 accounting lessons for lawyers." Co-author with Harvard professor David Herwitz of the leading casebook on accounting for lawyers, Matt's compendium of advice is important for anyone hoping to grapple with the recent scandals in accounting and corporate law. Like A.J., Matt concludes with a reminder that there should be a broad focus to the practice of law, one that includes adherence to the highest standards of ethical conduct. Finally, Professor Rick Garnett, another of the younger members of our faculty, reprints his op-ed piece from the

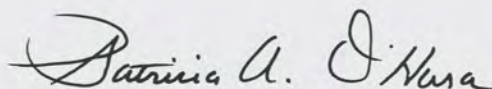
WALL STREET JOURNAL comparing the lessons from the Pledge of Allegiance case and the school vouchers decision. Taken together, these faculty pieces form a mosaic illustrating the distinctive way in which Notre Dame Law School seeks to examine legal questions with a special emphasis on moral and ethical values.

By the time that this issue reaches you, we will have begun another academic year. The academic cycle is always marked by comings and goings. We welcome a highly talented first-year class selected from among one of our largest applicant pools ever. Two new faculty members also join our ranks. Bob Jones '80 assumes leadership of the Notre Dame Legal Aid Clinic. A *summa cum laude* graduate of the Program of Liberal Studies, Bob worked two years as a community organizer in Chicago before enrolling at Harvard Law School. There he served as managing editor of the HARVARD LAW REVIEW and president of Students for Public Interest Law. Following a federal district court clerkship, he worked for 17 years at Business and Professional People for the Public Interest, a public interest law firm in Chicago, while also teaching at a number of Chicago law schools. Professor Amy Coney Barrett '97 J.D. also returns home to Notre Dame. After graduating first in her class from our Law School, Amy clerked for Judge Laurence Silberman on the Court of Appeals for the D.C. Circuit and for Justice Antonin Scalia on the United States Supreme Court. Following two years of practice with a Washington, D.C., law firm, she received an Olin Fellowship and spent last year as a visiting faculty member at George Washington University Law School. Amy will teach Civil Procedure and Evidence. We look forward to the vision and experience that Bob will bring to our clinic, and to the contributions that Amy will make as a teacher and scholar.

With very mixed emotions, we bid farewell to Professor Steve Smith. Steve enriched our community during his four years with us as a wonderful teacher, profound scholar and generous colleague. We will miss him greatly but share his excitement about the new opportunities that await him as a faculty member at the University of San Diego Law School.

Finally, Cathy Pieronek, director of law school relations, leaves us to accept a new position in the College of Engineering as director of women's engineering programs. It is little exaggeration to say that this magazine is Cathy's creation. During her six years with us, she built the magazine into a professional publication, coordinated alumni relations activities for the Notre Dame Law Association and played a vital role in helping to establish alumni-funded summer service fellowships. Her new position allows her to return to her undergraduate home in the College of Engineering. We are happy that she will be quite literally right next door.

As I begin my fourth year as dean, I do so with energy, excitement and a deep sense of gratitude for the collaborative efforts that have contributed to our progress in recent years. We have seen continued growth in our library, which is now very competitive with our peers. We have made dramatic strides in our ability to offer financial aid, allowing us to attract highly qualified students interested in our distinct mission. We are in the process of finalizing the details for an educational loan repayment assistance program that we hope to begin before the end of this calendar year for graduates who accept public interest employment. Fund raising for the new building — although not yet complete — is progressing well. All of these advances are in large measure the product of the loyalty and generosity of our alumni and friends. For the part each of you plays in our efforts to offer an academically excellent and distinctively faith-based approach to legal education, I thank you.



Patricia A. O'Hara
Joseph A. Matson Dean and Professor of Law

The Place of Economics in the Law of Torts

M

y text for today is a "Wizard of Id" cartoon. The king learns that the wizard is trying to cross a homing pigeon and a parrot, and the king asks, "What do you expect to achieve by that?" To which the wizard replies, "voice mail!"

My thesis is that a lot of good work has been wasted or ignored because the people doing the work neglected to answer the king's very good question, "What do you expect to achieve by that?" There is a vast literature attempting to apply economic theory to the law of torts. It started in 1961, with Calabresi's article on risk distribution in the law of torts, or, if you think a work has to contain calculus to be real economics, with a 1973 article by John Prather Brown showing that, under ideal conditions, it doesn't matter whether the law of torts uses strict liability or negligence when the issue is how much in the way of safety precautions will people have an incentive to take. Since then, several books, including a casebook, and countless articles have attempted to apply economics to tort law. A great deal of this work was produced by people who

have not seriously addressed the question of whether, or for what purpose, it was useful.

With part of the literature on economics and torts, I have no quarrel. This is the literature on the ways in which the tort system and some of its alternatives affect people's lives. For instance, a series of studies, beginning with one by Elisabeth Landes published in 1982, investigates the effect on traffic accidents of replacing part or all of the tort system for auto accidents with no-fault insurance. Landes looked at no-fault in the United States; later studies have included the more-extensive no-fault systems of Quebec and Australia. Their conclusion is that, as economic theory would predict, the replacement of tort with no-fault increases the number of auto accidents, and the more of the tort system you replace with no-fault, the

more fatal accidents there will be. That's useful information for a legislator deciding how to vote on a no-fault auto-insurance bill. But it has nothing to do with the everyday work of lawyers and judges in tort cases, whom Landes and the others were not addressing.

Similarly, studies have shown that workers' compensation is less effective than torts in deterring workplace accidents, but more effective than OSHA, which so far as we can tell has no effect on safety at all. Again, useful information for legislators, but not for practicing lawyers.

Sometimes the studies show that we don't know whether the system is working well or not; there are a couple of ambitious attempts to figure out what effect medical malpractice cases have on medical practices. All we know for sure at this point is that there is a lot of medical malpractice and a lot in the way of tort damages for that malpractice. Unfortunately, we don't have much of an idea at all of whether the doctors committing most of the malpractice are the same ones as those paying the damages, though there is some reason to think that they are not. This kind of scholarship is useful to lots of people, but none of it has, or even claims to have, any effect on how tort cases should come out under our system.

The scholarship with which I do have a quarrel — and this is a large part of the literature on economics and torts — is that which claims, or just assumes, that lawyers and judges should learn the economics of torts so that they can devise and apply efficient rules. Perhaps the most sweeping version of this claim is Judge Posner's. He has said, in every edition of his very influential book, that the common law is efficient, and that the reason it is efficient is that common-law judges have — usually without saying so — tried to make it efficient. "The great



common law fields of property, torts, crimes, and contracts," he says, "bear the stamp of economic reasoning." But he is far from being alone. Many articles and books either claim that judges have adopted particular rules because they are efficient, or simply analyze various doctrines to see whether they are efficient or not, without any express consideration of whether anyone would, or should, care.

The idea that judges routinely look to economics to help them make society efficient is nonsense. I can count on one hand the number of judicial opinions I've read that have applied economic reasoning to reach an efficient result. (1) *Coffin v. Left Hand Ditch Co.*, a 19th-century case involving the question whether water taken from a river could be used outside the watershed, something the English doctrine of riparian rights would have prohibited. The court said it could, because, in an arid state like Colorado, it would make no sense to outlaw many useful uses of water. (2) *Britten v. Turner*, a 19th century case in which an employee who quit before his one-year term of employment was up argued that, although he couldn't recover anything on the contract, he should at least recover in

quantum meruit for the value of the work he had done. The court agreed, in part because a rule denying recovery would encourage employers to make life miserable for employees near the end of their term in the hope that the employees would quit and forfeit their rights to payment under the contract. And (3) a handful of cases involving intellectual property, such as the right to limit the use of a deceased celebrity's name or likeness, in which the evident desirability of having clearly defined property rights seems to have influenced the courts. That's all I can think of, and it's not much.

The problem here, if I am right, is not just that a considerable body of scholarship has been produced for an audience that doesn't exist. After all, a large part of what academics do is write articles that no one will ever read. The real problem is that many lawyers, understanding very well that things like mathematical analyses of the efficiency of the doctrine of last clear chance have nothing to do with their lives, have written off law and economics as a waste of time.

When economics first made itself known in the law schools it met a lot of resistance. The usual explanation for that resistance among law-and-

economics people is that the lawyers were protecting their turf. Robert Cooter said recently that the initial response to economics from many law professors was to associate economics with some philosophical idea and then to reject economics on the ground that the philosophy in question was unsound. This, according to Cooter, had the advantage of allowing lawyers to reject economics without taking the trouble to learn it. There's some truth to that, but it's not the whole story. Much of the blame for the chilly reception economics got lies with the economists. With very few exceptions, those who practice economic analysis of law have either ignored the question of what use economics might be to lawyers or have answered that question wrong by saying, or implying, that economics is useful because knowing something about it will enable the courts to devise rules that will encourage people to behave efficiently.

In a few minutes I'll try to convince you that a knowledge of economics can be of use to people who have to resolve torts cases, but first let's look briefly at an area of the law that has been greatly improved because of economics: antitrust. When I took antitrust in law school, we spent a

BY ALAN GUNN

JOHN N. MATTHEWS PROFESSOR OF LAW

whole semester reading judicial opinions without ever considering what it was about monopolies that might be bad or how, if at all, it was possible for someone to get or keep a monopoly. Times have changed. Today, for example, vertical restraints other than price are no longer *per se* illegal, and it's a good thing too because, as economists have shown us, vertical restraints can benefit consumers and encourage competition. It's probably only a matter of time until some vertical price restraints are allowed as well; while they can be misused, they can also serve valuable goals. Predatory pricing is still illegal, but the courts aren't nearly so willing as they once were to allow fact finders to make a defendant pay because it charged low prices: The *Matsushita* case approved of a grant of summary judgment to the defendants in a predatory-pricing case if it was all but inconceivable that the defendants could have made money by doing what they were alleged to have done. *Matsushita* is the best opinion Justice Powell ever wrote, and most of it is straight out of law-and-economics works.

Antitrust law is a success story for economics, but it is not a story of judges using economic reasoning to replace inefficient rules with efficient ones. The basic rules of antitrust are much the same today as they were 30 years ago. The difference is that economics helps us to understand business behavior, and in some cases — vertical restraints, some possible “predatory pricing” cases, and tying — practices that may seem underhanded to those who don't understand what they accomplish turn out to be harmless, or even beneficial, when we understand them. And we won't understand them unless we know some economics.

But what about torts? A few years ago, I had the opportunity to co-author a torts casebook. I accepted, in part because I thought it would be fun

to try to work in some economics, which has been largely absent from the torts casebooks despite the volumes of writing on the subject in the law reviews. And I did find a few opportunities to explain some elementary economics. But so far as the heart of the book — the cases themselves — is concerned, there is virtually no economics at all. All those books and law review articles — the pioneering work of Calabresi and Brown, the reams of articles on when negligence or strict liability creates better incentives, or on whether the doctrines of last clear chance or contributory negligence make economic sense, or on the Coase theorem and the *Carroll Towing Company* negligence formula — have left almost no visible trace on the development of the law. This is the literature that seems to me to be misguided. But even if I'm right, it doesn't follow that economics is irrelevant to the work of common-law courts. I'll use two examples, one fairly obscure, the other involving a very-well-known case, to show why.

Ault v. International Harvester Corp. was a 1974 California products-liability case. The plaintiff was hurt in the crash of an International Harvester Scout. He claimed that the Scout had crashed because its aluminum gearbox had failed; International Harvester maintained that the crash was caused either by driver error or by the collapse of a portion of the highway. The plaintiff was allowed to introduce evidence that International Harvester had changed from aluminum gearboxes to gearboxes made of malleable iron after the accident. The California Evidence Code excluded evidence of “subsequent remedial or precautionary measures” to prove “negligence or culpable conduct.” So if the plaintiff's case had been based on International Harvester's negligence, evidence of the change could not have come in. The issue was whether this rule of evidence barred

evidence of subsequent remedial measures in a strict products-liability case: whether, in other words, the phrase “culpable conduct” in the evidence code included strict liability.

The California Supreme Court held that it was not error to admit the evidence of the design change. Its reasoning was based on what it saw as the purpose of the exclusion: “to avoid deterring individuals from making improvements or repairs after an accident has occurred.” The court said that this argument made no sense in products-liability cases because

The contemporary corporate mass producer of goods, the normal products liability defendant, manufactures tens of thousands of units of goods; it is manifestly unrealistic to suggest that such a producer will forego [sic] making improvements in its product, and risk innumerable additional lawsuits and the attendant adverse effect upon its public image, simply because evidence of adoption of such improvement may be admitted in an action founded on strict liability for recovery on an injury that preceded the improvement.

This is wrong. Without going into economic theory, it can be shown to be wrong by considering the variety of settings in which manufacturers have to decide whether to improve products that may be claimed to be defective. If the product clearly is defective, and if the maker expects to lose the lawsuits, of course it will improve the product to cut its losses. But some manufacturers may expect to win those lawsuits, or may not even expect to be sued, and they may fear that changing the design would give ammunition to plaintiffs' lawyers who would otherwise have weak cases. That kind of manufacturer has an

incentive either not to make the improvement, or to disguise it: perhaps to wait a year or two until a whole new kind of transmission was being introduced, or to replace the whole drive system, rather than a single component. This is said to have been the reason the cigarette companies abandoned the attempt to design a safer cigarette in the 1970s: Back then, they were winning all the lawsuits, and they feared that if they did come up with a safer product, their success in fending off litigation would be imperiled. (Whether this is true or not, it is plausible.) Another possible example: it has been claimed, and it may be true, that airbags were introduced in this country much later than in Japan and Europe because of fears of liability for selling cars without airbags.

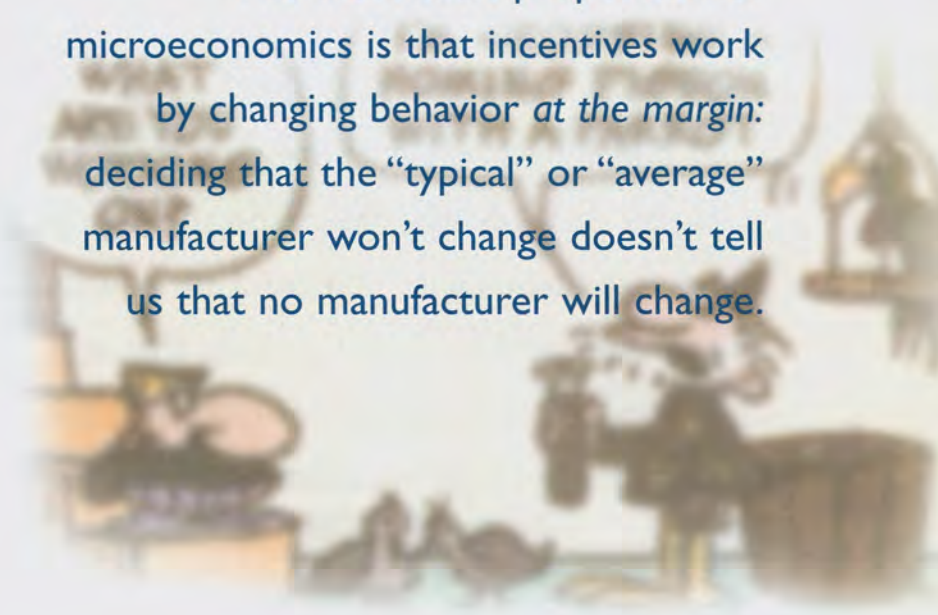
Here's where economics comes in. Anyone who has grasped Economics 101 should recognize instantly that the *Ault* court's analysis of how manufacturers would respond to a rule allowing subsequent improvements into evidence was wrong. For one thing, the opinion claims that changing manufacturers' incentives will not change their behavior. Technically, it's saying that the manufacturer's demand curve for safety improvements is vertical; and there are no vertical demand curves. Another and more basic way to look at it is to see that the court goes seriously astray by deciding what "the" manufacturer would do. There is no such person as "the" manufacturer: there are a lot of different manufacturers in a lot of different circumstances, and the fact that the one in the court's hypothetical won't respond to a change in the rule doesn't mean that no manufacturer will. The most basic proposition of microeconomics is that incentives work by changing behavior *at the margin*: deciding that the "typical" or "average" manufacturer won't change doesn't tell us that no manufacturer will change. The analysis in *Ault* was

wrong, and some people are dead now who would be alive if the case had gone the other way.

Ault teaches two important lessons. First: a lot of people — both law-and-economics people and those who think economics is evil — seem to think that economic analysis is an alternative to other ways of deciding cases: to deciding them on grounds of justice, or to following precedent, or perhaps to using natural law in some form. That's not what's at stake in *Ault*. The problem with that decision isn't that the court resolved the issue by following some approach other than economics and should have used economics instead. The problem is that the court *was* doing economics, and it was doing it badly. The court was making a prediction about how people would respond to the incentives created by its decision. That's what economics is: the scientific study of how incentives will affect behavior. So it's not an "economics vs. justice" issue, it's an issue of "good economics vs. bad economics." Second: economics doesn't tell us how *Ault* should have

been decided. If the court's economic analysis had been sound, its decision would probably have been right: it would have achieved a good thing — letting highly relevant evidence in, and so improving the accuracy of fact finding — at no cost. Economics tells us that there was a cost, in forgone safety improvements. Unfortunately, it doesn't tell us anything about whether that cost will be high or low, or whether those costs are outweighed by the improvement in accuracy that admitting the evidence provides. I have occasionally heard it said that people are drawn to law and economics because economics offers "right answers" in place of the uncertainty of the common law. Not in *Ault*, and probably not anywhere else, either: economic analysis typically shows us that cases we thought were easy are in fact hard. Which, I think, is one of the reasons why some people react so negatively to economics: lawyers who see their task as coming up with ways to make people better off may not like to be shown that well-intentioned proposals that may look good on the

The most basic proposition of microeconomics is that incentives work by changing behavior *at the margin*: deciding that the "typical" or "average" manufacturer won't change doesn't tell us that no manufacturer will change.



surface may in fact harm the very people they are supposed to help.

My other example is an opinion which has had a great effect on the law: Justice Traynor's concurring opinion in *Escola v. Coca-Cola Bottling Co. of Fresno*. It was just a concurring opinion in 1944, but it became the law in California in 1962 in the *Greenman* case, and in nearly all other states not long after that. According to Justice Traynor, rejecting a vast body of precedent, the seller of a product that is defective is liable to a consumer injured because of the defect, even if the seller was not negligent — even if it was absolutely clear that the seller was not negligent, as when a retailer sells a product in a sealed package and the product turns out to be defective. Now, in *Escola* itself, holding the defendant liable if the product was defective may have made sense: the majority allowed the case to get to the jury on *res ipsa* grounds, which left it to the jury to decide whether or not to find the defendant liable, with no real evidence either way. But the reasons Justice Traynor gave for holding manufacturers and other sellers strictly liable for product defects went way beyond that situation, and several of

those reasons make little sense.

One reason he gave: "It is evident that the manufacturer can anticipate against some hazards and guard against others, as the public cannot." Well, this is true: with respect to *some* hazards. With respect to other hazards, though, the user of the product is in a much better position to take precautions, as when someone who has bought hot coffee decides to open it in the car and spills it, or when parents let their young children play with cigarette lighters even though the kids have previously set the house on fire, or when a drunken driver parks a car in the middle of a foggy freeway.

Another reason: the manufacturer is better suited than the consumer to provide insurance to cover the losses that occur when consumers are hurt, because the loss is a great misfortune to the consumer, and the manufacturer can spread it around to all of its customers by charging a higher price. Well, risk-spreading can be a good thing: that's why people buy insurance. But they don't buy insurance against "pain and suffering," though Justice Traynor's rule forces them to buy it whenever they buy a product. For some people — especially poor people

— insurance is a very bad buy, especially if they have no dependents, yet Justice Traynor makes everyone buy his insurance.

The kind of insurance you get through tort liability is so insanely expensive that people who tried to sell it to customers would go to jail. For instance, when Cessna shut down lightplane production because of product-liability costs, it estimated that the cost of insuring against products-liability claims for a single plane was about \$70,000 (which is approximately \$300,000 dollars in current figures). You can buy a real insurance policy that covers losses other than those you incur when flying your Cessna a lot cheaper than that. Apart from cost, this is insurance that pays off in only a tiny fraction of the cases in which people suffer serious injuries, and, in most of those cases only after years of litigation, and with much of the payoff going to the victim's lawyer. Furthermore, the opinion seems to assume that sellers who have to provide this insurance will simply raise the price of the product by the amount of the extra cost. Some elementary economics shows that this can't happen: the price will increase, though by less than the additional cost, and the amount of the good sold will decrease.

There's some irony here. What Justices Mosk and Traynor were doing in *Ault* and *Escola* was, despite their utter ignorance of the most basic economic principles, precisely what many of the law-and-economics people are at least implicitly advocating: they were trying to devise rules that would create desirable incentives. They failed. It is fairly clear today that modern products-liability law has made the world more dangerous than it would otherwise have been, and it is indisputable that it is regressive: it shifts wealth from poorer to wealthier consumers. When the prices of products that make the world safer increase, people

It is fairly clear today that modern products-liability law has made the world more dangerous than it would otherwise have been, and it is indisputable that it is regressive: it shifts wealth from poorer to wealthier consumers.

will buy fewer of them, and their lives will be more dangerous.

The extreme case is that in which products liability drives safety-enhancing products off the market. One example is Bendectin, a drug for morning sickness, withdrawn because of product-liability claims, though a host of careful studies show that Bendectin is safe: safer than morning sickness, which does kill people, and probably safer than the drugs doctors now prescribe instead, which have not been so extensively tested. Except for the so-called "abortion pill," no drug company in the world is now developing any drug that can be used by pregnant women.

And then there are the airplanes: American lightplanes were the safest in the world; when they were killed off by Justice Traynor, those who wanted to fly had to buy used planes — sometimes rebuilt wrecks — or build kits, nearly all of which are harder to fly and more dangerous than the Cessna 150.

Would the courts have done better if they had known some basic economics? Perhaps. But not because a knowledge of economics would have made them more able to legislate intelligently. The lesson of economics here, and in many other situations, is "I don't know what's efficient, and no one else in town can tell you either." The model of judges using economics to devise efficient rules is silly: they can't do it right. Most judges, and most lawyers, are decent, intelligent people. But nothing in their training or experience gives them any particular ability to decide what is sound public policy, and they have no facilities for conducting even the most basic empirical work; without empirical studies, economic theory can't answer any questions to which we don't all know the answers already.

In a very useful book, *HOW WE KNOW WHAT ISN'T SO*, by Thomas

Gilowich, there's an interesting description of an empirical test of the ability of students in various fields to evaluate policy-related claims, such as a mayor's claim that his policies had succeeded in reducing crime. Students just beginning the study of law, medicine, chemistry and psychology were tested on their ability to distinguish valid claims of this sort from invalid claims, as were people who had studied these fields for two years. The study found that people who had studied psychology for two years improved quite a bit in this regard; people who had studied medicine improved some. Studying law or chemistry did nothing at all to make people better "policy analysts."

In a review of the first edition of Judge Posner's book on law and economics, James Buchanan expressed a concern that adding economics to the law school curriculum might encourage lawyers, and eventually judges, to think that they had the tools to enable them to legislate for us all; a bad thing, as it is not the job of the judge to legislate. That concern is well founded, but it is far too late to address it by suppressing or ignoring economics. The idea that courts are devising policies is deeply ingrained in American law students today. Pat Kelley attributes this tendency to Holmes, with considerable justification: those who think that common-law judges make policy can find lots in Holmes to back them up. It is worth noting, though, that Holmes' views on this were more complex than those of many of his followers. In *THE PATH OF THE LAW*, Holmes pointed out that if judges thought more carefully about the social consequences of the rules they were adopting, they "sometimes would hesitate where now they are confident," and, as Robert George pointed out in a recent issue of *FIRST THINGS*, Holmes himself was no innovator.

Perhaps the watershed here was *Erie RR. v. Tompkins*. If, as many people now think, common-law decisions are just state policies, different from legislation only because they are made by different people, then federalism requires the *Erie* doctrine. *Swift v. Tyson*, which *Erie* overruled, is a decision that many modern lawyers find incomprehensible: for example, one civil procedure hornbook describes *Swift* as a decision that implemented Justice Story's views of "policy," a view that suggests that the authors of the hornbook — all well-known legal academics — either never read *Swift* or misunderstood it badly.

Is there a better way to look at the law of torts (and, really, all of the common law)? Yes: the way in which most lawyers saw the law for most of our history, a way of looking at the law that is captured in important articles by Pat Kelley and Steve Smith. Kelley and Smith start with the proposition that the function of the tort system is to resolve disputes. I suppose all of us were told this sometime during our first week of law school. The usual practice, though, is, having said this, to forget about it: in deciding what rules to apply in resolving those disputes, the tendency has been to fall back on policy goals, such as deterrence and compensation. As Smith put it in a recent article, "[t]he suggestion that tort law exists primarily to resolve disputes seems at once prosaic and yet, in the current academic climate, strangely alien." Kelley and Smith point out that the implication of the "dispute resolution" model of torts is that we should ask whether the defendant has caused an injury to the plaintiff by violating an established social norm. If the defendant has punched the plaintiff in the nose, or run a red light and crashed into the plaintiff, the answer is "yes."

This system will generally tend to lead to efficient results, because people don't often adopt customs that

In the end, the real lesson of economics for the tort lawyer is that policy-making is hard — too hard to be engaged in by the participants in an adversary system.

impoverish them. And, if we look at the past several centuries of tort caselaw, that is exactly what we find. This approach, the approach of “finding the law” through asking how people are expected to behave and reasoning by analogy to previous cases, gave the common-law countries a legal system that enabled those countries to flourish economically, socially, and morally. It has served us well, but it is now in the process of being scrapped, bit by bit, in favor of a social-engineering project that has no hope of succeeding.

In the end, the real lesson of economics for the tort lawyer is that policy-making is hard — too hard to be engaged in by the participants in an adversary system. The great value of economic analysis in tort cases consists in the humility that it teaches — in the lesson that judges cannot convert the tort system into an efficient deterrent, an effective social-insurance scheme, or a mix of the two, and that if they try, the unintended consequences can be severe.

The approach Kelley and Smith take is one “internal” to the law; an approach Kelley derives from John Finnis. The difference between this sort of “internal” approach and the “external” view of the law that most economists take is fundamental, and it is by no means confined to torts. When I first read Kelley’s article, I noted this point, thought it interesting, and promptly forgot about it. Then, a few weeks ago, the Southern Methodist University law review published a symposium on the business purpose doctrine in tax law, containing

a couple of articles commenting not on the law itself but on tax scholarship on that problem, including some of my scholarship. These articles draw the same distinction: between internal arguments — arguments “of the law” as one of them puts it — and external arguments — arguments “about the law.” I was delighted to find myself, along with another author, used as an example of the “internal” approach, an approach said by one of these articles to be representative of the older generation of scholars, with the external approach illustrated by the work of the people who use economics in analyzing tax.

So, it seems, I’ve been using an “internal” approach to the tax law for years, without knowing it. One of Moliere’s characters is astonished to learn that he has been speaking prose all his life without knowing it; I have just had a very similar experience. My delight is just a little bit tempered by the conclusion of one of the articles, which says, in the nicest possible way, that those whose scholarship takes the “internal” approach are today considered fuddy-duddies. I prefer the term “fogies.”

But academic fashions change, and so long as law teachers spend most of their time teaching students how to do law, some degree of “internal” legal thinking is bound to remain in legal scholarship except, perhaps, at the “elite” law schools. That scholarship, by its very nature, will not concern itself primarily with questions like whether the doctrine of last clear chance is efficient. But it will, I hope, be done by people who have learned

enough economics to avoid elementary errors. Economic analysis of law is not an alternative to traditional legal thinking; it is a reason for sticking with that kind of system, which has served us well for centuries.

* * *

I’d like to close by commenting on a remark that Richard Epstein once made. He was talking about the Hart and Sacks casebook on the legal process, a book he doesn’t think highly of, and with good reason: Hart and Sacks is an uncritical endorsement of the view that legislators and judges are engaged in social engineering, and that the job of the lawyer is to help them along. The book opens with a commercial-law problem involving a shipment of cantaloupes that goes astray and spoils. Epstein observed that “the problem with Hart and Sacks is that they couldn’t think of a more-important social problem than who should pay for the spoiled cantaloupes.”

At first I thought this a devastating blow, but I have come to see that in this respect, at least, Hart and Sacks had a point: probably a point that they were not trying consciously to make, but a point nevertheless. A legal system can deal sensibly with the question of who should pay for the spoiled cantaloupes. It cannot deal sensibly with questions like “how should manufacturers design their products.” It cannot tell ophthalmologists when they should test for glaucoma, or tug-boat operators whether their boats should have radios (to take two of Kelley’s least-favorite cases). Hart and Sacks, for all their faults, had an admirably restrained view of the competence of courts. Economics, properly understood, teaches that they were right about that.

This article is the speech given by Alan Gunn on the occasion of his inauguration as the John N. Matthews Professor of Law, the University’s oldest endowed chair.

THE MORAL FOUNDATIONS OF PRIVATE LAW

What concepts make sense of private law? What explains the theories behind the methods by which people, private citizens, order their affairs? These questions formed the core of the NDLS Natural Law Institute's annual meeting in April 2002. With the generous support of the Olin Foundation, five scholars presented papers on various aspects of private law — including contract, tort and property law — and considered the reasons that the legal system enforces various agreements or upholds certain rights.

As the keynote speaker, James Gordley, Shannon Cecil Turner Professor of Jurisprudence at the University of California at Berkeley School of Law, delivered the keynote lecture, "The Moral Foundations of Private Law." His engaging lecture considered whether the writers in the Aristotelian tradition formulated a better view of private law than the current law-and-economics theories popular in American law schools today. Professor Gordley believes

"that there is a distinctively human life to be lived, and that there are virtues, and particularly virtues of prudence and distributive and commutative justice, that enable people to live it." He commented that the current law-and-economics view of private law, which holds as ultimate values preference satisfaction and economic efficiency, fails to capture the essence of what it means to be human. Rather, for the "late scholastics" of the 17th century, who based their work on an Aristotelian and Thomistic view of humans, "human happiness consists in living a distinctively

human life, a life which realizes, so far as possible, one's potential as a human being."

As social creatures, one aspect of reaching individual potential requires helping others to realize their potential as well. And achieving this potential requires not only virtues such as prudence, but also some "external things." In Professor Gordley's view, "A person should try to acquire what he needs and to help others to do so." He distinguished between distributive justice, which ensures that each person has the wealth needed to acquire what is needed, and commutative justice, which ensures that each person obtains what is needed without unfairly diminishing others' share of wealth. Consequently, the legal system should enforce private law as embodied, for example, in contracts and property rights, because these laws help individuals to acquire what is needed to achieve their full potential, while not unfairly depriving others in the process.

Four other scholars responded to Professor Gordley's ideas and delivered papers on various aspects of the keynote topic. NDLS Assistant Professor of Law A.J. Bellia '94 J.D. addressed "Promises, Trust and Contract Law," an

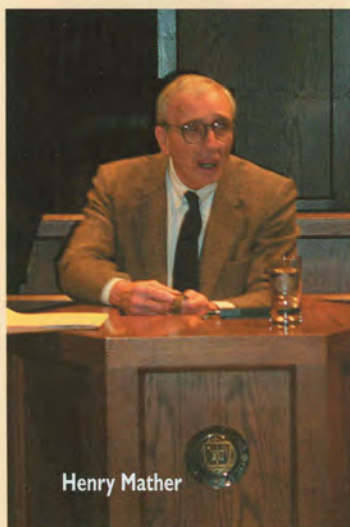
abridged version of which may be found at page 12 of this magazine. His talk focused on the relationship between the need for contract law "to render certain promises trustworthy, and the trust that otherwise inheres in personal relationships."

James Murphy, a professor at Dartmouth College, addressed "Equality in Exchange," in counterpoint to Professor Gordley's keynote address. He criticized Professor Gordley's interpretation of views of private law derived from the late scholastics, based primarily on the fact that Professor Gordley did not distinguish between "use value" and "exchange value" in his arguments. Professor Murphy refuted the idea that "justice in exchange requires that the performances exchanged be equal in 'value.'" NDLS Professor Gerard V. Bradley, who organized the conference, commented that the exchange of ideas between Professors Gordley and Murphy was "particularly animated, . . . owing to the fact that Professor Murphy criticized Professor Gordley at some points in his paper."

Henry Mather, a professor at the University of South Carolina School of Law, spoke on "Searching for the Moral Foundations of Contract Law." He described the search as "a Sisyphean quest, an uphill effort that is unending and never completely successful." Yet he argued that the search should continue, "because many of the rules in the positive law of contracts force judges and lawyers to make moral judgments, [yet] require the application of some rather vague moral norms" such as an interpretation of the term "good faith." He contended that "natural law theory offers the best approach to take in searching for moral ideas that are relevant to contracts," because it forces consideration of teleological purposes, provides general principles of justice and focuses on moral virtues to enforce in order to achieve the purposes of entering into contracts.

The concluding speaker, Scott Fitzgibbon, a professor at Boston College Law School, addressed "Marriage and the Good of Obligation." He considered the obligation aspects of marriage, and argued for the fundamental good of obligation in marriage. According to Professor Bradley, "The audience was quite involved in responding to Scott Fitzgibbon's very provocative paper on the marital covenant." Professor Bradley commented that the paper was "beautifully written, if not convincing to all present."

The proceedings of the conference will be available in an upcoming edition of the *AMERICAN JOURNAL OF JURISPRUDENCE*, a publication of the Notre Dame Law School's Natural Law Institute. For more information, please contact the managing editor, Aniela K. Berreth, Notre Dame Law School, P.O. Box R, Notre Dame, IN 46556-0780, or aberreth@earthlink.net.



Henry Mather



Scott Fitzgibbon



The Moral Foundations of Contract Law

A

ll students who entered the Notre Dame Law School between 1958 and 1991 studied contracts under the late Professor Edward J. Murphy. Professor

Murphy was a masterful teacher of contract law, beloved by his students. Professor Murphy also taught jurisprudence. Shortly before he died, he wrote the following in an essay on jurisprudence that stressed the importance of identifying the moral foundations of law:

[A]ll legal systems have a common structure. At the apex are the assumptions and basic values, which are, as it were, accepted on faith. From these are derived moral norms and ethical principles, and the law reflects this morality. For all law involves the imposition of someone's morality upon others. This, I submit, is how it works in every legal system and why it is absolutely crucial that the presuppositions of a legal order be identified.¹

Professor Murphy presents a timeless reminder that legal education must explore not merely what the law is, but also the foundation of moral principles upon which it is built.

What are the moral foundations upon which the Anglo-American law of contract is built? There are several theories that attempt to guide us in determining what the rules of contract law should be, each based on different presuppositions. One theory is the so-called "will" theory of contract. This theory argues that contract law should serve to enhance the freedom of autonomous individuals. If it is in the self-interest of an individual to make a binding commitment, that person should have the ability to do so. Indeed, this theory argues, having the option to make a binding commitment makes individuals more free than they would be if they did not have the option. The iconic work in this regard is CHARLES FRIED, *CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION* (1981).

This theory has been subject to several criticisms. One is that it is simply incomplete. There are many

things that an individual may not make a legally enforceable commitment to do — for example, to kill, steal, or unreasonably restrain trade. Why may such commitments not be made? Because we are not free to do anything we please. The value of a choice lies not in the fact that we have made a choice, but in the value of what is chosen. The law may enforce a promise to sell a car, but it will not enforce a promise to steal a car. The presupposition that contract law is strictly about enhancing freedom thus has its problems. Something must explain why contract law will support certain exercises of freedom, but not others. There must be higher values against which we measure exercises of freedom. James Gordley, who delivered this year's Natural Law Lecture at Notre Dame, spells out these criticisms in *Contract Law in the Aristotelian Tradition*, in *THE THEORY OF CONTRACT LAW* (Peter Benson ed. 2001).

A second theory of contract law is based on "welfare economics," a branch of so-called "law and economics." Welfare economic theorists argue that rules of contract law should be designed to maximize preferences in society. The claim is that if a person prefers to give something to another as revealed in a promise, the person is made better off; otherwise, the person would have had another preference. Enforcing contracts is economically efficient because if persons did not believe that assuming obligations would make them better off, they would not assume them. This theory is argued in Louis Kaplow and Steven Shavell, *Fairness v. Welfare*, 114 HARV. L. REV. 961 (2001).

It, too, has been subject to several criticisms. The primary one is that there is nothing self-evident about the presupposition that the exclusive goal of the legal order should be to "maximize preferences." Why should preferences to kill or enslave merit equal claim to satisfaction as preferences to sustain or liberate? There must be higher values against which we measure individual preferences. Professor Gordley has argued these criticisms as well.

So where does this leave us? In his book *NATURAL LAW AND NATURAL RIGHTS*, John Finnis, Biolchini Family Professor of Law at Notre Dame, suggests a third way. We should acknowledge up front that all individual choices and preferences — objectives, if you will — are not entitled to equal merit. The law should help individuals to achieve objectives that are consistent with authentic human good and flourishing. To pursue their own reasonable objectives, Professor Finnis explains, individuals must coordinate their actions with others and must cooperate with others. How else in today's society would individuals acquire the necessities of life? The making of promises is a way that individuals coordinate their activities with each other. The practice of promising, however, is an effective form of coordination only if promises are kept. Thus, rendering certain promises enforceable is a necessary means to enabling individuals to coordinate reasonable activities with each other.

It is as important today as ever that we understand and test the moral presuppositions of contract law. Technological advances in the way we transact business raise fundamental questions of contract law. For example, what are the terms of a contract? Many of us have made so-called "e-commerce" contracts. Questions

arise over what the terms of those contracts are. We have arranged, perhaps, an itinerary of flights on an airline web page at a given price, and clicked on a button labeled, "Purchase Flights" or "I Agree." What are the terms of this contract? Terms that were displayed on pages that we viewed? Terms on pages that we were instructed to view? Terms on pages that we should have viewed? Terms that we could not have seen until after we clicked "I Agree"?

Emerging technologies raise a more fundamental question still: What is a contract? Technologies are emerging to enable individuals to use electronic agents to arrange transactions for them. Imagine that, instead of personally visiting an airline web site and purchasing a flight, you use an electronic agent (a software program) that will visit several airline web sites and purchase for you a ticket at the best price within the dates and times that you have specified. Can electronic agents make contracts? If so, what are the terms of the contracts they make? Terms that the electronic agent "saw" or "could have seen" if properly programmed?

Questions such as these admit of no easy answers under common-law paradigms of contract formation. The answers may depend on what we take to be the moral presuppositions of contract law. Under a will theory of contract, a promise is not thought to be enforceable until it is conveyed. If I use an electronic agent to arrange a transaction with an unknown person who may also be using an electronic agent, the electronic agents may arrange a transaction before either of us is aware of the other's existence. Is a person bound to a promise before any other person is aware of it? Enforcement of transactions arranged by electronic agents may not be justified under a will theory of contract, because at the time electronic agents

interact, no promises have been made. Is this the way we should think about contract law?

Under welfare economic theories of contract law, enforcement of transactions arranged by electronic agents would be justified only if doing so operated to increase aggregate welfare in society. Empirical work would be necessary to determine what measurable effect, if any, enforcement of transactions arranged by electronic agents would have on the preferences of individuals in society. Is this how we should approach the question?

Under the theory of contract explained by John Finnis, individuals are bound to promises in order to protect their ability to pursue their reasonable objectives through reliable arrangements. It would seem under this theory that an individual who uses an electronic agent to arrange an exchange that another may perceive as obligatory could validly be held bound to it. For a detailed explanation of how different theories of contractual obligation inform this issue, see *Contracting with Electronic Agents*, 52 EMORY L. J. 1047 (2002).

Ed Murphy described lawmakers as primarily practitioners who exercise prudential judgment to adapt to changing circumstances. But he was careful to point out that any exercise of prudential judgment to address new circumstances must be consistent with correct moral presuppositions in order to be justified. At the Notre Dame Law School, we must strive not only to teach our students what the law is, but to provide a foundation for them to guide its development in an ever-changing world.

¹Edward J. Murphy, *The Sign of the Cross and Jurisprudence*, 69 NOTRE DAME L. REV. 1285, 1289 (1994).

Enron, Accounting and Lawyers

Even if you went to law school so you wouldn't have to deal with numbers or accounting, please read on. I know you're busy *and* you're tired of reading about Enron, but the corporation's collapse painfully illustrates the importance of financial accounting to all lawyers (and that means YOU!).

For years, accounting has been called "the language of business." Virtually every lawyer represents businesses, their owners or clients such as creditors and customers. Could you effectively practice law in China if you did not speak, or at least understand, Chinese? Especially after Enron, lawyers cannot competently represent clients if they do not grasp certain basic principles about accounting.

While accounting rules have become increasingly complex, and few law students or lawyers receive formal training in accounting, lawyers can watch financial statements and related disclosures for "red flags." Although the facts underlying Enron's collapse continue to come to light, for now all lawyers would do well to consider the following listing of the top 10 accounting lessons for lawyers from the scandal. (For extra credit, please give copies of this article to your 10 favorite lawyers.)

1. *Where's the beef?*

A complete set of financial statements includes an income statement, a balance sheet, a statement of cash flows, a statement of changes in owners' equity and the accompanying notes. The Enron crisis accelerated when the company's 2001 third-quarter earnings press release on October 16, 2001, provided only an income statement and not a balance sheet, statement of cash flows or statement of changes in shareholders' equity. (Remarkably, Enron failed to provide a balance sheet in its earnings releases dating back to 1996.) In response to questions from analysts, Enron's management later disclosed that Enron recorded a \$1.2 billion reduction in shareholders' equity. Because the income statement does not reflect this item, without a balance sheet or statement of changes in shareholders' equity, investors could not see a complete and accurate picture of Enron's financial condition and

operating results. In addition, the cash flow statement, possibly the lawyer's best friend in such situations, also would have alerted a careful reader to problems including the business's declining profitability. As Enron's collapse demonstrates, a missing financial statement may indicate that the enterprise seeks to hide disappointing results. Enron's eventual issuance of its missing balance sheet and the large write-down of shareholders' equity in the balance sheet triggered a loss of investor confidence, which caused Enron's share price to fall, accelerated debt repayment obligations and ultimately led to Enron's bankruptcy. The Enron scandal illustrates that *each* financial statement offers important information necessary to maintain investor and creditor confidence. A lawyer should ask probing questions any time an enterprise does not provide a complete set of financial statements, plus accompanying notes.

2. Old dogs, new tricks.

Generally accepted accounting principles (GAAP) often offer choices in financial accounting treatments. Although the “consistency principle” generally requires enterprises to use the same accounting principles to treat the same transactions similarly from year-to-year, this consistency requirement does not apply to new business activities. The business community refers to the “rules” governing the compilation of accounting data into financial statements and the accompanying notes as GAAP. GAAP, however, typically allows choices among permissible alternatives and almost always requires estimates and assumptions that affect the amounts shown in the financial statements, including the reported amounts of assets, liabilities, revenues and expenses. Especially in today’s world, business transactions and practices evolve more rapidly than rule-makers can promulgate accounting rules. For several reasons, therefore, GAAP does not provide a set of black-and-white rules that produce a single “bottom-line” number that a lawyer can use natural law to verify. Commonly referred to as “earnings management,” corporate managers can often use GAAP’s flexibility to show operating results in line with projections and expectations. Especially when an enterprise’s business changes (witness Enron’s evolution from a regional natural gas company to a global energy and commodities trader), lawyers should pay particular attention to the accounting principles an enterprise uses to account for transactions arising from the new business activities.



3. Looks aren't everything.

Pro forma reporting can distort an enterprise’s financial appearance. In its 2001 third-quarter earnings release, Enron reported “recurring” net income of \$393 million. Such *pro forma* reporting, which provides numbers “as if” certain (often undescribed) assumptions apply, does not follow GAAP. Even a simple analysis of the earnings release reveals that Enron actually suffered a \$618 million *net loss* under GAAP. By labeling \$1.01 billion as “one-time” or “nonrecurring” charges, mostly related to investment and asset write-downs and restructuring charges, the company turned its \$618 million net loss, purportedly using GAAP, into \$393 million in net income. Such write-downs and charges, however, would seem to represent normal business expenses and losses.

In an effort to focus investors on results from “normal” business operations, an enterprise may, knowingly or innocently, mislead investors. Initially, *pro forma* reporting can hide troubling financial results. For instance, in its 2000 fourth-quarter earnings release, Enron boasted a 25 percent increase in earnings per share (EPS) for the full

year 2000 over 1999, and a 32 percent increase in earnings per share for the 2000 fourth quarter over the 1999 fourth quarter. Buried in the last section of its earnings release, however, the company told a very different story. Enron disclosed that EPS for 2000, including nonrecurring charges, increased only from \$1.10 per share in 1999 to \$1.12 per share in 2000. These amounts translated to an increase of only 1.8 percent, compared to the 25 percent increase Enron reported at the beginning of its earnings release. Next, Enron disclosed that 2000 fourth quarter EPS, after nonrecurring charges, totaled \$0.05, a decrease of 83.8 percent from 1999 fourth quarter, in contrast to the 32 percent increase it reported at the beginning of the release. Interestingly, earlier in the quarter, Enron predicted that it would post a fourth quarter EPS of \$0.35. Excluding what it called nonrecurring items allowed Enron to exceed those expectations. If Enron had included the nonrecurring items, its results would have fallen below that prediction.

Second, an enterprise can use *pro forma* reporting to manage earnings. Earnings management typically tries to increase net income (or reduce the size of a loss) relative to what the business would otherwise report under GAAP. Enterprises, however, sometimes exclude nonrecurring gains in an effort to report lower net income, which translates to smaller profit-sharing payments to employees (or reduced income tax obligations). Lawyers drafting agreements that rely on earnings to set prices or to trigger payments, for example, should distinguish *pro forma* earnings from net income calculated in compliance with GAAP. Without distinguishing between the two benchmarks, parties to such an agreement can manipulate earnings by labeling some items as one-time or nonrecurring.



Lawyers should also carefully scrutinize financial statements, disclosures and transactions that involve an auditor who may have compromised independence, whether in fact or in appearance.

4. Sometimes, looks are everything.

Auditor independence matters — both in appearance and in fact. During the late 1990s, the largest public accounting firms increasingly provided non-audit services, such as consulting, internal audits and tax advising, often for the very enterprises they audited. During 2000, Enron paid \$52 million to Arthur Andersen — \$25 million for auditing services, and an additional \$27 million for non-auditing services — and ranked as Andersen's second largest client. In addition, an internal Andersen memo regarding the retention of Enron as an audit client refers to \$100 million a year in potential revenues from Enron.

Unlike lawyers who must zealously represent their clients, auditors' real responsibilities flow to the investing public, not to the enterprise that hires them. By evaluating an enterprise's financial statements and expressing an opinion as to whether those statements fairly present, in all material respects, the enterprise's financial position and operating results, an auditor seeks to help maintain investor and creditor confidence. To satisfy generally accepted auditing standards, an auditor must remain independent from any enterprises it audits — both in fact and in appearance. When non-audit fees comprise a substantial piece of an auditor's income from the audit client, those fees might tempt an auditor to overlook an enterprise's "aggressive" accounting simply to retain the client's non-audit business. At a minimum, substantial fees paid to auditors for non-audit related services call the appearance of independence into question. Even if the auditor continues, in fact, to exercise objective judgment, such relationships impair the appearance of independence. As the recent malaise that has afflicted the stock markets in the United States ably demonstrates, even the *perception* of lack of independence can shake investor confidence in the quality of financial statements. Because investors view a lack of independence, whether in appearance or in fact, with a critical eye, lawyers should encourage clients to preserve independence, both in fact and in appearance. Lawyers should also carefully scrutinize financial statements, disclosures and transactions that involve an auditor who may have compromised independence, whether in fact or in appearance.

5. With friends like these, . . .

Related-party transactions, especially those involving a special purpose entity (SPE), can distort an enterprise's apparent financial condition and operating results. Although related-party transactions may increase efficiency in transacting business, they may also allow an enterprise to manipulate its earnings by the way the enterprise sets prices or allocates expenses. Similarly, an enterprise may use SPEs for legitimate purposes, such as to limit exposure to risk in certain investments, such as credit card receivables or residential mortgages. An enterprise, the "sponsor," generally forms an SPE to transfer risks from such investments to outside investors.

Enron's transactions with its SPEs, including the so-called Chewco and LJM partnerships, highlight the dangers that can arise from related-party transactions. As a small, but relatively simple example, Enron sold an interest in a Polish company to LJM2 for \$30 million on December 21, 1999. While Enron intended to sell the interest to an unrelated party, the company could not find a buyer before the end of the year. The sale allowed Enron to record a gain of \$16 million on a transaction that Enron could not close with a third party. Remarkably, Enron later bought back LJM2's interest for \$31.9 million after it failed to find an outside buyer. Another deal allowed Enron to report a \$111 million gain on the transfer of an agreement with Blockbuster Video to deliver movies on demand, even after Enron realized that no real profits would ever flow from the underlying agreement.

The related-party transactions with SPEs, often occurring at the end of a fiscal period, allowed Enron to manipulate its reported earnings, to close deals at desired amounts quickly, to hide debt, and to conceal poor performing assets. Such transactions, which frequently occurred at the end

of a quarter or year, allowed Enron to meet its earnings expectations and to sustain its stock price. In fact, Enron sometimes even backdated such transactions to the previous period, in an effort to "manufacture" income for that period. Because Enron entered into those transactions with "friendly" related parties, the company could quickly and easily negotiate terms that allowed its earnings to appear on target. In addition, Enron used its earliest SPEs to obtain financing without showing the related liability on its balance sheet. Finally, Enron used SPEs to move poor-performing assets off of its balance sheet. By transferring such assets to SPEs, Enron could hide later declines in the value of those assets.

GAAP requires an enterprise to disclose information about material related-party transactions in the notes to the financial statements. In particular, an enterprise must disclose the nature of any relationships involved and also provide a description of the transactions for each period for which the financial statements present an income statement, including any information necessary to understand the transactions' effects on the financial statements; the dollar amounts of the transactions and the effects of any changes in the method used to establish terms when compared to those followed in the preceding period; and amounts due from or to related parties on each balance sheet date and the related terms governing those amounts. The disclosures should not imply that the transactions contained terms equivalent to those that would have prevailed in an arms'-length transaction unless management can substantiate that claim. Enron did disclose various related-party transactions in the notes to its financial statements, but not in any detail.

Lawyers who assist in related-party transactions should carefully examine the transactions and their

client's securities disclosures in an effort to assure that those disclosures accurately describe the transactions' true nature and effects on the financial statements. Likewise, lawyers negotiating other transactions or pursuing

other claims, especially when future or past earnings determine legal rights and obligations, should keep in mind that an enterprise can use related-party transactions to manipulate earnings.

6. *Details, details, details.*

Corporations should develop and adhere to internal controls (both administrative and accounting). Administrative controls generally refer to an enterprise's plan of organization, procedures and records that lead up to management's approval of transactions. Accounting controls, by comparison, describe the plans, procedures and records that an enterprise uses to safeguard assets and produce reliable financial information. Enron's administrative controls included policies designed to minimize conflicts of interest and to ensure that transactions fairly benefitted the company. Not only did recent events prove Enron's administrative controls inadequate, but those events also showed that Enron failed to follow the controls that it had put in place.

For example, when Enron's board approved a policy that allowed the company to enter into transactions with certain entities owned by Enron officers, the implementing procedures explicitly required management to use a "Deal Approval Sheet." By requiring certain disclosures and the approval of Enron's chief executive officer, the Deal Approval Sheets sought to ensure that the contractual provisions in such transactions would closely resemble the terms that would have materialized in an arms'-length transaction. In fact, the chief executive officer's signature does not appear on the sheets for several specific transactions. Moreover, the current absence of sheets for other transactions suggests that Enron did not complete any such document in those transactions.

As another example, Andrew Fastow, Enron's former chief financial officer, and, for a time, the general partner of the several partnerships that entered into transactions with Enron, reportedly earned more than \$30 million from his investments in those enterprises. Even though the board seemed to recognize the conflict of interest inherent in such related-party transactions, the board failed to require that Mr. Fastow report his profits from the partnerships to the company. Such disclosures almost certainly would have alerted the board to the possibility that the underlying transactions unfairly benefitted the related parties, to the detriment of Enron and its shareholders. Other items in this list document that Enron failed to implement adequate accounting controls.

Although top management bears the initial responsibility to develop, implement and, when necessary, revise adequate internal controls, overall oversight falls to the board of directors, who often rely on lawyers for advice. Internal controls work effectively only when those who bear responsibility for developing, implementing, and overseeing those controls stress the need to adhere to all policies and procedures and lead by adhering to those rules themselves. In recent years, the SEC has brought administrative actions and imposed so-called "tone-at-the-top liability" under the Foreign Corrupt Practices Act, which applies to all SEC registrants, including enterprises that engage only in domestic operations. Strong internal controls enhance the likelihood that the enterprise will engage in sound, beneficial transactions and reduce the chances that an enterprise will incur the enormous losses that can result from internal control failures.

7. *If it walks like a duck, . . .*

In recognizing revenue (and accounting generally), substance prevails over form. Under GAAP, an enterprise cannot recognize revenue until the business has substantially completed performance in a bona fide exchange transaction. If a transaction does not unconditionally transfer the risks that typically accompany a "sale," the enterprise may not recognize revenue.

Enron's announcement regarding a \$544 million after-tax charge to earnings in October 2001 revealed a serious flaw in its prior financial statements: Enron had improperly recognized revenue from transactions with its SPEs. In short, Enron recorded revenue after transferring certain assets to those SPEs, even though credit guarantees, promises to protect the purchasers from any loss from decline in value or buyback agreements caused the company to retain the risks of ownership even after the transfers. As a result, Enron had not truly "earned" the revenue it reported.

Enron's "sham" transactions resemble schemes that ultimately led to the demise of Drexel Burnham and the imprisonment of Michael Milken, that appeared so frequently during the savings and loan crisis, and that accompany most financial accounting frauds today. Milken ultimately pled guilty to charges involving "parking," whereby Drexel Burnham purchased securities from third parties with the understanding that the investment banking firm would quickly resell the securities back to the third parties at a fixed price. Similarly, the Federal Home Loan Bank Board took control of Lincoln Savings and Loan Association in 1989 after discovering, among other things, that Lincoln or its affiliates had recognized income on sales of real estate even though the funds for the down payments had emanated from Lincoln itself. In substance, Lincoln or its affiliates had retained the risks of ownership and could not recognize revenue from the sales.

The issue of substance over form applies not only to managers and accountants, but to attorneys as well. The litigation that follows from financial frauds can impose enormous financial costs. In addition, a lawyer who fails to investigate, or perhaps spot, a "red flag," such as a side agreement or guarantee, can face staggering personal liability for malpractice. Whether drafting, negotiating or interpreting contractual provisions that refer to "net income" or "earnings," performing "due diligence" to determine whether a particular transaction will further a client's best interests or rendering a "true sale" opinion regarding whether a transferor that retains some involvement with the transferred asset (or the transferee) has surrendered economic control over the asset to justify treating the transaction as a sale for financial accounting purposes, substance over form requires an attorney to look beyond the form of a transaction and to try to identify any arrangements that may affect the transaction's economic realities. In particular, understanding the motivations for a transaction offers an important clue to the transaction's substance. Enron often transferred assets to SPEs to hide losses or to remove liabilities from its balance sheet. Although most clients or adversaries will not expressly state such desires, such effects should also alert attorneys to issues of substance over form.

Again, inadequate disclosure can subject enterprises to liability and lawyers to malpractice claims.

8. *Promises, promises.*

Any time an enterprise guarantees the indebtedness of another in material amounts, the enterprise must disclose the nature and amount of the guarantees in the notes to the financial statements. When Enron's SPEs sought credit, the lenders often required that Enron guarantee the debt. On several occasions, Enron guaranteed amounts that various SPEs borrowed by promising to pay cash or to issue additional common shares to repay the debt if the market price of Enron's common shares dropped under a set amount or if Enron's bond rating fell below investment grade. While the notes to Enron's financial statements disclosed guarantees of the indebtedness of others, Enron did not mention that its potential liability on those guarantees, which shared common debt repayment triggers, totaled \$4 billion. When material, GAAP specifically requires an enterprise to disclose the nature and amount of guarantees of the indebtedness of others. Again, inadequate disclosure can subject enterprises to liability and lawyers to malpractice claims.



Because provisions in many of Enron's credit agreements required the company to maintain an investment grade credit rating, the downgrades triggered debt repayment obligations, which accelerated Enron's bankruptcy.



9. *If it sounds too good to be true, . . .*

An enterprise cannot recognize income from issuing its own shares and generally should not record a net increase in shareholders' equity when it issues stock in exchange for a note receivable. At the risk of oversimplifying, Enron used related-party SPEs to hedge, or to protect itself from declines in the market value of, certain investments that Enron used current market prices to value on its books. In these arrangements, Enron transferred its own stock to the SPEs in exchange for a note or cash. In addition, Enron guaranteed, directly or indirectly, the SPE's value. The SPEs in turn hedged the underlying investments, using the transferred Enron stock as the principal source of payment for the hedges. The value of the underlying investments decreased, but the hedges allowed Enron to recognize a corresponding increase, resulting in a wash. The SPEs, however, could reimburse Enron for any decline in value of the investments only as long as the market price of Enron's common shares remained stable or increased. When

the value of Enron's common shares fell, Enron had to issue additional shares pursuant to its agreements with the SPEs and the related guarantees. These additional shares reduced Enron's stock value, which triggered additional guarantees. In the interim, Enron recognized about \$500 million in revenues from the hedges, which had really arisen from the issuance of the company's own shares. GAAP, however, does not allow an enterprise to record gains from the increase in the value of its capital stock on its income statement.

As previously mentioned in the first item, Enron announced on October 16, 2001, that it had recorded a \$1.2 billion reduction in shareholders' equity, arising, in large part, from an accounting error. When Enron issued its common shares to several SPEs in exchange for notes receivable, Enron recorded the notes receivable as assets, thereby overstating shareholders' equity by \$1 billion. Although GAAP usually allows an enterprise to record notes receivable as assets, a different rule applies when an enterprise issues stock in exchange for the notes.

GAAP states that an enterprise should treat any notes received in payment for the enterprise's stock as an offset to shareholders' equity. Only when the obligor pays the note can the enterprise record an increase in shareholders' equity for the amount actually paid.

Many credit agreements allow the lender to accelerate the repayment of the debt if the borrower's debt-to-shareholders' equity ratio exceeds a certain level or if the borrower fails to maintain a certain credit rating. Although Enron's \$1.2 billion reduction in shareholders' equity did not itself trigger any debt repayment obligations, investment ratings companies immediately placed Enron on review for downgrade. Soon after, the ratings companies downgraded Enron's credit rating to below investment grade. Because provisions in many of Enron's credit agreements required the company to maintain an investment grade credit rating, the downgrades triggered debt repayment obligations, which accelerated Enron's bankruptcy.



... Enron officers and employees often either ignored the lawyers' advice, or changed the transactions just enough to get around the lawyers' particular concerns.

10. *When the going gets tough, . . .*

Lawyers' duties to their clients include an obligation to object when a client proposes or uses questionable accounting policies or practices. In his well-publicized opinion in the *Lincoln Savings and Loan* case, Judge Sporkin asked where the lawyers were when Lincoln consummated various improper transactions, wondering why they did not attempt to prevent those transactions or disassociate themselves

from them. Now, more than 10 years later, we hear similar questions directed to Enron's lawyers. While Enron's lawyers, both in-house and outside counsel, did question some practices, Enron officers and employees often either ignored the lawyers' advice, or changed the transactions just enough to get around the lawyers' particular concerns. In some cases, Enron's lawyers apparently helped to complete the very transactions they questioned.

The attorney-client privilege prevents lawyers from disclosing client confidences. That privilege, however, does not prevent lawyers from discussing concerns with their clients, attempting to persuade their clients to choose another course of action, going up the "corporate ladder" or even withdrawing from representing their clients if a client declines to follow the lawyer's advice. When Enron's lawyers questioned Enron's practices, they voiced their concerns to Enron's in-house lawyers and its management, but not to the board of directors or the audit committee. Blind deference to accountants and auditors seems unwise and dangerous. We'll never know, but without hearing the concerns of Enron's lawyers, the board of directors or the audit committee arguably could not see an objective picture of those transactions and Enron's financial accounting practices.

Standing up takes courage. Let's hope that Enron's collapse encourages more lawyers to watch for accounting "red flags" and to respond courageously when they see them.

*THE AUTHOR GRATEFULLY ACKNOWLEDGES THE INVALUABLE ASSISTANCE OF SHANNON BENBOW, A MEMBER OF THE CLASS OF 2003, AND HELPFUL COMMENTS FROM DAVID R. HERWITZ, TERRY LLOYD AND MARK P. TELLOYAN. FOR ANOTHER AND MORE DETAILED LISTING OF THE TOP 10 THINGS THAT EVERY LAWYER SHOULD KNOW ABOUT ACCOUNTING, SEE DAVID R. HERWITZ AND MATTHEW J. BARRETT, *MATERIALS ON ACCOUNTING FOR LAWYERS VII-X* (3D ED. 2001).

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RULE OF LAW: FUTURE CHURCH-STATE BATTLES LOOM

BY RICHARD W. GARNETT, ASSOCIATE PROFESSOR OF LAW

In constitutional law, as in comedy, timing is everything.

[In the last week of June], just before the Supreme Court ruled on the constitutionality of Cleveland's school-choice program, an appellate court in California shocked even the Senate with its decision that the Pledge of Allegiance violates the First Amendment. In light of the Supreme Court's determination that the Ohio voucher program does not "establish" religion, one would be right to wonder about the law governing church-state relations. How could the same few words of the Constitution require both these results?

Although politicians from across the spectrum denounced the Pledge ruling as wrongheaded, leading precedents provide some support for the result. So the senators' outrage might have been better directed at those Supreme Court precedents than at two appellate judges in California.

The reaction to *Zelman v. Simmons-Harris*, the school-choice case, was, in some quarters, nearly as overwrought as the outcry over the Pledge decision. Editorial pages and activists echoed Justice John Paul Stevens' dissent, and warned that yet another crucial brick had been removed from the traditional "wall of separation" between church and state.

In fact, as Justice Sandra Day O'Connor said in her concurring opinion, the decision was neither innovative nor radical. Chief Justice William Rehnquist's majority opinion, confirming that the Constitution permits communities to experiment with choice-based education reforms, was simply the reasonable application of a line of cases dealing with educational-assistance programs.

In what will be regarded as a landmark of his distinguished tenure on the court, the Chief Justice emphasized themes that he first sounded in 1983, in *Mueller v. Allen*: The Ohio school-choice program is "entirely neutral with respect to religion," he observed, and it permits its beneficiaries "to exercise genuine choice among options public and private." In other words, the program accords equal treatment, not preference, to religious schools and the parents who choose them. Such equal treatment of religion is not, in the education-reform context, an "establishment" of religion.

Judge Ferdinand Fernandez's dissent in the [Ninth Circuit's] Pledge case advanced similar arguments. There is nothing unconstitutional about the recitation of the Pledge in school, he reasoned, because the purpose of the Establishment Clause is not "to drive religious expression out of public thought," but rather to guarantee "neutrality," and "avoid discrimination."

The dissenters in *Zelman*, led by Justices Stephen Breyer and David Souter, insisted that the Constitution demands strict separation, not equal treatment of religion, as the means of achieving "social concord." Justice Stevens, writing separately, sounded similar concerns, asserting that the ruling would "increase the risk of religious strife and weaken the foundation of our democracy." But these arguments are unfounded. The Court was on solid legal ground in rejecting a theory that would have had the effect of kicking thousands of inner-city children out of the school-choice lifeboat.

Of course, even the needs of the disadvantaged would not excuse a constitutional violation. But there is no violation here. Ohio's legislators have elected to subsidize education, not religion; it is parents, not the state, who decide where that education should take place. Such a decision no more violates the First Amendment than does an undergraduate's decision to apply federally subsidized student loans toward tuition at Notre Dame or Brigham Young University.

Do these two cases tell us anything about the next wave of church-state disputes? They do. The next round of battles will center on the legal distinction between the "sphere of government" and "civil society." The Establishment Clause, remember, speaks to what the government does — it is government that may not "establish" religion. But the First Amendment does nothing to limit, and in fact protects, the right of citizens to proclaim religious beliefs in the public square.

The separation of church and state does not mean that religious expression is constitutionally condemned to a privatized ghetto; it simply means that it is not the business of government. But, as the Pledge case and other recent decisions involving religious after-school clubs remind us, the line between state-sponsored belief and private expression in the public forum is not always easy to identify.

We can also expect cases dealing with the autonomy of religious institutions, and involving conflicts between the nondiscrimination norms that we have imposed on government and the doctrines of faith. How should a constitutional democracy, committed to equal treatment, religious freedom, and free expression, respond to groups that practice what government regards as discrimination?

Justice Souter's dissent foreshadowed these conflicts when he warned that religious schools which accept "public" funds in the form of vouchers should not be surprised when those funds come with secularizing regulatory strings attached. The next education-reform fight, then, will not be about whether the Constitution allows religious schools to participate in voucher plans, but about whether they will be made to compromise their mission if they do.

Recall the recent Boy Scouts case, where a divided Court affirmed the right of a private group to determine its own values, and to hire and fire on the basis of those values. Remember, also, that many of President Bush's faith-based initiatives stalled in Congress over the question whether religious social-service providers would be required to tone down their evangelization.

These are the kinds of church-state battles likely to preoccupy the courts in the next few years.

This article appeared originally in the July 1, 2002, edition of the WALL STREET JOURNAL and is reprinted with permission.

NEWS FROM THE CENTER FOR CIVIL AND HUMAN RIGHTS

■ The Center for Civil and Human Rights hosted a colloquium with **Douglass Cassel**, a visiting scholar in the center and associate professor of law at Northwestern University Law School, on "Why Transitional Justice Erodes — and Should Erode — State Sovereignty," April 18, 2002.

■ The CCHR has received a \$60,000 grant from the Open Society Institute for the 2002 calendar year to support two visiting fellows who will examine issues of human geography and the internal war in Colombia, as well as issues of justice and reconciliation as they relate to punishment and forgiveness in the Colombian war.

■ **Ada Verloren '90 LL.M.**, assistant to the director in the Center for Civil and Human Rights, has left NDLS to become the project manager for the Advanced Studies Center of the International Institute at the University of Michigan. During the last few years at NDLS, Ada strengthened the center's alumni community through a variety of outreach efforts including twice yearly publishing the center's newsletter, *Notre Dame Human Rights Advocate*. She also taught courses in the center's LL.M. program, and represented NDLS and the center at various human-rights conferences around the world.

■ **Ali Qazilbash '97 LL.M.**, a current J.S.D. candidate in the center, commented on the situation in his native Pakistan, in the wake of the kidnapping and murder of *WALL STREET JOURNAL* reporter Daniel Pearl and the attack on a Christian church in that country, in an article in the May 14, 2002, edition of the *SOUTH BEND TRIBUNE*. While condemning the recent violence, Mr. Qazilbash believes that Pakistan is in a good position to benefit from the increased attention the nation has received from the world. He believes that if President Musharraf can root out Islamic fundamentalism and can improve law and order, the nation's image will improve and that, in turn, likely will lead to economic development and better opportunities for health care and education.



2001-02 Participants in the LL.M. and J.S.D. Programs. Back row: Miguel Angel de los Santos, Professor Juan Méndez, Alaa Kaoud, Dr. Ada Verloren, Andrés Sánchez Thorin, Sean O'Brien, Bernard Duhaime, James Verdier, Sonia Boulos, Alpha Fall. Front row: Marilyn Imus, Luisa Khitarishvili, Edita Kusari, Clare Hamill, Babafemi Akinrinade, Remzij Istrefi, Helena Olea.

FACULTY notes

Faculty biographies and contact information may be found on line at www.nd.edu/~ndlaw/faculty/faculty.html.

■ **JOSEPH P. BAUER** participated in a panel discussion on "What Do We Mean by Harm to Competition" at the Second Annual Midwest Antitrust Colloquium sponsored by the Institute for Consumer Antitrust Studies at the Loyola University Chicago School of Law, April 5, 2002. He presented "The 'Antitrust Injury' Doctrine: Adding Insult to 'Injury'?" at the 50th annual spring meeting of the ABA's Section of Antitrust Law, April 24-26, 2002, in Washington, D.C. He also presented "A Primer on Antitrust" at a program titled "Research Workshop and Conference on Marketing Competitive Conduct and Antitrust Policy" sponsored by the University's Mendoza College of Business, the American Antitrust Institute and the JOURNAL OF PUBLIC POLICY AND MARKETING, held at Notre Dame, May 2-4, 2002.

■ **GEOFFREY J. BENNETT** published *Criminal Procedure and Sentencing* in ALL ENGLAND LAW REPORTS ANNUAL REVIEW 2001.

■ **G. ROBERT BLAKEY '57, '60 J.D.** participated in a discussion on the April 24, 2002, edition of NPR's "Talk of the Nation" regarding the recent crisis of sexual abuse in the Catholic Church. His comments concerned the difference between crime and sin and how the church responds to allegations of abuse in those various contexts. He also commented on the issue in two separate articles in the DALLAS MORNING NEWS: *Criminal Guilt or Just Bad Decisions?* on April 27, 2002, and

Criminal Wrongdoing of Bishops Would be Difficult to Prove, Experts Say on May 2, 2002; in an article titled *Church's Legal Move* in the May 7, 2002, edition of USA TODAY; in an article titled *RICO A Long Shot in Catholic Church Sex Abuse Case* in the April 2, 2002, editions of the BROWARD (FLORIDA) DAILY BUSINESS REVIEW, the MIAMI (FLORIDA) DAILY BUSINESS REVIEW and the LEGAL INTELLIGENCER, and the May 13, 2002, edition of the PALM BEACH (FLORIDA) DAILY BUSINESS REVIEW; and in an article titled *More Dioceses Face Grand Jury Inquiries After Bishops' Meeting in Dallas* in the July 12, 2002, edition of THE NEW YORK TIMES.

Also on April 24, NPR's "Morning Edition" featured his comments on the propriety of using RICO against protestors at abortion clinics. The U.S. Supreme Court decided in mid-April to hear the case, brought in 1986 by the National Organization for Women against Joseph Scheidler and others, to decide whether the law had been applied correctly to the facts of the case, and whether the RICO statutes should allow judges to grant injunctions against protestors, forbidding them from further similar actions. His commentary on the subject has been picked up in the May 20, 2002, edition of National Review, in its "The Week" section.

Professor Blakey also commented on the use of RICO to prosecute street gangs in an article titled *RICO Being Used to Fight LI Gangs* in the May 8, 2002, edition of NEWSDAY.

■ **PAOLO CAROZZA**, during his recent research sabbatical, completed

articles on *Human Rights and Subsidiarity, from the European Union to International Law*, to be published in the AMERICAN JOURNAL OF INTERNATIONAL LAW, *The Charter of Fundamental Rights, Between the Union and the Member States*, and *Retrieving a Latin American Tradition of the Idea of Human Rights*. In April, he delivered the Yves Simon Memorial Lecture at the University of Chicago on "Of Conquest, Constitutions and Catholics: Retrieving a Latin American Tradition of the Idea of Human Rights"; an article of the same title is forthcoming in HUMAN RIGHTS QUARTERLY. He also commented on tort litigation issues surrounding the current abuse crisis in the Catholic Church in an article titled *Scandals in the Church: The Liability* in the April 23, 2002, edition of THE NEW YORK TIMES.

■ **RICHARD W. GARNETT** published *Common Schools and the Common Good: Reflections on the School-Choice Debate* in volume 75 of ST. JOHN'S LAW REVIEW and *Sectarian Reflections on Lawyers' Ethics and Death Row Volunteers* in volume 77 of the NOTRE DAME LAW REVIEW. He delivered a talk entitled "Law and the Humanity of the Death Row Inmate" at the Third Annual Collegiate Youth Conference, hosted by Notre Dame and sponsored by Notre Dame Right to Life, April 12, 2002.

He commented on the recently completed 2001-02 term of the U.S. Supreme Court, focusing particularly on the decisions involving the death penalty and school vouchers, in a number of articles including *Top Court*

Backs Vouchers in the June 28, 2002, edition of the CHICAGO TRIBUNE; *Longtime Justices Hold Sway in Opposite Camps* in the June 30, 2002, edition of the Los Angeles Times; *Watershed Cases Cap High Court Term* in the July 1, 2002, edition of the CHICAGO TRIBUNE; and *Yes to Vouchers* in the August 16, 2002, edition of COMMONWEAL.

■ **JIMMY GURULÉ** published *United States Opposition to the 1998 Rome Statute Establishing an International Criminal Court: Is the Court's Jurisdiction Truly Complementary to National Criminal Jurisdictions?* in volume 35 of the CORNELL INTERNATIONAL LAW JOURNAL.

He gave the commencement address at the spring graduation of his alma mater, the University of Utah, May 26, 2002.

■ **M. CATHLEEN KAVENY** commented on the moral issues surrounding the current abuse scandal in the Catholic Church in a number of articles including: *For the Faithful, Trying to Reconcile Morality and Scandal* in the March 28, 2002, edition of THE NEW YORK TIMES; *James Burnett Looks at How the Catholic Church Might Salvage Its Tainted Reputation* in the April 22, 2002, edition of PR WEEK; and *Bishop Says Mistakes Made Handling Cases* in the May 19, 2002, edition of the HOUSTON CHRONICLE.

She participated in a conference on June 13, 2002, sponsored by the Hartford (Connecticut) County Bar Association's Ethics Study Group to discuss her recent article, *Billable Hours in Ordinary Time*.

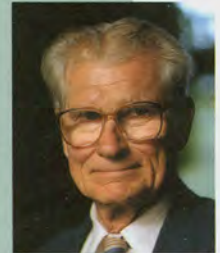
■ **DONALD P. KOMMERS** published *Die freie Meinungsäußerung in der Rechtsprechung des Bundesverfassungsgerichts und des Supreme Court* in TRADITION UND WELTOFFENHEIT DES RECHTS: FESTSCHRIFT FÜR HELMUT

PROFESSOR EMERITUS BRODEN HONORED

Professor Emeritus Thomas F. Broden '49 J.D. has been honored by the United Religious Community (URC) of St. Joseph County, Indiana, with a "Hearts Afire" award during the URC's 30-year anniversary celebration in May. Professor Broden co-founded the organization in 1972 and served on its homelessness task force, out of which the South Bend Center for the Homeless originated. The interfaith organization has served as a forum through which all religious groups that perform similar work in the community could combine their efforts to achieve the same goals.

Additionally, the SOUTH BEND TRIBUNE recognized Professor Broden as one of its "Heroes Among Us" in an article titled *Grassroots Efforts Cultivate Homeless Shelter* on May 12, 2002. The article focuses on his work in the community, particularly his role in founding the South Bend Center for the Homeless.

A member of the NDLS faculty since 1950, Professor Broden has long been a champion of causes to help the disadvantaged, both locally and nationally. In 1970, he helped to found the University's Institute for Urban Studies, which he also directed for 20 years. An integral force behind the creation of the U.S. Civil Rights Commission, he served as counsel to the U.S. House of Representatives Judiciary Committee from 1955 to 1957. In the St. Joseph County area, he has served with the South Bend Fair Employment Practices Commission, the Coordinating Committee for Civil Rights of South Bend, the Urban Coalition and the Legal Services Program of Northern Indiana.



LAW LIBRARY GROWS WITH ADDITION OF CIVIL AND HUMAN RIGHTS LIBRARIAN

Roger Jacobs has appointed Laurel Cochrane to the position of visiting associate librarian in the Kresge Law Library's Technical Services Department. As the library's new human-rights librarian, Ms. Cochrane will devote much of her time to organizing and making accessible materials acquired and generated by the Center for Civil and Human Rights Transitional Justice Project. Working under the direction of the Head of Technical Services Joe Thomas, and in close liaison with Project Manager Javier Mariezcurrena, Ms. Cochrane will integrate the project's materials into existing library holdings in human rights. She will also participate in other cataloging activities to increase the effectiveness of LINK, the library's online catalog.

Ms. Cochrane earned her B.A. in English at Indiana University, where she was named Outstanding English Student of the Year in 1979. She earned her masters degree in Library Science from I.U. in 1988. She has had a long and distinguished career as a cataloging librarian, primarily at the St. Joseph County Public Library here in South Bend. She brings expertise in the use of the law library's integrated library system, Innopac, and is a member of national library and cataloging organizations.

ROGER JACOBS RECOGNIZED FOR SERVICE

Roger Jacobs was recognized as a "Hero Among Us" by the SOUTH BEND TRIBUNE in an article titled *St. Vincent de Paul Volunteer Humble* in the paper's May 6, 2002, edition. A member of the Notre Dame Law School faculty and director of the Kresge Law Library for 17 years, Mr. Jacobs has served the St. Vincent de Paul Society for more than a decade as the local conference (neighborhood) president, although he and his wife Alice have spent many more years among the ranks of tireless volunteers who help the needy in the South Bend area.



STEINBERGER, edited by Hans-Joachim Cremer (Springer 2002). He spoke at the celebration in honor of Helmut Steinberger, professor emeritus of law at Heidelberg University and former justice of Germany's Federal Constitutional Court, January 26, 2002, in Heidelberg, Germany.

■ **GARTH MEINTJES '91 LL.M.**, associate director of the Center for Civil and Human Rights, served as an instructor at the 2002 Legislative Drafting Institute sponsored by the Public Law Center at Tulane University School of Law.

■ **JUAN MÉNDEZ** continues with a very active speaking schedule. In January, he lectured on "Terrorism and International Law," as part of the special undergraduate course on "Problems of Contemporary Violence: Terrorism, War and Peace after September 11." He also commented on the case of John Walker Lindh and the prisoners at Guantanamo Bay, for WSBT radio in South Bend.

In February, he attended a seminar on "Auditing the Quality of Democracy," sponsored by the United Nations Development Program (UNDP) and the *Proyecto Estado de la Nación*, a Costa Rican organization, in San Jose, Costa Rica. He gave two presentations to an interdisciplinary graduate seminar on human rights at Emory Law School in Atlanta concerning the inter-American system of human rights protection and the incorporation of international norms into domestic jurisdiction. He also served as the keynote speaker at an event on police brutality at the University of Chicago Law School, where he discussed an international law perspective on forced confessions. In Tallahassee, Florida, he gave a talk at Florida State University's Human Rights Institute as part of a series on human rights and terrorism after September 11.

In March, at a meeting of experts on human rights and democracy at the offices of the Open Society Institute in New York, Professor Méndez commented on a proposal to create a world-wide institute to coordinate legal approaches to human rights protection. Later that month, as part of as part of his duties as special rapporteur on the Rights of Migrant Workers and their Families within the Organization of American States Inter-American Commission on

Human Rights, he conducted a fact-finding mission to Guatemala that included extensive interviews at the capital and visits to two control sites on the Guatemala-Mexico border. He presented an advance of his annual report to the Committee on Political and Juridical Affairs of the Permanent Council of the OAS in Washington, D.C., several weeks later, in April.

Professor Méndez also continues to make significant written contributions to the field of human rights. In

NEW FACULTY FOR 2002-03

Dean Patricia A. O'Hara has announced that the Law School will add two faculty members in 2002-03.

Robert L. Jones Jr. '80 is the new director of the Notre Dame Legal Aid Clinic. He graduated from Notre Dame in 1980 with a B.A., *summa cum laude*, in the Program of Liberal Studies and French, and earned his J.D., *cum laude*, from Harvard Law School in 1984. He is a member of Phi Beta Kappa and, while in law school, served as managing editor of the *HARVARD LAW REVIEW* and as chair of Students for Public Interest Law. Following graduation from law school, Mr. Jones clerked for Honorable Milton Shadur on the U.S. District Court for the Northern District of Illinois for a year.

Since 1985, he has been staff counsel and transportation project director of Business and Professional People for the Public Interest, a Chicago-based public interest law and policy center, founded in 1969 to engage in litigation, regulatory advocacy and policy analysis on issues relating principally to the environment, fair housing and public-utilities regulation. He also served as a lecturer at the Loyola University of Chicago School of Law from 1985 to 1999, teaching in a variety of areas including appellate advocacy, professional responsibility, legal writing and moot court.

Mr. Jones and his wife Lucille (Maloney) Jones '80 are the parents of three children.

Amy Coney Barrett '97 J.D. has joined the NDLS faculty as an assistant professor of law. She earned her B.A. in English literature, *magna cum laude*, from Rhodes College in 1994, where she was also elected to Phi Beta Kappa and, among other honors, was chosen by the faculty as the most outstanding graduate in the college's English department. She earned her J.D., *summa cum laude*, from NDLS in 1997, where she was a Kiley Fellow, was awarded the Hoynes Prize, the Law School's highest honor, and served as executive editor of the *NOTRE DAME LAW REVIEW*.

After graduating from NDLS, she clerked for Honorable Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit from 1997 to 1998, and then for Honorable Antonin Scalia, associate justice of the United States Supreme Court, in the 1998-99 term. From 1999 to 2001, she worked as an associate for Miller, Cassidy, Larroca & Lewin (now Baker Botts) in Washington, D.C., where she focused on both trial and appellate matters in federal and state courts involving the substantive areas of general civil litigation, white-collar crime and religious liberty. In spring 2001, she joined the faculty of the George Washington University Law School as an adjunct teaching a seminar on constitutional law and the Supreme Court. For the 2001-02 academic year at GWU, she served as visiting associate professor of law and John M. Olin Fellow in Law. Her teaching interests include civil procedure, evidence and federal courts.

Ms. Barrett and her husband Jesse Barrett '96, '99 J.D. are the parents of one daughter.



VISITING FACULTY FOR 2002-03

Dean Patricia A. O'Hara has announced the following visiting faculty for 2002-03. These legal scholars will add richness and curricular diversity to NDLS.

Reverend John J. Coughlin, O.F.M., an associate professor of law at St. John's University School of Law, will teach in the spring semester. Father Coughlin was ordained a Roman Catholic priest in the Franciscan order in 1983. He earned his B.A. degree from Niagara University in 1977, an M.A. from Columbia University in 1982, a master's degree in theology from Princeton University in 1984, a J.D. from Harvard Law School in 1987, and his canon law license and doctorate in canon law, *summa cum laude*, from the Pontifical Gregorian University in Rome, Italy, in 1990 and 1994, respectively. His doctoral dissertation focused on a comparative study of the administration of the tribunals of the Roma Curia and the U.S. federal court system.

A member of the New York bar, Father Coughlin clerked for Honorable Francis X. Altamari on the U.S. Court of Appeals for the Second Circuit. He has served as general counsel of St. Bonaventure University in Olean, New York, from 1990 to 1993. From 1993 to 1996, he served as legal and canonical counsel to the Holy Name Province of Franciscan Friars in New York. Upon appointment by John Cardinal O'Connor of New York, Father Coughlin served as professor of canon law and spiritual director at St. Joseph's Seminary in New York from 1994 to 2001. He has also served the Archdiocese of New York as a judge in the Appeals Tribunal, vicar of canonical and legal aspects of health care, and as a member of the boards of several Catholic hospitals and educational institutions.

He taught as an adjunct at St. John's from 1996 to 1998, as a research professor in 1998-99 and, in 1999, joined the faculty as an assistant professor. In his first year as a full-time faculty member, St. John's law students selected him as "Professor of the Year." He teaches in the areas of administrative law, canon law, family law and professional responsibility, and will teach courses on the canon law of marriage and professional responsibility at NDLS in the spring 2003 semester.

Raymond J. Gallagher returns for the fall 2002 semester as a visiting professor of law, teaching a course in sports law. Professor Gallagher earned his J.D. from Fordham Law School, where he served on the staff of the *FORDHAM LAW REVIEW*. He practiced law at White & Case in New York City, and has taught law at Catholic University of America, Widener University, Villanova University and Georgetown University.

Thomas O. Patrick is the director of the Dispute Resolution Skills Institute at West Virginia University College of Law, where he also teaches legal research and writing. He earned his A.B. from Glenville State College in 1971, two master's degrees, one in counseling and guidance and the other in English education, from West Virginia University in 1975 and 1981, respectively, and his J.D. from W.V.U. in 1985. He will serve as a visiting associate professor of law, teaching a section of Legal Writing I in the fall 2002 semester, and a section of Legal Writing II - Moot Court and a course in alternative dispute resolution or negotiation in the spring 2003 semester.

Thomas E. Plank is an associate professor of law at University of Tennessee, Knoxville, where he teaches courses in debtor-creditor law, commercial law, property law and aspects of representing enterprises. He earned his A.B. in 1968 from Princeton University, and his J.D. in 1974 from the University of Maryland. He was a partner in the Washington, D.C., office of Kutak Rock and twice served as assistant attorney general for the state of Maryland. As a visiting professor of law for the academic year, he will teach courses on bankruptcy and secured transactions in the fall semester, and a course in payment systems, as well as a seminar in securitization — a capstone commercial law course — in the spring.

Michael I. Swygert is a professor of law at Stetson University College of Law in St. Petersburg, Florida. He earned his A.B., *cum laude*, from Valparaiso University in 1965, and his J.D., *summa cum laude*, from Valparaiso University School of Law in 1967, where he graduated first in his class and served as editor-in-chief of the very first volume of the *VALPARAISO UNIVERSITY LAW REVIEW*. He then earned an LL.M. from Yale Law School in 1968. He engaged in private practice in the Chicago, Illinois, office of Hopkins, Sutter, Owen, Mulroy, Wentz & Davis, before beginning his teaching career, which has included positions at Valparaiso, DePaul and Stetson. As a visiting professor of law for the academic year, he will teach Contracts I and a course in advanced jurisprudence in the fall 2002 semester, and Contracts II and a course in law and economics in the spring 2003 semester.

2002, the IIHR issued *VERDAD Y JUSTICIA*, in tribute to the late Emilio F. Mignone, co-edited by Professor Méndez, Javier Mariezcurrena and Martín Abregu, and containing several articles in Spanish and English on problems of truth, justice and reconciliation in transitions to democracy. The tribute includes an article by Professor Méndez on *La justicia penal internacional, la paz y la reconciliación nacional*. He authored an essay in Spanish on citizens' security and human rights, *Reflexiones sobre la Consolidación Democrática y las garantías ciudadanas en América Latina*, published in *EL DESAFÍO DEMOCRÁTICO DE MÉXICO: SEGURIDAD Y ESTADO DE DERECHO* (Arturo Alvarado and Sigrid Arzt eds., El Colegio de México-Centro de Estudios Sociológicos 2001). His essay, *El derecho a la verdad frente a las graves violaciones a los derechos humanos*, originally published in Argentina in 1997, has been reprinted in *PERU 1980-2000: EL RETO DE LA VERDAD Y LA JUSTICIA* (APRODEH, Lima, 2002). And an article he wrote with **GASTON CHILLIER '00 LL.M.**, *La acción del Congreso y las Obligaciones Internacionales de la Argentina en Materia de Derechos Humanos*, has been published in *EL CASO BUSSI: EL VOTO POPULAR Y LAS VIOLACIONES A LOS DERECHOS HUMANOS*, a book edited by Senator Jorge P. Busti and Dr. Juan Carlos Vega regarding the decision by the Argentinian congress to deny recognition to an elected representative on account of his role as an army general during the "dirty war" in the 1970s.

■ **PATTI J. OGDEN** participated in Collegium's 2002 Annual Colloquy in mid-June at Fairfield University in Fairfield, Connecticut. The Collegium summer institute developed in response to the long-standing concern among educators and church leaders for the future prospects of the religious identity of the many Catholic

colleges and universities in the United States and Canada. Some Catholic institutions have found it increasingly difficult to uphold their faith-based mission statements and identify, recruit and develop new faculty who can both articulate and expand the vision of the Catholic intellectual tradition.

Collegium, a national organization of 50 Catholic colleges and universities including Notre Dame, was founded in 1992 to respond to these challenges. The annual Collegium summer seminars provide a collegial environment in which participants from diverse backgrounds, faiths and disciplines can discuss the sources and implications of a Christian academic vocation.

■ **LUCY SALSBUURY PAYNE '88 J.D.** has left her position as research librarian in the Kresge Law Library, which she held for 14 years since her graduation from NDLS, to pursue other activities. In July, she moved to Albuquerque, New Mexico, where she will look for an exciting new opportunity that best suits her talents and interests. In the meantime, she will finish a book that she has been writing, study for the February administration of the New Mexico bar exam and, as an adjunct, teach a course called "Isolated Supreme Court — Gender, Race, Religion, Class and Justice for All?" in the interdisciplinary honors program at the University of New Mexico.

■ **TERESA GODWIN PHELPS '73, '75 M.A., '80 Ph.D.** has been elected chair of the University's Committee on Women Faculty and Students.

She presented two writing workshops at the annual meeting of the Council for Appellate Staff Attorneys in Flagstaff, Arizona, on July 20, 2002.

■ **CHARLES RICE** spoke at a conference on "Global Family Life" sponsored by the Population Research

Institute in Santa Clara, California, in April 2002. He spoke at the May 15 meeting of Michiana Second Amendment Advocates, discussing a recent case in Texas in which a court ruled that the right to bear arms, as protected by the Second Amendment, is an individual right and not a collective right.

■ **HONORABLE KENNETH F. RIPPLE** presided at the final argument of the Annual Orison S. Marden Moot Court Competition at New York University School of Law, April 16, 2002.

He was featured in an article titled *7th Circuit Making Its Mark on Law* in the April 27, 2002, edition of the CHICAGO DAILY LAW BULLETIN, which discussed the strong intellectual nature of the circuit owing, in part, to the fact that he and several other judges remain involved in academia as professors in law schools in the circuit.

He was honored at University President's end-of-the-year dinner for 25 years of service on the Law School faculty.

■ **THOMAS L. SHAFFER '61 J.D.** has published *Review Essay on John Howard Yoder* in volume 16 of the JOURNAL OF LAW AND RELIGION. The article reviews Stanley Hauerwas *et al.*, *THE WISDOM OF THE CROSS* (Eerdmans 1999) and John Howard Yoder, *FOR THE NATIONS* (Eerdmans 1997). He also published: *The Irony of Lawyers: Justice in America* in volume 70 of the FORDHAM LAW REVIEW; and *Using the Pervasive Method of Teaching Legal Ethics in a Property Course* in volume 46 of the ST. LOUIS UNIVERSITY LAW JOURNAL.

■ **DINAH SHELTON** spent the spring 2002 semester teaching in London at the Notre Dame London Law Programme. In addition to her course work, she lectured at the Universities of Nottingham, Cardiff, Essex and London. She also

NEW ADJUNCTS JOIN FACULTY

The following practitioners will serve as adjunct assistant professors of law during the 2002-03 academic year:

Ralph E. DeJong '82 J.D. earned his B.A. from Calvin College in Grand Rapids, Michigan, in 1979, and his J.D., *magna cum laude*, from NDLS in 1982. A partner in the Chicago, Illinois, office of Gardner, Carton & Douglas, he will teach a course on employment-benefits law in the spring 2002 semester.

John N. Gallo '83 graduated from Notre Dame with a B.A., *summa cum laude*, in the Program of Liberal Studies in 1983, and earned his J.D., *cum laude*, from Harvard Law School in 1986. A partner in the Chicago, Illinois, office of Sidley, Austin, Brown & Wood since 1996, he will teach a course on complex criminal litigation in the fall 2002 semester.

Jeanine M. Gozdecki '85, '92 J.D. earned her B.A., *cum laude*, from Notre Dame in 1985, and her J.D. from NDLS in 1992. A partner in the South Bend office of Barnes & Thornburg since 2001, she will teach a section of the deposition skills course in the both the fall 2002 and spring 2003 semesters.

Honorable John M. Marnocha earned his B.A. in 1978 from Indiana University South Bend in 1978 and his J.D. from Valparaiso University in 1982. A judge in St. Joseph (County, Indiana) Superior Court since 1999, he will teach a section of the trial advocacy course in the spring 2003 semester.

participated in an expert seminar on reparations for victims of gross human rights violations, held March 10, 2002, at the University of Antwerp, Belgium.

Her recent publications include *Protecting Human Rights in a Globalized World*, the lead article in 25 BOSTON COLLEGE INTERNATIONAL & COMPARATIVE LAW REVIEW 1 (2002); *With All Deliberate Speed: Case Management in the European Court of*

MATTHEW J. BARRETT PROMOTED TO PROFESSOR

Matthew J. Barrett '82, '85 J.D. has been promoted from associate professor to professor of law. A member of the NDLS faculty since 1990, Professor Barrett teaches business-related courses such as business associations, federal taxation and accounting for lawyers. A member of the Ohio bar since 1985, and a certified public accountant since 1987, he clerked for the Honorable Cornelia G. Kennedy in the U.S. Court of Appeals for the Sixth Circuit (1985-86), and worked as an associate at the Columbus, Ohio, law firm of Vorys, Sater, Seymour & Pease (1986-90).

In 1997, with Harvard Law Professor David Herwitz, Professor Barrett published the second edition of the leading casebook on accounting for lawyers, *MATERIALS ON ACCOUNTING FOR LAWYERS*, along with the related teacher's manual. He published an update for the second edition in 1998, and bound supplements in 1999 and 2000.



Professor Barrett has served numerous professional organizations including as recording secretary of the taxation committee of the Ohio State Bar Association, editorial board member of the *JOURNAL OF LIMITED LIABILITY COMPANIES*, chair and member of the AALS Committee on Audit and Association Investment Policy, and member of the ABA Section on Business Law, Committee on Law and Accounting. He also serves on a number of University and Law School committees. In addition, he assists the Notre Dame Legal Aid Clinic with tax and not-for-profit corporation issues, volunteers with the Tax Assistance Program sponsored by the University's Mendoza

College of Business and advises the South Bend Center for the Homeless on various tax and corporate matters.

In 1998, the Student Bar Association awarded Professor Barrett the Captain William O. McLean Community Spirit Award for exceptional contributions to community life, and in 2001, the graduating class named him the Law School's Distinguished Teacher for the 2000-01 academic year.

Human Rights and the United States Federal Courts, a lead article in the *HUMAN RIGHTS LAW JOURNAL*; and completion of the third edition of *HUMAN RIGHTS IN A NUTSHELL* with Judge Thomas Buergenthal and David Stewart.

■ **STEVEN D. SMITH** has joined the faculty at the University of San Diego Law School as a chaired professor. The move will allow him to pursue his interests in analytical philosophy in collaboration with several professors whom he has known for some time who focus on that particular field of research.

■ **J. ERIC SMITHBURN** delivered a lecture and paper titled "Probation Conditions and Constitutional Rights: Where is the Line?" at the National Council of Juvenile and Family Court Judges (NCJFCJ) conference on

"Dispositional Alternatives and Juvenile Probation" in Tucson, Arizona, in May. The NCJFCJ has also published on interactive compact disk Professor Smithburn's monograph on evidentiary issues in cases involving termination of parental rights. The CD has been sent to several thousand judges in the United States and abroad, as well as to law schools for use in evidence, family-law and juvenile-law courses.

■ **JAY TIDMARSH '79** commented on class-action issues in a suit filed against MasterCard International and Visa U.S.A. in an article titled *Credit Card Giants Charge Class Action in High Court* in the April 15, 2002, edition of the *NATIONAL LAW JOURNAL*. The case is currently before the U.S. Supreme Court to resolve a conflict among the federal appellate courts on the standards for class certification.

JOSEPH W. THOMAS PROMOTED TO LIBRARIAN

Joseph W. Thomas, has been promoted to librarian and head of technical services in the Kresge Law Library. A member of the library faculty since 1989, he began his career at NDLS as a catalog librarian. He became assistant head of technical services in 1992 and head of technical services in 1994. He earned his B.A. from the University of Kentucky in 1980 and his M.A.L.S. from the University of Chicago in 1983. He is involved with numerous committees of regional and national professional organizations, and often publishes articles and gives presentations on cataloging legal materials, electronic serials and collection management.



JUAN MÉNDEZ FEATURED IN BOOK

FIGHTING FOR PUBLIC JUSTICE, by Wesley J. Smith with a foreword by Erin Brockovich, (Washington and Oakland: Trial Lawyers for Public Justice) includes a feature on Professor Juan Méndez, director of the Center for Civil and Human Rights. The book comprises stories about finalists for and winners of the Trial Lawyers for Public Justice "Trial Lawyers of the Year Award" since 1983. Professor Méndez and several co-counsel were chosen as finalists in 1989, for their work in *Rapaport v. Suarez Mason*, *Martinez Baca v. Suarez Mason* and *Forti v. Suarez Mason*, three cases brought under the Alien Tort Claims Act in California federal courts against a general who arrived clandestinely in the United States after escaping justice in Argentina.



■ **Gail Peshel**, director of career services, presented "Internal Marketing: How to Make the Case for Career Services" at the National Association for Law Placement's (NALP) 2002 Annual Educational Conference on April 10, 2002. She also co-authored an article titled *What Make Employer Web Sites Work?* published in the May 2002 edition of NALP's BULLETIN.

■ Congratulations to **Marilyn Imus**, assistant program manager in the Center for Civil and Human Rights, and to **Deb Fox**, acquisitions assistant in the Kresge Law Library, who celebrated 15 years of service to Notre Dame in May 2002.

■ Congratulations to Law School Registrar **Anne Hamilton**, who received the Captain William O. McLean Award from the Class of

2002. The award honors one member of the faculty, administration or staff and one student who has done the most to improve the lives of law students over the course of the year. Ms. Hamilton shared this year's honor with 3L Tamona Bright of Kileen, Texas.

■ **Julia B. Meister '95 J.D.**, director of student services at NDLS since early 2001, has returned to southern Ohio to the active practice of law. During her tenure here, she helped the Law School regularize a number of functions related to law student services and student activities including organizing important events such as first-year orientation and graduation, managing budgets for over two dozen student organizations and serving as a counselor to students.

■ **Cathy Pieronek '84, '95 J.D.**, formerly director of law school relations, presented "Title IX and Intercollegiate Athletics: Myth vs. Reality" at the University's Reunion 2002 enrichment program, June 7, 2002, and at the annual meeting of the National Association of College and University Attorneys, June 26, 2002, in Boston.

■ Best wishes to **Nancy Catanzarite**, senior staff assistant, who retired from NDLS in June after 12 years of service as a faculty secretary. She and her husband Roy plan to travel and to spend lots of time with their children and grandchildren.



Find it online ♦♦♦

Contact information for individual faculty members is available on the Law School's web site at www.law.nd.edu/faculty/faculty.html. The site provides hot links with each faculty member's e-mail address, as well as regular mail and telephone information.

S T U D E N T N O T E S

Law School Graduation Highlights

Despite unseasonably cold weather with periods of rain, the Law School managed to hold its diploma ceremony outdoors as part of the University's 157th commencement exercises on May 20, 2002, and conferred degrees on 199 graduates. Margaret Munalula earned her J.S.D. degree through the Center for Civil and Human Rights, graduating *magna cum laude* in January 2002, for her dissertation titled "The Legitimacy of Sovereign Debt: A Case Study of Zambia." Twelve students earned LL.M. degrees — one earning *magna cum laude* honors and one *cum laude* honors — from the London program in international and comparative law, with seven traveling to Notre Dame to receive their degrees personally. Fourteen students earned LL.M. degrees in international human rights law through the Center for Civil and Human Rights. Sean B. O'Brien '95, '01 J.D., '02 LL.M. of South Bend, Indiana, and Bernard Duhaime of St. Laurent, Quebec, Canada, graduated *summa cum laude*, while five others graduated *magna cum laude* and four graduated *cum laude*.

The University conferred the Juris Doctor (J.D.) Degree on 173 graduates. Seven students — Leon F. DeJulius Jr. of Davenport, Iowa, Stephanie Sue Harting of Dayton, Ohio, Michael John Hayes of Cambridge City, Indiana, Julie Hoffman of LaOtto, Indiana, Brian Lester of Scottsdale, Arizona, Stephanie Niehaus of Westlake, Ohio,

and Ryan Van Den Elzen of Stevens Point, Wisconsin — graduated *summa cum laude* (GPA over 3.8); Ms. Harting earned the Law School's highest academic honor, the Hoynes Prize, while Mr. DeJulius earned the Dean Joseph O'Meara Award and Ms. Hoffman earned the Farabaugh Prize. Nineteen students graduated *magna cum laude* (with a GPA over 3.6) and 34 graduated *cum laude* (with a GPA over 3.4).

On Saturday, the Law School hosted the graduates, their families and friends, and the faculty, administration and staff at a picnic at the Sacred Heart Parish Center, north of St. Joseph's lake on the north edge of campus. Later that evening, the Law School community participated in the University's annual Baccalaureate Mass in the south dome of the Joyce Center.



The unusually cold Sunday — with a high temperature of 52 degrees — was punctuated by rain showers and threatening skies all day. The day-long celebration began with the prayer service and hooding ceremony at the Basilica of the Sacred Heart, presided over by University President Reverend Edward A. Malloy,

C.S.C. Reverend John H. Pearson, C.S.C., director of the Law School's Thomas J. White Center on Law and Government, conducted the solemn ceremony. Afterward, the graduates made their way next door to the Main Building for a class photo on the building steps.

After box lunches for all in the Law School, students and their guests participated in the University's Commencement ceremonies. Tim Russert, Washington bureau chief for NBC News and moderator of "Meet the



Press" served as principal speaker and received an honorary doctor of laws degree. His address, which focused on the need to take the values learned at Notre Dame and make the world a better place, is available on line at www.nd.edu/~prinfo/news/2002/5-19y.html. Reverend John P. Smyth '57, executive director of Maryville Academy in Des Plaines, Illinois, received the

2002 Laetare Medal, the most prestigious award given to American Catholics, and spoke of the destruction visited on the nation's children by heroin, crack and cocaine.

In addition to Mr. Russert, the University conferred honorary doctor of laws degrees on Lord John Browne of Madingley, group chief executive of BP Amoco; Alfred C. DeCraene Jr., retired chair and chief executive officer of Texaco, Inc.; Walter Cardinal Kasper, president of the Pontifical Commission for Promoting Christian Unity; Helen Lieberman, founder and executive director of the South African non-profit organization Ikamva Labantu; Honorable Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit; and Dr. William P. Sexton, retiring

vice president for university relations at Notre Dame. The University awarded an honorary doctor of science degree on Helen Rhoda Quinn, physicist at the Stanford Linear Accelerator Center, and an honorary doctor of engineering degree on Patrick Toole, retired senior vice president of IBM Corporation. Honorary doctor of fine arts recipients included Margaret Bent, musicologist and senior research fellow at All Souls College of Oxford University; Sydney Pollack, motion picture actor, director and producer; and Cicely Tyson, Emmy Award-winning actress, activist and humanitarian.

Despite the touch-and-go weather and warnings from local meteorologists of the probability of pop-up showers in the late afternoon, the diploma conferral ceremony took place in front of the reflecting pool by the Hesburgh Library. Student Bar Association president Andy Mayle of Fremont, Ohio, introduced Professor Emeritus of Law Charles E. Rice, the recipient of the 2002 Law School Teaching Award, who encouraged Notre Dame Law Students to put their education to good use, and to work to protect unborn children. Dean O'Hara, assisted by Associate Dean Rougeau conferred the diplomas and gave her charge to the class,

which focused on the special responsibilities NDLS graduates have to be that different kind of lawyer who makes the profession and society better.

The day concluded with a reception for the graduates and their families at South Dining Hall, providing one last opportunity for the graduates, their families and the faculty to say good-bye.



Graduation Honors

The following special awards were announced at the Law School's diploma conferral ceremony:

Arthur Abel Memorial Writing Competition Award

Leon F. DeJulius Jr. of Davenport, Iowa

Edward F. Barrett Award

for outstanding achievement in the art of trial advocacy

Andrew M. Hicks of Fair Oaks, Indiana

Nathan Burkan Memorial Award

for the best paper in copyright

Ryan L. Van Den Elzen of Stevens Point, Wisconsin

Joseph Ciralo Memorial Award

to a student who has overcome obstacles to succeed in Law School

Tamona L. Bright of Kileen, Texas

Farabaugh Prize

for high scholarship in law

Julie A. Hoffman of LaOtto, Indiana

Colonel William J. Hoynes Award

the Law School's highest honor, for outstanding scholarship, application, deportment and achievement

Stephanie S. Harting of Dayton, Ohio

International Academy of Trial Lawyers Award

for distinguished achievement in the art of advocacy

Andrew C. Baum of Bexley, Ohio
Bernard P. Costello Jr. of Greensburg, Pennsylvania

Jessup International Moot Court Award

for excellence in advocacy

Adrian T. Delmont of Beemer, Nebraska

William T. Kirby Award

for excellence in legal writing

Kevin E. Barton of Lake Oswego, Oregon
Sunil M. Bhuta of Los Angeles, California

Dean Konop Legal Aid Award

for outstanding service in the Legal Aid and Defender Association

Tamona L. Bright of Kileen, Texas
Mark E. Farrell of Dayton, Ohio

John E. Krupnick Award

for excellence in the art of trial advocacy

Jacqueline Carroll of Grand Rapids, Michigan
Thomas E. Day of Ludlow, Massachusetts

David T. Link Award

for outstanding service in the field of social justice

Myra L. McKenzie of Slidell, Louisiana
Matthew T. Nelson of Constantine, Michigan

Judge Joseph E. Mahoney Award

for demonstrating outstanding leadership qualities

Michelle Chelvam of Houston, Texas
Michael C. O'Shaughnessy of Wichita, Kansas

Arthur A. May Award

to a member of the Barristers team who demonstrates a commitment to professional ethical standards and exhibits excellence in trial advocacy

Philip A. Siculo of Hopkinton, Massachusetts

Captain William O. McLean Law School Community Citizenship Award

to a member of the Law School community who has done the most to contribute to the lives of students at the Law School

Tamona L. Bright of Kileen, Texas

Dean Joseph O'Meara Award

for outstanding academic achievement

Leon F. DeJulius Jr. of Davenport, Iowa

National Association of Women Lawyers Award

for scholarship, motivation and contribution to the advancement of women in society

Jennifer R. Byrns of South Bend, Indiana

National Clinical Legal Education Association Award

for an outstanding student in the Notre Dame Legal Aid Clinic

Kristina M. Campbell of Concord, California

A. Harold Weber Moot Court Award

for outstanding achievement in the art of oral argument

Timothy F. McCurdy of Cumberland, Iowa

A. Harold Weber Writing Award

for excellence in essay writing

Paul A. Wilhelm of Ann Arbor, Michigan

SBA and Students Honored for Community Service



On April 11, 2002, at the annual Dismas House awards banquet, members of the SBA's com-

munity service committee accepted the "Loving Spoon Award" on behalf of all NDLS students who participated in Dismas House programs this year. Dismas House is a live-in community of recently released prisoners, Notre Dame students and others who work together to reintegrate the former inmates into society. Law students cooked dinner for the residents on selected Tuesday nights throughout



the academic year. Committee chair Myra McKenzie, a 3L from Slidell, Louisiana, SBA vice president Nicole Borda, a 3L from Mechanicsburg, Pennsylvania, and 1Ls Jim Murray of Huron, Ohio, and Brian Josias of Fort Lauderdale, Florida, represented the dozens of students who participated throughout the year.

Research Librarian Lucy Payne '88 J.D., who accompanied the students to the event, noted, "I was so proud of our law students, whose volunteerism in the South Bend community enabled the Notre Dame Law School to have a presence at this social justice event. A big thank you to Myra, Nicole, Jim and Brian for their leadership and to all our many law students whose service enriches our community!"

HLSA Presents 2002 Olivarez Award



On April 5, 2002, the Notre Dame Hispanic Law Students Association presented the 2002 Graciela Olivarez Award to Professor Margaret Montoya from the University of New Mexico Law School. This award honors Graciela Olivarez '70 J.D., the first Latina graduate in the first class to admit women at Notre Dame Law School. Each year, the students present this award to a Latina or Latino who demonstrates leadership and significantly contributes to the legal community. The students nominated Professor Montoya for her inspiring mentorship to law students across the country, her outstanding scholarship and her dedication to affirmative action.

HLSA students noticed Professor Montoya's remarkable work when one member attended the fifth annual National Latino Law Student Conference at Boalt Hall Law School in the fall of 2001. About 50 members of the legal education community, including administrators, faculty and students, attended the award ceremony to meet the dynamic critical-race-theory scholar. Professor Montoya's articles dealing with ethnicity, gender, language and race are widely published in books and law reviews nationally.

Professor Montoya left an indelible mark on her audience as she related the story of her life. She was the first Latina female accepted at Harvard Law School. She then became the first

woman to receive the Harvard University Frederick Sheldon Traveling Scholarship, an expense-paid year of travel around the world. She currently teaches a traditional legal curriculum, but challenges her students to examine elements that are often overlooked in their casebooks, such as race and gender, within a legal context. She also shared her innovative course work entitled "Lawyering for Social Change," which is an opportunity for law students to create cross-disciplinary,



Steve Marques, Julissa Robles, Professor Montoya, Barb Szweda and Angel Pineda.

law-based materials, involving the most significant topics for the Latino community. These materials are accessed by middle school teachers and employed in their classrooms.

Professor Montoya's discourse focused on empowering students of color to transform the law. In part, she focused on the importance of affirmative action both for individuals as well as for institutions. She believes that students benefit from the opportunity to develop academic goals, while institutions benefit from a richly diverse scholarship that elicits new perspec-

tives from faculty and students. She explained the significance of an affirmative action case recently decided by the Sixth Circuit, *Grutter v. Bollinger*, and the role of the University of Michigan student-interveners. This case could press the Supreme Court to explore the constitutionality of considering race as an element in admissions decisions.

Following the award ceremony, students and faculty hosted Professor Montoya at an intimate lunch at the Morris Inn.

Associate Dean Vincent D. Rougeau joined the students in asking questions and listening to the stories of a life-long advocate. Professor Montoya made a commitment to continue her relationship with the Notre Dame students and will exchange ideas on clinical programs and research projects. The students' enthusiastic comments following the event revealed a desire to

incorporate her discussion topics into classroom discourse. Her presence at Notre Dame was a blessing that opened the students' minds and created an appetite to promote social change through legal mechanisms. Professor Montoya's message was clear: Knowledge of the law affords great power, and the way in which law school forms students influences how students will use that power once they graduate.

— Julissa Robles, Class of 2004
Lennox, California

29th Annual Black Law Students of Notre Dame Alumni Weekend

The 29th Annual Black Law Students of Notre Dame Alumni Weekend was held on April 5-7 2002.

This is the longest running black law students alumni weekend in the country. Our theme this year was "Uniting Leaders Today to Plan a Successful Tomorrow." With the support of the Law School Admissions Office, this year's weekend included 10 admitted African-American applicants and their guests, who enjoyed the opportunity to meet current students and alumni. The investment paid off. We are happy to report that 10 African-American applicants have committed to attending NDLS this fall!

This year's alumni weekend consisted of a panel discussion entitled "Uniting the Young Leaders of Tomorrow: An Action Plan for Tomorrow's Leaders," featuring distinguished panelists such as Marcus Ellison '01 J.D. of the St. Joseph County (Indiana)



Prosecutor's Office, a distinguished visiting professor of law, Angela M. Kupenda, and former state senator and practicing attorney Cleo Washington. Saturday started the day with an alumni-student basketball game. Next we held a round-table discussion focusing on issues relating to minority recruitment and retention at Notre Dame Law School; we also discussed the Williams-Lark Memorial Fellowship, a scholarship program for entering African-American students that BLSND has started, and the BLSND/BLSA name change.

R. Wilson '76, '79 J.D. of the U.S. Court of Appeals for the Eleventh Circuit and a member of the Law School Advisory Council, received our distinguished Alvin C. McKenna Alumnus of the Year Award.

The one thing that amazes me about this alumni weekend is how



much the students need to see alumni here. The comments I heard most from the prospective students was

"It's great to see the alumni here," and "I wish I could meet more alumni." It means so much to both current and prospective students to see successful alumni like Judge Wilson come back and show us what we can become and share with us how he got there. It says a great deal about NDLS when alumni come back year after year to take part in the alumni weekend and support current and future students. The Notre Dame family is alive and well and the BLSND annual alumni weekend is a big part of that family tradition. The annual alumni weekend is BLSND's way of saying thanks to all of our alumni and all the people in the law school who support us throughout the year. We want to thank all those who attended for making this year's alumni weekend a tremendous success.

— Michele Johnson, Class of 2003
BLSND 2002 Weekend Chair
Tampa, Florida

NDLS 3Ls HONORED AS ASSISTANT RECTORS

Three NDLS third-year students received honors from the University's Office of Student Affairs for their work as assistant rectors in the undergraduate residence halls. Sean Monterastelli of Blue Springs, Missouri, was selected as men's assistant rector of the year for his work in Keenan Hall. Kate Whalen of Lincoln, Rhode Island, was selected as women's assistant rector of the year for her work in Howard Hall. Peyton Berg of Kalispell, Montana, earned a special recognition award for leadership for his work in St. Edward's Hall.

WLF AUCTION PROCEEDS SET NEW RECORDS



The Ninth Annual Women's Legal Forum Auction, held April 12, 2002, at the Alumni/Senior Club on campus, raised a record \$6,000 to support YWCA of South Bend, and to fund a summer fellowship for a student who will be engaging in public-interest work focused on providing legal assistance to women. Nicole Homan, a 2L from Muskegon, Michigan, organized the event. Items auctioned included meals with various faculty members and their families, a signed copy of the RICO statute, ND football tickets and a car wash by a faculty member.



PILF Dunk Tank Supports Service

PILF's first-ever "dunk tank," held April 29 on the lawn in front of the Law School, raised \$476 to support students engaged in low- or non-paying public service jobs during the summer. Thanks to Research Librarian Lucy Payne '88 J.D. — the only faculty member actually to get dunked — and to Assistant Professor Rick Garnett and Career Services Counselor Alexandria Lewis, who provided generous matching contributions to avoid the tank. Students who braved the water — and their classmates' throwing arms — on the cold April afternoon included 1Ls J.J. Gonzales of Beaverton, Oregon, Jason Linster of Aurora, Illinois, and Jim Murray of Huron, Ohio, as well as incoming SBA president Bryan Wise of Orange, New Jersey.

Students Elect Leaders for 2002-03

Congratulations to the newly elected SBA officers for 2002-03:

President: 3L Bryan Wise of Notre Dame, Indiana
Vice President: 2L Susan Brichler of Phoenix, Arizona
Secretary: 3L Larry Ward of Johnstown, Pennsylvania
Treasurer: 3L Adam Witmer of Bellefonte, Pennsylvania

Class of 2003 SBA Representatives:

Amy Averill of Richmond, Virginia
 Casey Dick of Buchanan, Michigan
 Rebecca McCurdy of Grosse Pointe Park, Michigan

Class of 2004 SBA Representatives:

Carah Helwig of Peoria, Illinois
 Michael Hom of Setauket, New York
 LaWanda Spearman of Detroit, Michigan

Class of 2003 Honor Council Representatives:

Jane Dall of Ferdinand, Indiana
 Kate Meacham of Pittsburgh, Pennsylvania
 Mike O'Connor of San Bruno, California

Class of 2004 Honor Council Representatives:

J.J. Gonzales of Beaverton, Oregon
 Ken Kleppel of Concord Township, Ohio
 Ben Whipple of Grand Rapids, Michigan

The incoming Class of 2005 will elect SBA representatives and Honor Council members in September.

I R I S H L A W



SPORTS REPORT

3Ls Earn Softball Championship for 2002

The annual faculty-student softball tournament was held Saturday, April 20, at Stepan Fields. As reported by Rick Garnett, the faculty team was "crippled by injuries and (excused) absences of such stalwarts as Joe Bauer, John Nagle, Lucy Payne, Dwight King, Warren Rees and, of course, John Finnis." Nevertheless, "the faculty team managed to avoid humiliation in the opening game, losing to the first-year team 11-2." In his opinion, the final score makes the game sound worse than it was, and even characterized it as a "moral victory."

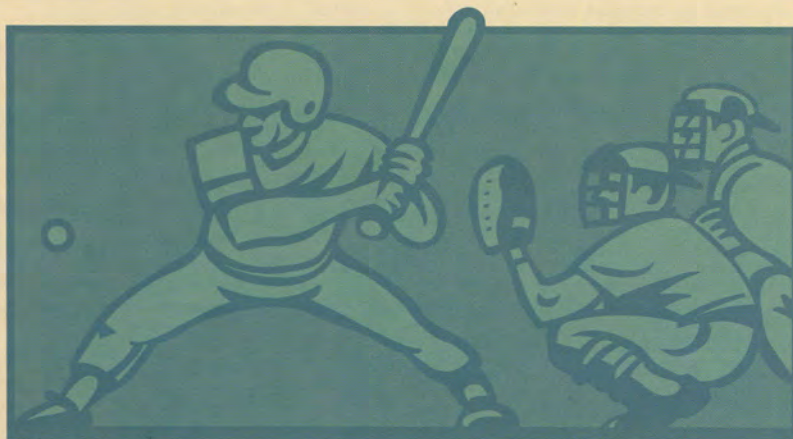
The faculty team came through in the second game against the 2L team, however. As Professor Garnett reports, "Mike 'The Taxman' Kirsch teamed up with fellow audit-meister Matt 'The Bat' Barrett to lead the faculty team to a 6-5 win over the second years. Granted, the game was shortened for various reasons, and we did have one student, Eric Kniffin, on the roster, but a win is a win. In one inning, Mike single-handedly made every put-out, and generally put on what can only be described as a fielding clinic."

"As usual, we received rock-solid performances from Patti Ogden, Roger Jacobs and Dan Manier. Lefty Brian 'Spouse of Lisa' Casey was flawless at second base, notwithstanding the lack of a left-handed glove. And Julian 'Shades' Velasco joined his fellow newbie Mike with some impressive offensive production."

Greg Nielsen, the SBA's athletic commissioner, provided the balance of the event reporting. "As a 2L, I would love to be able to tell a tale of glory about our team, but unfortunately, that wasn't the case," as the 2Ls lost to both the 3Ls and the faculty team. Ultimately, the 3Ls prevailed as champions for 2002 by beating the 1Ls in the second round.

Law Students Bring Home University Softball Championship

Continuing on a successful run for the Law School in the 2001-02 Grad/Faculty/Staff athletic league, a Law School team comprised mostly of 3Ls defeated last year's softball champs from the Department of Chemistry to bring home the softball crown for 2001-02 in addition to the flag-football and basketball championships. "Quan" team members included 3Ls Peyton Berg of Kalispell, Montana, and T.C. Couhig of Painesville, Ohio, as co-captains, and 3Ls Pat Dahl of Winnetka, Illinois, David Krupski of Ponce Inlet, Florida, Kevin Lohman of Northridge, California, Fred Marczyk of Egg Harbor City, New Jersey, Ethan McKinney of Mishawaka, Indiana, and Art O'Reilly of Mahopac, New York,



along with 2L Carlos Abeyta of Lubbock, Texas, and undergraduates Mike Garofola and Nick Sciola.



Law Students Honored by RecSports

3 L Peyton Berg of Kalispell, Montana, and 2L Natalie Wight of Portland, Oregon, have been selected as the Grad/Faculty/Staff

Participants of the Year by the University's Department of Athletics RecSports Office.

Double-Domer Changes Stadium "Seating"

For those alumni who prefer to relive their student days when attending Notre Dame home football games, double-domer Paul Noonan '93, '96 J.D. has initiated what will be a welcome change — for both those who like to sit and prefer unobstructed views of action on the field as well as those who like to stand while cheering for their team. He and two other ND alumni e-mailed University Athletic Director Kevin White to suggest setting aside a portion of the stadium specifically to accommodate alumni who, like current students, want to stand for the entire game. Named "Alumni Alley," the concept will debut this fall on a small scale — for 900 to 1,200 fans who will be selected by lottery for tickets in a section adjacent to the student section.



ND Lawyers Make a Difference in Professional Sports

Kevin Warren '90 J.D., general counsel and senior vice president of business operations for the NFL's Detroit Lions, was profiled in an article titled *Detroit Lions Hope Top Lawyer Can Help Bring Championship Mentality to Team* in the May 6, 2002, edition of CRAIN'S DETROIT BUSINESS.

Mr. Warren has also become of counsel to the Detroit office of Honigman, Miller, Schwartz and Cohn, L.L.P., as a member of the firm's corporate law department.

Coquese Washington '92, '97 J.D., assistant coach of the Notre Dame women's basketball team and point guard for the WNBA's Houston Comets, writes a "Hoop Clinic" column on women's professional basketball for the bi-monthly WOMEN'S BASKETBALL magazine.

Alumni Sports Notes

Softball World Series

South Bend East Side girl's 11-12 softball team made it to the softball World Series in Portland, Oregon, this summer, achieving a fourth-place finish in a tough field of competitors. As the team progressed through various competitions this summer, both locally and regionally, several individuals with NDLS connections played prominent roles. Jeff Jankowski '84, '87 J.D., father of player Erin Jankowski, served as one of the coaches along with Peter Gillis, husband of Lucinda (Cindy) Gillis '89 J.D. and father of player Maria Gillis. Tina Jankowski, assistant director of Law School administration and Erin's mother, engaged in her usual efficient coordination efforts, making sure the team members got where they needed to be, cleaning the uniforms and leading the cheering section.

Representing the Central Region in the competition, the South Bend team lost in the semifinals to last year's first-place team, the South Region champions. Nevertheless, the team and their coaches and other supporters made South Bend (and NDLS) proud, making it so far in their very first appearance in the series. They also enjoyed a special treat, being among those specially recognized by President George W. Bush during his recent visit to South Bend. Congratulations!



A L U M N I N O T E S

LISTSERV ADDRESSES

Law School all-alumni:

ndlaw-alumni@listserv.nd.edu

Center for Civil and Human Rights alumni:

ndlaw-cchr@listserv.nd.edu

London LL.M. alumni:

ndlaw-london-llm@listserv.nd.edu

To join any NDLS listserv, please send an e-mail to lawalum@nd.edu.

WEB ADDRESS

Law School alumni web site:

<http://www.nd.edu/~ndlaw/alumni/alumni.html>

CLASS OF 1952

■ **Honorable Tobias Barry** was featured in an article titled *Tobias Barry: Congenial Dissenter* in the July 15, 2002, of the Illinois Bar Association's Bar News. The article recounts his career as a judge and notes that he "sets an example for his fellow and sister judges . . . by his work, by his efforts to improve the administration of the law, by his integrity, by his warm companionship, and by his persistent dedication to physical fitness." Judge Barry was honored by the Illinois State Bar Association as an ISBA senior counselor in July.

CLASS OF 1960

Secretary: John A. DiNardo

■ **Hugh McGuire**, a sole practitioner in Troy, Michigan, has been elected president of the Macomb County, Michigan, chapter of Habitat for Humanity.

CLASS OF 1961

Secretary: John N. Moreland

■ **David H. Kelsey**, founding partner of Atkinson & Kelsey in Albuquerque, New Mexico, was profiled in an article titled *Law Firm Shapes Family Practice* in the April 15, 2002, edition of the ALBUQUERQUE JOURNAL. Mr. Kelsey's 10-attorney firm is the oldest and largest family law firm in New Mexico and is tied for fifth-largest among family law firms in the United States.

CLASS OF 1965

Secretary: Honorable John D. O'Shea

■ **John W. Beatty**, a partner with Dinsmore & Shohl in Cincinnati, Ohio, received the 2002 Community Service Award from the Cincinnati Bar Association, which recognizes members of the association who have performed extraordinary volunteer service to the Cincinnati community. Mr. Beatty has served on numerous civic and arts organization boards including: Cincinnati Art Museum, Cincinnati Art Academy, Cincinnati Institute of Fine Arts, 2001 Fine Arts Fund, Community Chest, Community Chest Foundation, United Way of Cincinnati, Archdiocese of Cincinnati Catholic Social Services, Andrew Jergens Foundation, Children's Psychiatric Center and Cincinnati Symphony Orchestra.

■ **Michael J. Flaherty**, a partner in Flaherty & Shea in Buffalo, New York, has been elected vice president of the Erie County (New York) Bar Association. He will assume the presidency of the association next year.

CLASS OF 1967

Secretary: James J. Olson

■ **Louis W. Brenner**, formerly with the Brenner Law Firm, Ltd., in Minneapolis, Minnesota, has joined Hovland Real Estate, Inc., in Naples, Florida, as manager of the firm's sales and leasing office in Bonita Springs, Florida.

■ **Paul Meyer**, chief executive officer of Clear Channel Outdoor, Inc., in Phoenix, Arizona, and member of the Notre Dame Law Association board of directors, was honored by his undergraduate *alma mater*, Saint Mary's University of Minnesota, April 23, 2002. He received an honorary doctorate in ethical leadership and gave a talk titled "Be Ethical and Be Successful" as part of the fourth convocation of the Hendrickson Institute for Ethical Leadership at Saint Mary's.

CLASS OF 1969

Listserv: NDLAW-1969@listserv.nd.edu

Secretary: James L. Starshak

James L. Starshak has agreed to take over class secretary duties from Scott Atwell, who served in the position for the last several years. If you wish to contact him to submit information for the class notes column in NOTRE DAME magazine, you may contact him at P.O. Box 656, Honolulu, HI 96813-4450, by phone at (808) 523-2515, by fax at (808) 523-0842, or by e-mail at jls@carlsmith.com.

CLASS OF 1970

Secretary: John K. Plumb

■ **Joseph J. Jankowski** has been elected to the management committee of Wilentz, Goldman & Spitzer, a 140-attorney firm headquartered in Woodbridge, New Jersey. Mr. Jankowski also co-chairs the firm's Real Estate, Land Use, Environmental and Leasing Department.

I N M E M O R I A M

Please remember the following deceased alumni and their families in your prayers:

John S. Montedonico '35, '36 J.D., April 21, 2002, Killen, Alabama

Robert E. Gartland '38 J.D., July 12, 2002, Niles, Illinois

Edward L. Boyle Jr. '38, '39 J.D., May 29, 2002, Mesa, Arizona

Charles J. O'Brien '40 J.D., October 14, 2001, Canton, Ohio

Arthur A. May '47 J.D., June 21, 2002, Granger, Indiana

William R. Ethridge '48, '51 J.D., January 28, 2002, Westlake, Ohio

James R. Kelly '52 J.D., June 5, 2002, Columbia, Maryland

Lt. Col. William A. Loy '54, '58 J.D., April 12, 2002, Peru, Indiana

John J. Haugh '66 J.D., April 1, 2002, Vancouver, Washington

Frederick M. Miller '81 J.D., July 30, 2002, Grosse Pointe Farms, Michigan

We have also received belated notice of the death of **Bruce W. Callner '74 J.D.**, January 17, 2001, Decatur, Georgia.

A L U M N I

N O T E S

CLASS OF 1971

Secretary: E. Bryan Dunigan III

■ **Honorable Michael P. Scopelitis**, of the St. Joseph (County, Indiana) Superior Court, attended the General Jurisdiction Instructional Program at the National Judicial College, supported by a scholarship awarded by the State Justice Institute.

CLASS OF 1972

Listserv: NDLaw-1972@listserv.nd.edu
Secretary: Richard L. Hill

■ **Alfred A. Lechner Jr.**, a partner at Morgan, Lewis & Bockius in Princeton, New Jersey, has been named to the Infractions Committee of the National Collegiate Athletic Association. He is one of two public members on the committee, and will also sit on the Infractions Committee for Division II and III institutions.

CLASS OF 1974

Secretary: Christopher Kule

■ **Lawrence Schwarz**, assistant district attorney in Nassau County, New York, and a colonel in the U.S. Army Reserves JAG Corps, has been called up for a six-month assignment in the counsel's office for the chair of the Joint Chiefs of Staff in Washington, D.C., where he will oversee government contracting, among other responsibilities.

CLASS OF 1975

Listserv: NDLaw-1975@listserv.nd.edu
Secretary: Dennis Owens

■ **Reverend E. William Beauchamp, C.S.C.**, formerly executive vice president emeritus at the University of Notre Dame, has been named senior vice president at the University of Portland in Oregon. His areas of responsibility at the university, which is run by the Congregation of Holy Cross, will include the division of university relations and the department of athletics. He will also serve as the university's investment officer and, in that role, will assist the investment committee of Portland's board of trustees. He will also oversee the university's legal affairs and coordinate university planning.

■ **Andrew P. Napolitano**, formerly with Epstein, Becker & Green, P.C., in Newark, New Jersey, has joined Fischbein Badillo Wagner Harding in the firm's New York, New York, office.

■ **Eugene E. Smary**, a partner at Warner Norcross & Judd, L.L.P., in Grand Rapids, Michigan, and a member of the board of directors of the Notre Dame Law Association, has been elected chair-elect of the ABA's Section on Environmental Law.

CLASS OF 1978

Secretary: vacant; please contact the Law School Relations Office to volunteer

■ **Jeffrey A. Lichtman**, of Trolman, Glaser & Lichtman in New York, New York, has begun his one-year term as president of the New York State Trial Lawyers Association.

■ **Patrick A. Salvi**, founder of Salvi, Schostok & Pritchard, P.C., has been inducted as a fellow of the International Academy of Trial Lawyers. Membership in the academy is by invitation only, is limited to 500 trial lawyers from the United States, and has members in over 30 countries around the world.

He recently secured a \$2.55 million settlement in a medical malpractice case involving the wrongful death of an 18-year-old who received inappropriate treatment for atrial flutter.

CLASS OF 1979

Secretary: M. Ellen Carpenter

■ **Stan Cardenas**, of Cardenas Financial Services Consulting in San Francisco, California, has been named to the advisory board of National Closing Solutions, a full-service real estate settlement, vendor management and post-close servicing company.

■ **Christopher Larmoyeux**, a partner at Larmoyeux & Bone in West Palm Beach, Florida, has been appointed to the Florida Arts Council by Florida's Secretary of State Katherine Harris. He is president of the Palm Beach County Cultural Council and a member of the Academy of Trial Lawyers of America.

■ **Mark G. Olive**, who practices personal injury law with Sieben, Grose, Von Holtum & Carey in Minneapolis, Minnesota, was voted a "super lawyer" by attorneys throughout Minnesota for the sixth consecutive year since the survey was inaugurated in 1996 by the legal trade magazine MINNESOTA LAW & POLITICS.

CLASS OF 1980

Secretary: Honorable Sheila M. O'Brien

■ **Daniel J. Buckley**, a partner in Breidenbach, Buckley, Huchting, Halm & Hamblin in Pasadena, California, has been appointed by California Governor Gray Davis to the Los Angeles County Superior Court.

CLASS OF 1981

Listserv: NDLaw-1981@listserv.nd.edu
Secretary: Robert J. Christians

■ **Nancy J. Gargula**, formerly a partner in the Indianapolis, Indiana, office of Baker & Daniels, has been appointed by U.S. Attorney General John Ashcroft as U.S. trustee for Indiana and central and southern Illinois.

CLASS OF 1982

Secretary: Frank Julian

■ **Diana Lewis**, a partner in the West Palm Beach, Florida, office of Carlton Fields and a member of the University's Board of Trustees, has announced her candidacy for judge in Palm Beach County, Florida.

CLASS OF 1983

Listserv: ndlaw-1983@listserv.nd.edu
Secretary: Ann Burford Merchlewitz

■ **David Hasper**, formerly with Miller, Johnson, Snell & Cumiskey in Grand Rapids, Michigan, has joined the Grand Rapids office of Miller, Canfield, Paddock & Stone as a senior attorney practicing in the areas of commercial real estate law, commercial leasing transactions, condominium law and general business transactions.

■ **Ann E. Merchlewitz**, vice president and general counsel at St. Mary's University of Minnesota, has been elected to the board of directors of Merchants Bank, based in Winona, Minnesota. She is the first woman elected to the board in the 126-year history of the bank.

CLASS OF 1984

Secretary: Cathy Chromulak

■ **Kevin Luby**, managing partner with Adams, Helzer, Uffelman & Luby in Beaverton, Oregon, is a candidate for a judgeship on the Washington County (Oregon) Circuit Court. The election will be held in late May.

■ **Timothy G. Merker**, formerly with Landau, Omahana & Kopka, Ltd., in Chicago, has formed Tucker, Bower, Robin & Romanek, L.L.C., also in Chicago, where he is a partner.

CLASS OF 1985

Listserv: NDLaw-1985@listserv.nd.edu
Web site: <http://alumni.nd.edu/~law85/>
Secretary: Tom Nessinger

■ **Kathleen Cerveney**, formerly with Reed Smith in Fairfax, Virginia, has joined the McLean, Virginia, office of Miles & Stockbridge as a partner. She focuses her work on emerging-growth companies and public and private securities offerings.

■ **Karen Keltz**, a partner at Shannon, Gracey, Ratliff & Miller, L.L.P., in Dallas, Texas, directed and moderated the annual meeting of the insurance section of the State Bar of Texas, June 14, 2002, in Dallas.

CLASS OF 1986

Listserv: NDLaw-1986@listserv.nd.edu
Web site: <http://alumni.nd.edu/~law86/>
Secretaries: Glenn Schmitt and Don Passenger

■ **Elizabeth Amorosi**, formerly assistant U.S. trustee for Arizona, based in Phoenix, has been appointed acting U.S. trustee for Arizona.

■ **Susan J. Link** has been elected to the partnership at Maslon Edelman Borman & Brand in Minneapolis, Minnesota. She focuses her practice in the areas of estate planning, probate, trust administration and tax law.

CLASS OF 1988

Secretary: Lisa Visingardi

■ **Anne E. Becker**, utility consumer counselor for the State of Indiana, has been appointed to the Energy Security and Electric Industry Restructuring Forum of the Consumer Energy Council of America.

■ **Beth DeBauche**, formerly associate commissioner of the Southeastern Conference, has been named assistant chief of staff for Division I at the National Collegiate Athletic Association, headquartered in Indianapolis, Indiana. In this new position, she will work with the Division I Board of Directors and the Management Council, in addition to two Division I cabinets.

CLASS OF 1989

Web site: <http://alumni.nd.edu/~law1989/>
Secretary: Jennifer O'Leary Smith

■ **Gregory Evans**, formerly with McKenna & Cuneo in Los Angeles, California, has joined the Los Angeles office of Orrick, Herrington & Sutcliffe as a partner. His practice focuses on telecommunications litigation and on assisting clients with governmental affairs and public policy.

CLASS OF 1991

Secretary: Martha Boesen

■ **J. Aloysius Hogan** has been promoted to legislative counsel for Senator Jim Inhofe (R-Oklahoma). His responsibilities now include working with the senator on appropriations, commerce, agriculture, and energy and natural-resources issues. He has worked on Capitol Hill in various capacities since 1995.

CLASS OF 1992

Secretary: Paul Drey

■ **Erik V. Huey**, formerly with Manatt, Phelps & Phillips in Washington, D.C., has become of counsel in the D.C. office of Venable, where he will be part of the firm's national communications practice.

■ **Sarah Ney**, formerly with Preaus Roddy & Krebs in New Orleans, Louisiana, has joined the New Orleans office of McGlinchey Stafford as an associate practicing with the firm's consumer financial services litigation group.

■ **Michael D. Rehtin Jr.** has been named counsel in the Chicago, Illinois, office of Mayer, Brown, Rowe & Maw, where he focuses his practice on real estate matters.

CLASS OF 1993

Listserv: NDLaw-1993@listserv.nd.edu
Secretary: Charley Hegarty

■ **Patrick L. Emmerling**, formerly with Cohen Swados in Buffalo, New York, has joined the Buffalo office of Jaekle Fleischmann & Mugal, L.L.P., as a partner in the firm's Estate and Trust Practice Group. He focuses his practice on estates and trusts, federal gift and estate taxation, and elderlaw.

■ **Lester N. Fortney** has been elected a director of the Webb Law Firm in Pittsburgh, Pennsylvania.

■ **Robert A. McMahon**, formerly with Thompson, Hine & Flory in Cincinnati, Ohio, has formed Eberly McMahon Hochscheid, L.L.C., a Cincinnati-based firm representing businesses and individuals throughout Ohio and Kentucky in litigation matters including creditors' rights, commercial litigation, products liability, real estate, employment and personal injury.

■ **Judson Montgomery**, a member of Givens Pursley, L.L.P., in Boise, Idaho, was named one of 40 *Accomplished Business Leaders Under Forty* in the March 18, 2002, edition of THE IDAHO BUSINESS REVIEW.

■ **Kevin M. Moran**, formerly counsel and legislative assistant to U.S. Senator John Kyl (R-Arizona), has been named director of the Washington, D.C., office of the Western Governors' Association.

■ **Lt. Col. Ronald R. Ratton**, U.S. Air Force, formerly stationed in the U.S. Sending State Office for Italy at the U.S. Embassy in Rome, Italy, is now stationed at the Yakota Air Base near Tokyo, Japan.

■ **Stacy Gerber Ward**, formerly a shareholder with Cook & Frank, S.C., in Milwaukee, Wisconsin, has become an assistant U.S. attorney for the Eastern District of Wisconsin, also in Milwaukee.

CLASS OF 1994

Secretary: P. Douglas Duncan

■ **Chris Graddock**, formerly with Long Weinberg in Atlanta, Georgia, is now a litigator with Nix, DelCampo, Thornton & Graddock in Decatur, Georgia.

CLASS OF 1995

Listserv: NDLaw-1995@listserv.nd.edu
Secretary: Julia Meister

Julia Meister has agreed to take over class secretary duties from Kurt Merschmann, who has served the Class of '95 well for seven years. She will be responsible for providing a regular column of class notes to NOTRE DAME magazine, and can be reached at foosmeister@yahoo.com.

■ **John O. Beanum**, formerly with Brobeck, Phleger & Harrison in Los Angeles, California, with a number of other attorneys has formed the Los Angeles office of Clifford Chance Rogers & Wells, L.L.P.

2002 GRADUATE TO CLERK FOR CHIEF JUSTICE

Leon F. DeJulius '02 J.D. has been named a clerk to Chief Justice of the United States William Rehnquist for the 2003-04 term. Mr. DeJulius earned his B.S.B.A. in finance, *magna cum laude*, from Saint Louis University in Missouri in 1997, where he was a member of Pi Kappa Alpha fraternity. He earned his J.D., *summa cum laude*, from Notre Dame Law School in 2002, where he also earned the Dean Joseph A. O'Meara Award for his academic achievement. While at Notre Dame, he served as editor-in-chief for the NOTRE DAME LAW REVIEW, and as executive editor of the National Symposium Editorial Board for the HARVARD JOURNAL OF LAW & PUBLIC POLICY.

Mr. DeJulius will clerk for Honorable Diamuid F. O'Scannlain, U.S. Court of Appeals for the Ninth Circuit, in Portland, Oregon, prior to beginning his work with the U.S. Supreme Court in late 2003. He will be the sixth Notre Dame Law School graduate since 1994 to clerk for the nation's highest court.

■ **Martin A. Foos**, has completed his clerkship with Honorable Christopher Neuchterlein in South Bend and has returned to the practice of law at Faruki, Gilliam and Ireland in Dayton, Ohio. He received the "Diamond in the Rough" award from the South Bend Center for the Homeless for his work in preparing formerly homeless individuals for their GEDs.

■ **J. Joseph Rossi** has been elected shareholder at Smith Haughey Rice & Roegge in Grand Rapids, Michigan, where he practices in the area of general civil litigation, governmental law and employment law.

■ **Michael L. Schrenk**, formerly a partner with Cozen O'Connor in Seattle, Washington, has joined St. Paul Insurance Company as in-house counsel in Baltimore, Maryland.

■ **Kelly Smith**, formerly with Smith Mullin, P.C., in Montclair, New Jersey, has joined Reitman Parsonnet in Newark, New Jersey, where her practice focuses on plaintiff's employment law as well as on union labor work.

CLASS OF 1996

Secretary: Marie Prein

■ **Kristen Fletcher**, director of the National Sea Grant Law Center/Mississippi-Alabama Sea Grant Legal Program at the University of Mississippi Law School, gave the keynote address, titled "Fix It! Constructing a Recommendation to the Ocean Commission for the Future of Fisheries," at the National Fisheries Law and Policy Symposium at Roger Williams University Ralph R. Papitto School of Law, June 28, 2002.

■ **William K. Sjostrom Jr.**, currently legal counsel for Genmar Holdings, Inc., in Minneapolis, Minnesota, has accepted a position as a tenure-track professor at the Salmon P. Chase College of Law at Northern Kentucky University in Highland Heights, Kentucky. He will teach contracts, corporations and securities regulation.

CLASS OF 1997

Secretary: Erica Anaya

■ **Melissa C. Brown**, an associate in the Chicago, Illinois, office of Foley & Lardner, has co-authored *When You Become a Target of the SEC*, published in the spring 2002 issue of DIRECTORS & BOARDS magazine.

■ **Kathleen Ley-Bruinsma**, formerly an associate with Lovells in Chicago, Illinois, has joined the Chicago office of Dykema Gossett, P.L.L.C., as an associate, and will focus her practice on consumer and commercial litigation matters.

■ **Raymond J. Tittman**, an associate at Paul, Hastings, Janofsky & Walker, L.L.P., in San Francisco, California, has been interviewed by the Bay Area affiliate for Fox News, the OAKLAND TRIBUNE and the CHRISTIAN TIMES regarding Bill Simon's campaign for governor of California.

■ **William F. Zieske**, an associate in the Chicago, Illinois, office of Ross & Hardies, P.C., published *JULIE, Digger and Liability for Damage to Buried Utilities* in the July 2002 edition of the ILLINOIS BAR JOURNAL. He focuses his practice on oil and gas and public utility tort litigation, as well as on general commercial litigations.

CLASS OF 1998

Web site: <http://alumni.nd.edu/~law98/>

Secretary: Mike Rafford

■ **John Cerone**, executive director of the War Crimes Research Office at American University's Washington College of Law, has been busy speaking and writing on various aspects of the subject of war crimes. His articles, talks and interviews — too numerous to list here — are described more fully in the May-June 2002 edition of NDLS Update, available on the Law School's web site.

■ **Bryan Lord**, formerly with Testa, Hurwitz & Thibault in Boston, Massachusetts, has joined AmberWave Systems Corporation in Salem, New Hampshire, as director of corporate development and legal affairs.

■ **Michael S. Rafford**, formerly with Snell & Wilmer in Phoenix, Arizona, has joined Hypercom Corporation, also in Phoenix, as in-house counsel for the company, which makes electronic payment equipment such as point-of-sale terminals. He also received an award from the Arizona Bar Foundation as one of the top 50 *pro bono* attorneys in Arizona.

CLASS OF 1999

Listserv: NDLaw-1999@listserv.nd.edu

Web site:

<http://www.geocities.com/Heartland/Trail/3096/>

Secretary: Steve Boettinger

■ **Timothy M. Bliss**, formerly with Powers Kinder Keeney in Providence, Rhode Island, has joined Tillinghast Licht Perkins Smith & Cohen, L.L.P., also in Providence, where he focuses his practice on labor and employment law.

■ **Basil Buchko**, formerly with Recka and Joannes, S.C., in Green Bay, Wisconsin, has joined Whyte, Hirschboeck Dudeck, S.C., in Manitowoc, Wisconsin, as an associate focusing his practice on corporate law.

■ **Michelle Mack ('00 LL.M.)**, working with the International Committee of the Red Cross (ICRC) in Belgrade, has been transferred to the ICRC's relief team in Jerusalem. Her work will involve starting up operations to facilitate the ICRC's efforts to bring food and non-food aid to the area.

■ **Adriana Nakis**, formerly with Stairs Dillenbeck Finley Merle in New York, New York, has joined Vezina, Lawrence & Piscitelli in Tallahassee, Florida, as an associate.

■ **Alex Nakis**, formerly with Dewey Ballantine in New York, New York, has joined Gray Harris & Robinson in Tallahassee, Florida, as an associate.

■ **Kurt Rademacher**, with Butler, Snow, O'Mara, Stevens & Cannada, P.L.L.C., in Jackson, Mississippi, published *Eliminating Double Tax on Your Business* in the January/February edition of *PLANNING NOTES MAGAZINE*. He spoke to the Jackson Tax Forum on "The Tax Implications of Converting to an S Corporation" and to the Butler Snow Tax Seminar on "Tax Avoidance Techniques on S Corporation Conversions."

CLASS OF 1999 (LL.M.)

■ **Meg Penrose**, assistant professor of law at Oklahoma University in Norman, has just been voted the "Most Outstanding" professor by the school's students. In addition, she received an "Arkansas Traveler" award from the governor of Arkansas for her work with police officers and school officials in the state, as part of her work with the National Center for Missing and Exploited Children and the U.S. Department of Justice. This summer, she traveled throughout Europe surveying what remains of many of the Holocaust sites in Germany, Austria, France and Holland.

CLASS OF 2000

Secretary: Brian Murray

Brian Murray has agreed to take over class secretary duties from Mark Busby, including providing a regular column for *NOTRE DAME* magazine. He may be contacted at doubledomer2000@yahoo.com.

■ **Peter Breen**, who is studying for the priesthood at Mundelein Seminary in Illinois, has been selected to study theology in Rome, Italy, for the coming academic year. He will take an intensive, six-week course in Italian this summer in Brooklyn and will leave for Rome at the end of August.

■ **Danny Cevallos**, formerly with Fish & Neave in New York, New York, has joined Piper Rudnick, L.L.P. His practice focuses on products liability defense and he will be based out of the firm's office in Philadelphia, Pennsylvania, although he will also work out of the firm's New York offices from time to time.

NEW ADDITIONS

Please welcome the newest members of the NDLS family:

- Lee (Illig) Joly '89 J.D.** and her husband Tom announce the birth of Nathaniel Lee, November 16, 2001, in Vancouver, British Columbia.
- Catherine Gregory '90 J.D.** and her husband Rick announce the birth of Michael Richard, May 13, 2002, in Farmington, Connecticut.
- Maura Doherty '91 J.D.** and her husband Steve Delano announce the birth of Cori Ruth, October 29, 2001, in Quincy, Massachusetts.
- William Fair '93 J.D.** and his wife Lorianne announce the birth of Natalie, January 14, 2002, in Chicago, Illinois.
- Bridget Healy '93 J.D.** and her husband Rob Schoenig announce the birth of John, February 8, 2002, in Highland Park, Illinois.
- Julie Garvey Davis '93 J.D.** and her husband Marc announce the birth of Elijah James, February 20, 2002, in Chicago, Illinois.
- William F. Dugan '95 J.D.** and his wife Jennifer announce the birth of Emma Elizabeth, November 13, 2001, in Chicago, Illinois.
- Kara Murphy '95 J.D.** and her husband **Glenn Kempf '84** announce the birth of their son, Sorin, December 20, 2001, in Seattle, Washington.
- Chris Pardi '95 J.D.** and his wife Mary announce the birth of Catherine Rose, July 30, 2002, in Northville, Michigan.
- Mike Schrenk '87, '95 J.D.** and his wife Danielle announce the birth of Ryan Edward, April 22, 2002, in Seattle, Washington.
- Steve Hieatt '96 J.D.** and **Jennifer Fraley Hieatt '96 J.D.** announce the birth of John Paul, April 2, 2002, in Cincinnati, Ohio.
- Michael S. Rafford '93, '98 J.D.** and his wife **Kelly '93** announce the birth of Sean Michael, January 15, 2002, in Phoenix, Arizona.
- Edward Williams '00 J.D.** and his wife Jill announce the birth of Julia Margaret, May 3, 2002, in Lansing, Michigan.
- Michael Hays '02 J.D.** and his wife Jenny announce the birth of Seth Micah, July 2, 2002, in South Bend, Indiana.

■ **Akram Faizer**, an associate at Mackenzie Hughes, L.L.P., in Syracuse, New York, has been awarded the President's *Pro Bono* Service Hanna S. Cohn Young Lawyer Award by the New York State Bar Association.

■ **Roger Mattioli** has been promoted to captain in the U.S. Marine Corps. He is a judge advocate stationed at the Marine Corps Air Station in Cherry Point, North Carolina.

■ **Gabe Tsui**, formerly an associate at Vedder, Price, Kaufman, Kammholz in Chicago, Illinois, has joined Mayer, Brown, Rowe & Maw, also in Chicago, as an associate. His practice focuses on tax litigation.

CLASS OF 2000 — LL.M.

■ **Xiaosheng Huang**, formerly with Jon Eric Garde & Associates in Las Vegas, Nevada, has joined the Law Offices of Albert C. Lum, also in Las Vegas, where he practices asylum law. He has also been admitted to the New York bar and reports that he is the first Mandarin-speaking American lawyer in Las Vegas.

CLASS OF 2001

Listserv: NDLAW-2001@listserv.nd.edu
Secretary: Jonell Lucca

- **Paul Dean** has joined Warrick & Boyn in Elkhart, Indiana, as an associate.
- **Melonie Jurgens**, a general-litigation associate with White & Case in New York, New York, was featured in an article titled *Externship Draws Law Firm Lawyers to Counsel Women* in the July 12, 2002, edition of the NEW YORK LAW JOURNAL. The article discusses her four-month service with inMotion, formerly the Network for Women's Services, representing indigent, working-class and immigrant women, and how that experience has benefitted her work at White & Case.
- **Jonell Lucca** has completed her clerkship with the Supreme Court of Idaho and has joined the Maricopa County (Arizona) Attorney's Office in Phoenix.
- **Marjie McCanta** is working with the Coordinated Legal Education, Advice and Referral (CLEAR) system of the Northwest Justice Project. CLEAR provides free legal assistance on civil matters for low-income residents of the state of Washington.
- **Thomas Pasuit** has completed his clerkship with Honorable Raymond Lyons, in the U.S. Bankruptcy Court for the District of New Jersey, and has joined Connell Foley, L.L.P., in Roseland, New Jersey, as an associate.

NDLA MEMBERS

- **Philip J. Faccenda '51**, formerly general counsel for the University, has been named a life fellow of the American Bar Association, which recognizes the top one-third of 1 percent of attorneys whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

CLASS REUNIONS FOR 2003

■ If your class is eligible for a reunion in 2003 — that is, if your class year ends in "3" or "8" — we look forward to seeing you at the University's Reunion 2003, the weekend of **June 5-8, 2003**. Members of the 50th anniversary class of 1953 will be invited to special ceremonies hosted by the University to commemorate the occasion. Information on reunion weekend activities is available on the Notre Dame Alumni Association's web site at <http://alumni.nd.edu/reunion/index.html>. On-line registration will be available in the spring, or you may call the Alumni Association's reunion office directly at (574) 631-6000.

■ The NDLS Class of 1968, under the leadership of Tom Curtin, is proposing a 35th anniversary reunion for the ND-Michigan State home football weekend, September 19-20, 2003. To help with the planning or for more information, please contact Mr. Curtin directly at:

Graham, Curtin & Sheridan
4 Headquarters Plaza
P.O. Box 1991
Morristown, NJ 07962-1991

phone: (973) 401-7117
fax: (973) 292-1767
e-mail: tcurtin@gcslaw.com

■ The NDLS Class of 1998, under the leadership of Mark Kromkowski, hopes for a strong turn-out for the fifth anniversary reunion during the University's spring reunion celebration in June. Contact Mr. Kromkowski directly at:

Wildman, Harrold, Allen & Dixon
Suite 300
225 West Wacker
Chicago, IL 60606-1229

phone: (312) 201-2000
fax: (312) 201-2555
e-mail: kromkowski@wildmanharrold.com

Class members interested in attending the home football game should be sure to contribute \$100 to the University or the Law School before the end of calendar year 2002 in order to receive a lottery application for fall 2003 football tickets. Class members may wish to designate contributions to the Class of 1968 Law School Fellowship, established at the time of the 30th reunion to commemorate deceased members of the class.



NEWS FROM THE NOTRE DAME LAW ASSOCIATION

A Message from the NDLA President

Dear Notre Dame Lawyer:

I am delighted and honored to serve as president of the Notre Dame Law Association for the 2002-03 year. My several predecessors deserve sincere thanks and congratulations for their efforts on behalf of our association and the Law School.

Since the reorganization of NDLA several years ago, much has been achieved. Alumni presence in the operation of the Law School has been considerably strengthened. Under the auspices of NDLA, approximately 10 students are funded each summer for public interest law fellowships; considerable efforts have been and are being devoted to the identification and selection of incoming students; numerous seminars, talks and workshops have been sponsored and staffed by alumni for the benefit of Notre Dame Law School students; better coordination with the national undergraduate alumni association is under way; regional elections have been established to bring on board enthusiastic alumni committed to the activities of NDLA; and before she joined the College of Engineering, Cathy Pieronek worked tirelessly to assist and coordinate our activities. For the first time, NDLA will present to alumni in the fall of 2002 those various awards previously described in this magazine.

More and more Notre Dame alumni are joining these activities. I encourage you to be among them. There are endless opportunities to devote some of your time, treasure, and/or talent, in whatever order they might be available to you and whatever the stage of your career. Help sponsor a summer fellowship in your community; represent Notre Dame Law School at an undergraduate career fair; have lunch with an accepted student who has not yet decided on whether to attend Notre Dame; join in the efforts of your local Notre Dame Club to assist the working poor in preparation of their taxes; nominate a worthy graduate for an NDLA award; do what the Spirit moves YOU to do in the name of Notre Dame.

Notre Dame Law School's mission of service and responsibility is printed for all to see in its publications and catalogs. It is articulated on a daily basis by the administration, faculty and staff. However, it finds its strongest living presence in, by and through Notre Dame students, faculty, alumni and friends who accept its message and incorporate its essence into their daily personal and professional lives. It is by this means that Notre Dame and its mission become a vibrant witness to the Gospel in a very troubled world.

We were all blessed who have had the opportunity to spend time at Notre Dame during the formative stages of our professional lives. We owe it to ourselves and our legal heritage to represent well each and every day the tradition, spirit, and legacy of Notre Dame and its mission.

Yours in Notre Dame,

Paul Mattingly
President, 2002-03
Notre Dame Law Association



Congratulations to Election Winners

Congratulations to the following, who won the 2002 NDLA elections. Each successful candidate will serve a three-year term beginning on July 1, 2002. Thanks to all who ran for making this a successful election process.

Region 2

Colorado, Montana, New Mexico, Utah, Wyoming and Western Canada (Calgary)
Brain Bates '79, '86 J.D.
Denver, Colorado

Region 3

Arizona, Southern California, Southern Nevada and Mexico
David C. Scheper '85 J.D.
Los Angeles, California

Region 7

Michigan
Eugene Smary '75 J.D.
Grand Rapids, Michigan

Region 10

New Jersey, Southern Connecticut, Southern New York
Alfred J. "Jim" Lechner '72 J.D.
Princeton, New Jersey

Region 12

Delaware, Eastern Pennsylvania, Maryland, Virginia, Washington, D.C.
Gregory Shumaker '87 J.D.
Washington, D.C.

Region 13/14

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, Texas
Scott T. Beall '89 J.D.
Memphis, Tennessee

The following regions will be up for election in 2003, for three-year terms beginning July 1, 2003:

Region 1 — Alaska, Hawaii, Idaho, Northern California, Northern Nevada, Oregon, Washington

Region 8 — Indiana (excluding northwest Indiana), Kentucky

Region 9 — Ohio, Western Pennsylvania, West Virginia

Region 16 — Chicago (Cook County)

Region 18 — Northern New York, Eastern Canada (Toronto)

To represent a region, you must be a resident of that region and must be a member of the Notre Dame Law Association. If you are interested in learning more about these opportunities, please contact the Law School Relations Office. Nominations for the 2003 elections close on September 15, 2002. Ballots will be mailed in January 2003 to all NDLA members.

NDLA Honors Alumni with 2002 NDLA Awards

At its spring meeting, the Notre Dame Law Association board decided to honor four NDLA members for their service to Notre Dame, the Law School, the profession and their community. The recipients of these inaugural awards, chosen because they represent the highest ideals for which Notre Dame lawyers strive, were honored by the association at the time of its fall board meeting, October 11, 2002.

■ To **Dean Emeritus David T. Link '58, '61 J.D.**, the **Edward F. Murphy Award**, for Notre Dame lawyers who have distinguished themselves in the profession of law, exhibited the highest standards of professional competence and compassion, been guided by the high moral and religious values Notre Dame represents, devoted themselves in service to their church and have a reputation for being ethical, professional and faithful to moral and religious values.

■ To **Don Wich '69, '72 J.D.**, the **Reverend William E. Lewers, C.S.C., Award**, for Notre Dame lawyers who have made outstanding contributions in the area of civil and human rights, social justice or *pro bono* legal services.

■ To **Carl Eiberger '52, '54 J.D.**, the **Reverend Michael D. McCafferty, C.S.C., Award**, for individuals who have rendered distinguished service to the University of Notre Dame, including those who have expended substantial time and effort as part of alumni association activities, raised substantial funds for the University, or been an outstanding faculty member or administrator at the Law School, whether or not a graduate of the Law School.

■ To **Jim Flickinger '71 J.D.**, the **St. Yves Award**, for Notre Dame lawyers who have rendered outstanding service or contribution to the area of public-interest law. Named after St. Yves, one of the patron saints of lawyers, the award aims to create awareness of and support for public-interest law. Recipients are lawyers who have devoted substantial time and effort to the practice of or support of social justice in the law. Examples of such efforts include the private practitioner or corporate counsel who encourages a client to act responsibly or who volunteers professional services outside the scope of paid practice; the government employee who ensures that a public agency acts with the requisite concern for the public good; the legislator or legislative staff member who drafts and works to enact just law; the judicial clerk, prosecutor or public defender who works to ensure justice for all parties involved in criminal actions or civil disputes; and those who provide financial support for such efforts.

If you would like to nominate a colleague or friend for an NDLA award in 2003, please contact:

Mr. Charles A. Weiss, Chair
NDLA Awards Committee
Bryan Cave, LLP
3600 One Metropolitan Square
St. Louis, MO 63102-2750

phone: (314) 259-2000
fax: (314) 259-2020
e-mail: caweiss@bryancave.com

NEWS FROM THE NOTRE DAME LAW ASSOCIATION

NDLA Supports Student Service

Thanks to the generosity of Notre Dame Law Association members and Notre Dame Alumni Clubs throughout the country, eight NDLS students had the opportunity to engage in service work in the summer of 2002 at agencies across the country. Alumni — both through individual alumni and through contributions from the Notre Dame Alumni Clubs in Denver and Detroit — raised \$32,000 to support these eight students. AmeriCorps grants — provided through the Holy Cross Associates program with the assistance of the University's Center for Social Concerns — offered an additional \$1,000 in financial support to the students involved in these projects.

Following is a list of the students who helped to serve the public thanks to the commitment on the part of the Notre Dame Law Association to make this program a success:

City	Program	Student	Sponsor
Cincinnati, Ohio	Hamilton County Public Defender	Catherine Lockard	Paul Mattingly '75 J.D.
Denver, Colorado	Legal Aid Society of Colorado	Rachel Mordecai-Izikson	Brian Bates '79, '86 J.D. Notre Dame Club of Denver
Detroit, Michigan	Legal Aid and Defender Association	Rebecca McCurdy	Robert S. Krause '66 J.D. Notre Dame Club of Detroit
Los Angeles, California	Attorney Paul Hoffman (<i>pro bono</i> work)	Jessica Pongratz	various alumni donors
Morris County, New Jersey	Morris County Legal Aid	Nicole Bayman	Richard D. Catenacci '62, '65 J.D. Thomas R. Curtin '68 J.D.
New York, New York	Legal Aid Society of New York	Ryan Blaney	James S. Carr '87 J.D. Kelley, Drye & Warren
San Diego, California	San Diego Volunteer Lawyers Project	Regena Baxter	Michael Witton '92 J.D. Ross, Dixon & Bell
Washington, D.C.	Archdiocesan Legal Network	Erica Kruse	Heather McShane '96, '99 J.D. David Pruitt '92, '99 J.D. Gabriela Teodorescu

If you are interested in helping to secure a position for an NDLS student in your area for the summer of 2003, please contact Paul Mattingly, 2002-03 president and chair of the NDLA's Public Interest Committee, as soon as possible:

Mr. Paul Mattingly
Dinsmore & Shohl
1900 Chemed Center
255 East Fifth Street
Cincinnati, OH 45202-3172

phone: (513) 977-8281
fax: (513) 977-8141
e-mail: mattingl@dinslaw.com

LAW SCHOOL

briefs

News from Law School Admissions

Alumni have assisted the Admissions Office in a number of ways this past spring and summer in enrolling the Law School Class of 2005. With more than 500 candidates admitted from this year's pool of 2,890 applicants, alumni offered valuable assistance in contacting and meeting with potential students. More than 50 alumni agreed to host luncheons for admitted candidates during the month of March, with nearly 100 admitted candidates accepting this invitation. Additionally, alumni throughout the nation contacted admitted candidates by phone, letter and e-mail. These efforts, similar to the alumni-hosted luncheons, were intended to provide potential NDLS students with the opportunity to learn about the Law School so that the candidates would make the best possible choice when selecting what law school to attend.

Luncheons for Admitted Candidates

Carlos Acosta '90 J.D.
 Travis Almandinger '99 J.D.
 Thomas Antonini '85, '88 J.D.
 Elena Baca '92 J.D.
 Brian Bates '79, '86 J.D.
 Bruce Baty '79, '82 J.D.
 Scott Beall '89 J.D.
 Robert Berry '63 J.D.
 Stephen Boettinger '90, '99 J.D.
 Rebecca Brown '01 J.D.
 Thomas Burns '71 J.D.
 John Cadarette '83 J.D.
 Timothy Carey '73, '80 J.D.
 Ellen Carpenter '79 J.D.
 James Carr '87 J.D.
 Arther Carter '92 J.D.
 William Cavanaugh Jr. '84 J.D.
 Gregory Cozad '85 J.D./M.B.A.
 Honorable N. Patrick Crooks '63 J.D.
 Thomas R. Curtin '68 J.D.
 Lee DeJulius '02 J.D.
 Paul Drey '89, '92 J.D.
 Honorable David J. Dreyer '77, '80 J.D.
 Frank Eck '89 J.D.
 Kimberly Esmond '99 J.D.
 Matthew Feeney '79, '83 J.D.
 John Fitzpatrick '81 J.D.
 Nancy Gargula '81 J.D.
 Teresa Giltner '86 J.D.
 Gregory Gorski '79 M.A., '82 J.D.
 Gary Gottschlich '71 J.D.
 Robert M. Greene '69 J.D.
 Michael Grossman '78 J.D.
 Karen Grundy '90 J.D.

Patricia Haim '84 J.D.
 Scott Hapeman '01 J.D.
 Mary Hartigan '91 J.D.
 Kevin Hasson '79, '82 M.A., '85 J.D.
 Richard Jordan '70 J.D.
 Thomas Keller '92 J.D.
 Douglas Kenyon '76, '79 J.D.
 Robert Krause '66 J.D.
 Alfred J. Lechner Jr. '72 J.D.
 David C. Link '81, '86 J.D.
 Bryan Lord '98 J.D.
 James Lynch '83 J.D.
 Susan Lyndrup '01 J.D.
 Alicia Matsushima '97 J.D.
 Paul Mattingly '75 J.D.
 Thomas McCusker '65, '69 J.D.
 Paul Meyer '67 J.D.
 Cynthia Morgan '99 J.D.
 Stasia Mosesso '96, '00 J.D.
 Christopher Mugica '00 J.D.
 Sara Oberlin '01 J.D.
 Anthony Patti '90 J.D.
 David Petron '01 J.D.
 Vanessa Pierce '96 J.D.
 Michael Pietrykowski '79, '80 M.A., '83 J.D.
 David Reed '94 J.D.
 Diane Rice '80, '83 J.D.
 Scott Richburg '95 J.D.
 Edward Ristaino '84 J.D.
 David Rivera '99 J.D.
 Andrea Roberts '94 J.D.
 Joseph Romero Jr. '86 J.D.
 Charles Rose '93 J.D.
 Margaret Ryan '95 J.D.
 Martin Schreier '95 J.D.
 James Shea '95 J.D.
 Thomas Shumate IV '98 J.D.

Max Siegel '86, '92 J.D.
 Eugene E. Smary '69 M.A., '75 J.D.
 Scott Sullivan '76, '79 J.D.
 Jeremy Trahan '96 J.D.
 William Walsh '95 J.D.
 Zhidong Wang '94 J.D.
 Charles A. Weiss '68 J.D.
 Honorable Ann Claire Williams '75 J.D.,
 '97 LL.D. (Hon.)
 Honorable Charles Wilson '76, '79 J.D.
 S. David Worhatch '79 J.D.
 Honorable Mary Yu '93 J.D.
 Sean Yuzwa '01 J.D.

Phone, E-mail, and Personal Contact with Admitted Candidates

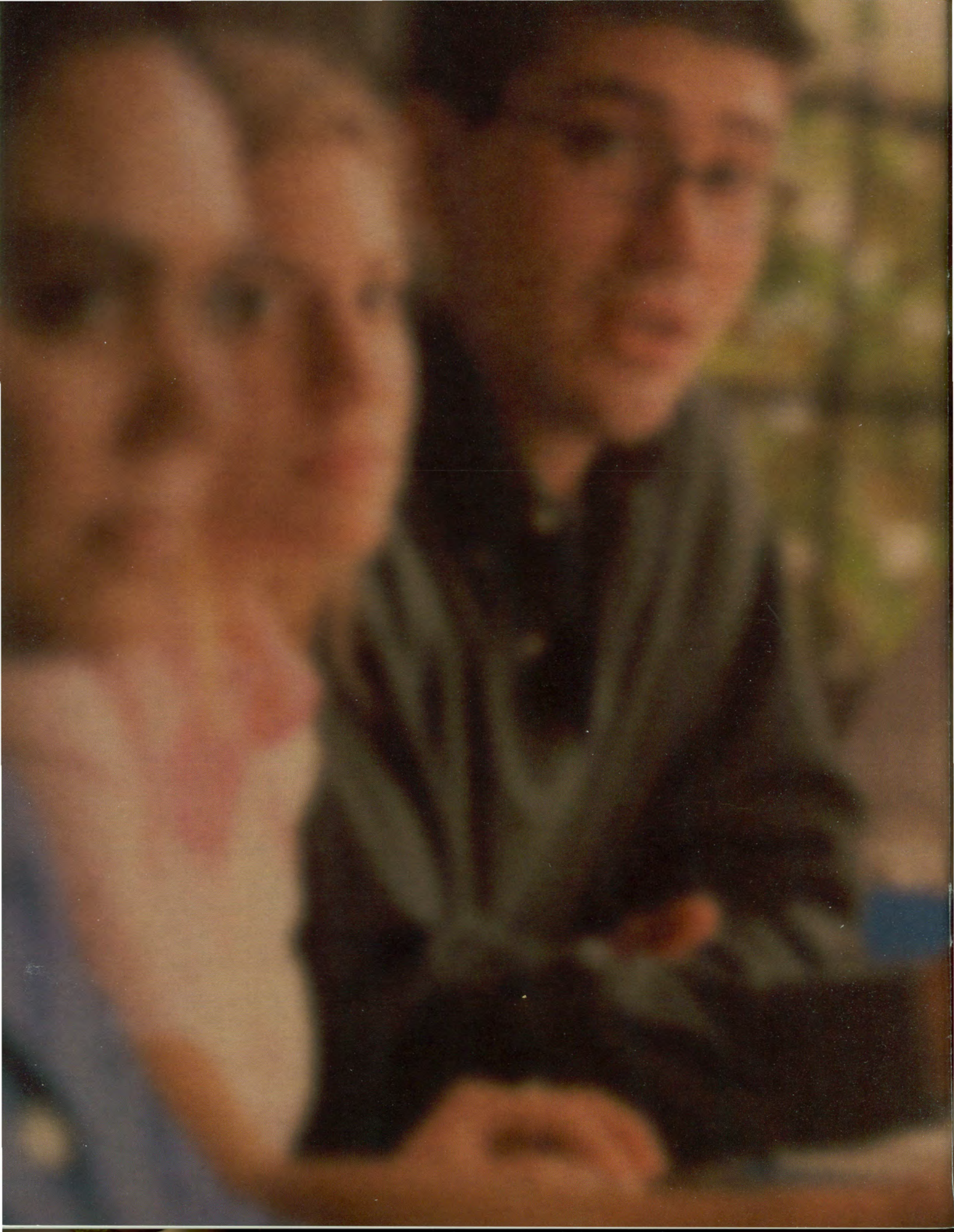
Lee DeJulius '02 J.D.
 David Petron '01 J.D.
 Margaret Ryan '95 J.D.

Alumni also lent their support to the Law School's admissions efforts in a number of other ways. **Doug Kenyon '76, '79 J.D.**, returned to the Law School in February to address admitted candidates as part of the annual Fellowship Weekend, a special recruitment program for admitted candidates who were awarded full and near-full fellowships by the Law School. **Bob Greene '69 J.D.**, hosted a picnic at his home for entering students from upstate New York during July.

For More Information

If you would like to participate in this year's student recruitment efforts, please contact Janet McGinn '84 J.D., in the Admissions Office, at (574) 631-6626 or jmccginn@nd.edu.

— Charles W. Roboski,
 Director of Admissions





ORDER
OF
THOMAS
MORE

The Order of St. Thomas More, named for the patron saint of lawyers, judges and university students, honors Law School benefactors who, in a significant way, support the ideals of the Law School.

Your gift of \$1,000 or more annually, gives you membership in the order. But more importantly, your gift will contribute in a significant way to our efforts at providing a premier legal education based in English and American common law and in Catholic intellectual tradition; forming competent and compassionate Notre Dame lawyers who engage in their practice of law as God's good servants first; and conducting the highest levels of scholarship of national and international significance.

For more information on membership, please contact:

Office of Law School Advancement
1100 Grace Hall
Notre Dame, IN 46556
(574) 631-3781
rosswurm.3@nd.edu

