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Notre Dame Law School

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LAWYER



Fall 2007

Groundbreaking
for Eck Hall of Law

 UNIVERSITY OF
NOTRE DAME
The Law School

FROM THE DEAN

The ancient Greek philosopher, Heraclitus, is quoted as saying: "No man steps into the same river twice because it is not the same river and he is not the same man." This thought nicely captures the sense of contrapuntal movement that marks the beginning of an academic year. On the one hand, we begin a cycle that has a rhythm with which we are familiar—the excitement and energy of a new first-year class walking the hallways, surrounded by fast-paced conversations among returning students reporting on their summer experiences; on the other hand, we embark on a year that will have a story all its own with discoveries, challenges, and achievements as yet unknown.

This sense of a place that is enduring while ever-changing has never been more true than this fall at the Law School. We broke ground July 31st on our long-awaited construction project. We can begin to see a building taking shape that will capture in its very bricks our commitment to forming the minds, hearts, and souls of the next generation of Notre Dame lawyers. The new Eck Hall of Law will be completed in time for a mid-year move over Christmas break 2008 with classrooms, faculty offices, student commons, a chapel, and administrative office space. We will then begin renovation of our existing building to house an expanded Kresge Law Library, increased study space, new offices for our four law reviews, and additional administrative space. By June 2010, both the new and renovated Law School buildings will exist in a single, integrated, collegiate Gothic structure that increases our physical facility by 80 percent.

As important as this construction project is to the realization of our aspirations for the Law School, the heart of this community is our people. Long before we enjoyed the resources that are ours today—and that will be ours in fuller measure in just a few years—we staked our place in the academy on our commitment to enduring values that flow from our vision of a holistic education that seeks the integration of faith and reason

in the professional life. For this reason, most of this issue is devoted to articles on the distinctive scholarly and service contributions of our faculty and students.

In these pages, you will meet the newest member of our faculty, Bridgette Carr. Prof. Carr is helping to revitalize the immigration and asylum division of our Legal Aid Clinic at a time when that issue dominates the national press and commands the attention of the American church. We also highlight the work of M. Cathleen Kaveny, the Murphy Foundation Professor of Law, whose training in theology and law allows her to bring a distinctive normative perspective to a wide spectrum of issues confronting society. We are proud to profile Prof. Paolo Carozza of our international human rights faculty, who will assume the presidency of the Inter-American Commission on Human Rights next spring. Finally, we include an excerpt from a recent article by Prof. Carter Snead, former general counsel to the President's Council on Bioethics. Prof. Snead explores the tension in the conceptual underpinnings of cognitive neuroscience and capital sentencing. In these articles and in the reports of the accomplishments of our students, I hope that we capture a sense of the intellectual vibrancy that characterizes the Law School today.

This fall the University celebrates the beatification of Basil Moreau, C.S.C., who founded the Congregation of Holy Cross in Le Mans, France. It was Father Moreau who dispatched Father Sorin to Indiana to establish the University in 1842. Father Moreau is quoted as saying: "We teach to make God known, loved and served." Amidst all the changes taking place in our physical facility today, Moreau's words still endure and animate our scholarship, teaching, and service here at the Law School.



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



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NOTRE DAME LAWYER



FALL 2007



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Law School Breaks Ground for New Facility



On July 31, a dream became reality when the groundbreaking ceremony for Eck Hall of Law occurred. Frank Eck, Sr. ('44 B.S.) and his children Frank, Jr. ('89 J.D.), Kelly, and Candy traveled to campus to participate in this eagerly anticipated event. Rev. Paul Doyle, C.S.C., delivered a blessing at the site and anointed it with holy water. Dean Patricia O'Hara then spoke about the transformative effect that the new building will have on the Law School community and the Law School's academic reputation. She expressed her deep gratitude to the Eck family for its overwhelming generosity, closing her remarks by saying "*Deo gracias.*"

Notre Dame Executive Vice President John Affleck-Graves presented Frank Eck with a framed architectural rendering of the Eck Hall of Law. Mr. Eck then shared his pleasure in being able to help the Law School bring this critical project to fruition. He reflected that his father arrived on the Notre Dame campus as a freshman in 1911, and mused about how fitting it is that the new law building will be completed almost exactly 100 years after his family's long association with the University began.

As a small group of guests (which included Notre Dame head football coach Charlie Weis) looked on, the Eck family, joined by Dean O'Hara, John Affleck-Graves, and Vice President for University Relations Lou Nanni, donned golden hard hats. Wielding shovels and standing side by side, they collectively



turned the earth, ceremonially launching the construction of Eck Hall of Law. Several members of the Notre Dame Glee Club concluded the program by presenting stirring renditions of the *Alma Mater* and the *Notre Dame Victory March*.

The entire Law School community—faculty, students, and staff—wishes to convey its everlasting thanks to the Eck family. We look forward to celebrating with them again in early 2009 when the Eck Hall of Law opens its doors!

Law School Construction Update

With the official groundbreaking ceremony completed, construction of the new building began in July 2007 and is scheduled for completion by December 2008. As is often the case with building projects, construction will necessitate some changes in the current Law School building.

During December 2007 and January 2008, 15 offices will be built in the Kresge Law Library to provide space to relocate 15 faculty members with offices on the south end of the current Law School building that are impacted by phase one of construction. Five of the offices will be located in the Main Reading Room, five in the East Reading Room, and five on the East Balcony of the third floor overlooking the Main Reading Room. During that same time frame, the Kresge Law Library will relocate 90,000 volumes from the large compact shelving area in the lower level of the Law School. Also, books from the East Reading Room and some materials from the Main Reading Room will be relocated or moved offsite. During late-May and June 2008, there will be a number of office shifts in the Law School to allow the contractor access to the offices in the south end of the existing building.

The new building will be completed by December 2008. During January 2009, the Law School faculty and staff will move into the new building. Students will take classes in the new building beginning with the 2009 spring semester.

From the beginning of the 2009 spring semester through June 2010, the existing Law School building will be renovated. The primary occupants of the renovated building will be the staffs of the Kresge Law Library, Career Services, and Admissions. They will move back in during July 2010.



LAW SCHOOL EVENTS

upcoming events

October 19, 2007

Notre Dame Law Review Announces 2007 Symposium: “Separation of Powers as a Safeguard of Federalism”

The *Notre Dame Law Review* is sponsoring its annual symposium on Friday, October 19, 2007. The subject of the symposium is “Separation of Powers as a Safeguard of Federalism”—a thesis propounded by Prof. Bradford D. Clark in an article of the same title. Specifically, participating scholars will discuss the implications of that thesis for federal courts and the federal system.

Anthony J. Bellia, Jr., *Notre Dame Law Review* faculty advisor and the John Cardinal O’Hara Associate Professor of Law, Notre Dame Law School, will introduce and moderate the 2007 symposium. The current list of contributors includes:

Bradford R. Clark

Professor of Law, The George Washington University Law School

William Eskridge, Jr.

John A. Garver Professor of Jurisprudence, Yale Law School

Elizabeth Garrett

University Vice President for Academic Planning and Budget; Sydney M. Irmas Chair in Public Interest Law, Legal Ethics, Political Science and Policy, Planning and Development, USC Gould School of Law

John F. Manning

Bruce Bromley Professor of Law, Harvard Law School

Peter L. Strauss

Betts Professor of Law, Columbia Law School

Carlos Manuel Vázquez

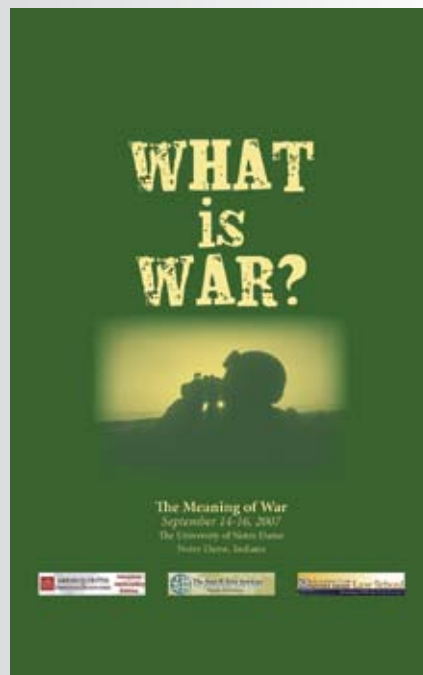
Professor of Law, Georgetown University Law Center

Ernest A. Young

Charles Alan Wright Chair in Federal Courts, University of Texas School of Law

Each scholar will participate on one of two panels focusing on federal judicial power as it relates to either legislative or nonlegislative sources of law. Specific topics of discussion will range from statutory interpretation to customary international law.

This event will provide a unique opportunity for Notre Dame Law School students to hear from leading scholars as they identify and discuss issues at the heart of current disagreements over federal judicial power. In addition, students will have the



chance to continue the conversation with participants at a post-symposium reception to be held at the Law School.

For more information about this event, please contact the Law Review at ndlrev@nd.edu.

previous events

September 14, 2007

The Meaning of War

On September 14, 2007, Rev. Theodore Hesburgh, C.S.C., spoke at the “Meaning of War” conference on the Notre Dame campus. The conference was jointly sponsored by the Notre Dame Law School, Notre Dame’s Joan B. Kroc Institute for International Peace Studies, and The Ohio State University’s Mershon Center for the Study of International Security. The two-day, interdisciplinary conference explored the question, “what is war?” from the perspective of military historians, soldiers, war correspondents, ethicists, peace studies scholars, and political scientists.

The conference provided important context for a study committee of the International Law Association (ILA), the premier, worldwide organization of international lawyers and law scholars. The ILA formed the study committee in 2005 under the

chairmanship of Mary Ellen O’Connell, the Robert and Marion Short Chair in Law at the Notre Dame Law School. The study committee was tasked to address the legal challenges raised by the Bush Administration’s “global war on terrorism.”

Since the rise of the state system, international law has been organized around the existence of two contrasting social situations: the presence or absence of war. Yet, there is no immutable, scientifically definable line between these socially constructed concepts. Nevertheless international lawyers need to correctly identify situations of war or armed conflict and determine when the rules relevant to war apply.

In the past, lawyers have had to persuade governments to admit that fighting on their territories amounted to armed conflict. Governments have tended to deny that fighting on their territories is armed conflict, arguing instead that it is criminal activity. Acknowledging war was perceived as acknowledging failure. Following the September 11 attacks, the United States reversed that trend—now we have an example of a government declaring war where many would see crime. Individuals have been killed, detained without trial, had property confiscated, and lost other rights under the argument that the United States is in a global war.

Because significant human rights turn on the existence of war, the ILA formed the study committee to report on the legal meaning of war. A 10-country committee has been formed of top experts on the international law relevant to war. It will deliver its final report at the ILA biennial conference in Rio de Janeiro in the summer of 2008.

The “Meaning of War” conference was intended to assist the committee by providing perspectives from other disciplines also concerned with the meaning of war. Comparing and contrasting other understandings should help the committee clarify the meaning within international law. Among the speakers were prominent political scientists Michael Doyle (Columbia), John Mueller (Ohio State), Richard Herrmann (Ohio State), and George Lopez (Notre Dame).

Two generals, both NATO commanders in Bosnia, General Sir Michael Rose (British Forces ret’d) and General William Nash

(USA ret'd) spoke, as well as respected military historians Williamson Murray (Ohio State) and Jeremy Black (Exeter). The presentations from the conference, the research papers of the study committee, and the committee's final report will be collected in a book due out a year after the conference.

February 22, 2007

Moot Court Showcase Argument 2007

NDLS continued another proud tradition as the 57th Annual Moot Court Showcase Argument was held on February 22, 2007. The NDLS National Moot Court Team argued Fourth and Fifth Amendment issues before an impressive panel of federal judges.

NDLS' annual showcase continues to enjoy the support of the federal bench, represented this year by the fourth, sixth, and 11th districts. The Honorable Paul V. Niemeyer currently serves as a circuit judge for the Fourth Circuit Court of Appeals. After graduating from Notre Dame Law School in 1966, Judge Niemeyer practiced commercial law at Piper & Marbury in Baltimore for 22 years. He served for two years (1988–90) as a United States District Judge in Maryland before his appointment to the Fourth Circuit in 1990. His father, Gerhart Niemeyer, taught political theory at Notre Dame from 1955 until 1992.

The Honorable Julia Smith Gibbons was appointed to the United States Court of Appeals for the Sixth Circuit in August 2002. From 1981 to 1983, she served as a judge for the Tennessee Circuit Court. In 1983, President Reagan appointed her to the United States District Court for the Western District of Tennessee. Subsequently, she presided over the court as Chief Judge from 1994 to 2000.

In 2002, President Bush appointed the Honorable Timothy J. Corrigan the United States District Court for the Middle District of Florida, where he had served as a magistrate judge since 1996. Judge Corrigan obtained his bachelor's degree from the University of Notre Dame and his law degree from Duke University School of Law.

The legal issues in the 57th Annual Moot Court Showcase Argument involved whether challenged police conduct constituted either an unlawful search or a coerced confession. Stephen H. Robinson and Kate D. Spitz represented the United States, arguing that the challenged police conduct did not violate either the Fourth or Fifth Amendments. Adèle H. Auxier and Heather A. Cameron represented the petitioner, arguing that the search and subsequent interrogation crossed constitutional boundaries. In the NDLS spirit, the advocates displayed excellent oral advocacy skills that have become the trademark of the NDLS Moot Court Board. The argu-

ments also provided an inspiring example to the 1L class to continue the NDLS tradition.

March 30, 2007

Law Review Symposium 2007

The *Notre Dame Law Review* hosted a symposium, titled "Non-Judicial Actors and the Continuing Role of *Stare Decisis* in Federal Courts," on Friday, March 30 in the Law School Courtroom. The event was open to students, faculty, and the general public, and included the following panel of distinguished guests: Prof. Michael Stokes Paulsen, the McKnight Presidential Professor of Law & Public Policy at the University of Minnesota Law School; Kermit Roosevelt, assistant professor at the University of Pennsylvania Law School; Thomas Healy, associate professor at Seton Hall Law School; and Mark Tushnet, the William Nelson Cromwell Professor of Law at the Harvard University Law School and former president of the American Association of Law Schools. Prof. Amy Coney Barrett of Notre Dame served as moderator.

The panel employed South Dakota's recently passed ban on abortions as a springboard for a discussion on the role of *stare decisis* in the Supreme Court's constitutional analysis and the proper level of deference the Court should afford the constitutional decisions of non-judicial actors when engaged in that inquiry. Specifically, Prof. Paulsen undertook a historical examination of the Alien & Sedition Acts, Prof. Tushnet examined what he termed "legislative *stare decisis*," and professors Roosevelt and Healy considered questions of *stare decisis* facing the current Court. The presentations were followed by a moderated debate, and the day's events concluded with lunch for the panelists, faculty, and students at the Morris Inn.

The members of the *Law Review* were extremely pleased with the success of the event and expressed special gratitude to professors Amy Barrett, John Nagle, and Jay Tidmarsh for their extensive efforts in planning the event. The papers presented at the symposium will be published in their entirety this December in Volume 83, Issue 2 of the *Notre Dame Law Review*.



LAW SCHOOL EVENTS

March 2007

The Notre Dame Hispanic Law Students Association Held its 11th Annual Graciela Olivarez Award Ceremony

This past March, the Notre Dame Hispanic Law Students Association held its 11th annual Graciela Olivarez Award Ceremony in the Law School Courtroom. This ceremony honors the legacy of Graciela Olivarez, the first Hispanic and first woman to graduate from Notre Dame Law School. At the time, Graciela, known as "Amazing Grace" among the faculty, was a woman in her mid-thirties, a single mother, and had not had any formal education in over 20 years. Before attending law school, Graciela was a crusader for the poor, serving as the director of the Arizona branch of the federal Office of Economic Opportunity.

Her trip to Notre Dame began with a chance encounter with Father Hesburgh at a conference. Impressed with her intelligence and desire to help others, Father Hesburgh returned to Notre Dame and secured a spot for Graciela in the Class of 1970. Although initially reluctant, Graciela made her way to Notre Dame. Her legacy includes serving as the chair of the Mexican-American Legal Defense Fund, where she was one of the first two women on its board. Then, in 1977, President Jimmy Carter appointed her the director of the Community Services Administration, where she became the highest-ranking Hispanic woman in the Carter administration.

Each year the Hispanic Law Students Association honors a Hispanic lawyer or judge who best exemplifies Graciela's qualities and who has made significant contributions to the Hispanic legal community. This year's recipient is the Honorable Philip R. Martinez of the Western District of Texas. Before being appointed by President George W. Bush to the federal bench in 2002, Judge Martinez had served as a judge in El Paso County and as a State District Court judge. His educational accomplishments include graduating *summa cum laude* from the University of Texas at El Paso (UTEP) and attending Harvard Law School. Among his many contributions to the Hispanic legal community, Judge Martinez has established the Philip R. Martinez Endowed Scholarship to fund UTEP students learning at the Center for Law and Border Studies and the Law School Preparation Institute.

February 23–25, 2007

Host to the 2007 Regional Midwest Philip C. Jessup International Law Moot Court Competition

The Notre Dame Law School was honored to host the 2007 Regional Midwest Philip C. Jessup International Law Moot Court Competition in February 2007. This annual competition is sponsored by the International Law Students Association. Selected member schools are chosen to host each regional competition. Twelve schools from the Midwest region came to Notre Dame ready to argue the case between the Republic of Adaria (Applicant) and the Republic of Bobbia, the Kingdom of Cazalia, the Commonwealth of Dingoth, the State of Phriam, and the Kingdom of Finbar (Respondents). The case was concerning the Rotian Union.

Prof. Paolo Carozza served as the faculty host; Peter Horvath, director of

students, served as the scoring coordinator; third-year law student Andy Moosman served as the student volunteer coordinator; and external relations staff member, Therese Hanlon served as the regional administrator to the competition.

The law firm of Baker and Daniels kindly sponsored the competitor receptions. Seventeen alumni, nine LL.M. and J.S.D. candidates, 15 Notre Dame faculty members, and four non-alumni attorneys served as judges to the 27 competition rounds that took place. More than 30 undergraduate and law students assisted with the competition throughout the weekend.

After 26 rounds of competition, the University of Iowa College Law School and William Mitchell College of Law argued the final round before judges Prof. Mary Ellen O'Connell (Notre Dame Law School), Prof. Douglass Cassel (Notre Dame Law School), and Associate Dean William Mock (John Marshall Law School). The University of Iowa College of Law team emerged the champion of the competition.



PARTICIPATING TEAMS

- Chicago-Kent College of Law
- DePaul University College of Law
- Hamline University School of Law
- John Marshall Law School
- Loyola University Chicago School of Law
- Marquette University Law School
- Northwestern University School of Law
- University of Illinois College of Law
- University of Iowa College of Law
- University of St. Thomas School of Law
- University of Wisconsin Law School
- William Mitchell College of Law

REGIONAL CHAMPION

- University of Iowa College of Law**
- Javaria Ahmad
oralist for Applicant
 - Jessica Blome
oralist for Applicant
 - Dustin Lies
 - Andrea Shafer
 - Andrew Stoltze

REGIONAL RUNNER-UP

- William Mitchell College of Law**
- John Burton
oralist for Respondent
 - Chris Jensen
 - Jamie Kreuser
 - Jesse Matson
oralist for Respondent
 - Angela Saxena
 - Amy Busse
Coach

ORALIST AWARDS

- First Place**
- Michael Klein
University of Wisconsin Law School
- Second Place**
- Chris Ryba
Loyola University Chicago School of Law
- Third Place**
- David Warning
University of Wisconsin Law School
- Fourth Place**
- Honorable Mention**
- Jesse Matson
William Mitchell College of Law
- Fifth Place**
- Honorable Mention**
- Matthew Resch
Hamline University School of Law

MEMORIAL AWARDS

- First Place**
- University of Iowa College of Law
- Second Place**
- Chicago-Kent College of Law
- Third Place (tie)**
- DePaul University College of Law
- Third Place (tie)**
- Northwestern University School of Law
- Third Place (tie)**
- University of St. Thomas School of Law
- Fourth Place**
- Honorable Mention**
- University of Wisconsin Law School
- Fifth Place**
- Honorable Mention**
- Hamline University School of Law

Neuroimaging and the “Complexity” of Capital Punishment

O. CARTER SNEAD



Prof. Snead joined the faculty of the Law School in the fall of 2006. He received his B.A. degree from St. John's College in 1996 and his J.D. degree from Georgetown in 1999. After clerking for the Honorable Paul J. Kelly, Jr., United States Court of Appeals for the Tenth Circuit, he practiced law in Washington, D.C. In 2002, he became the general counsel for the President's Council on Bioethics. In that capacity, he was the principal drafter of the Council's 2004 report, "Reproduction and Responsibility: The Regulation of New Biotechnologies." From 2004 to 2005, he was the chief negotiator for, and head of, the United States' delegation to UNESCO for the drafting of the Universal Declaration on Bioethics and Human Rights, which was adopted in October of 2005. Earlier this year, Prof. Snead was appointed to be a Permanent Observer for the United States Government at the Council of Europe's Steering Committee on Bioethics. His research focuses on the intersection of law, morality, and bioethics.

"Can brain scans be used to determine whether a person is inclined toward criminality or violent behavior?"

This question, asked by Senator Joseph Biden of Delaware at the hearing considering the nomination of John G. Roberts to be Chief Justice of the United States, illustrates the extent to which cognitive neuroscience—increasingly augmented by the growing powers of neuroimaging—has captured the imagination of those who make, enforce, interpret, and study the law. Judges, both state and federal, have convened conferences to discuss the legal ramifications of developments in cognitive neuroscience. Scholarly volumes have been devoted to the subject. The President's Council on Bioethics convened several sessions to discuss cognitive neuroscience and its potential impact on theories of moral and legal responsibility. The United States General Accounting Office drafted a report surveying the views of government officials representing the CIA, Department of Defense, Secret Service, and FBI on the potential uses of "brain fingerprinting," a lie-detection technique that utilizes functional neuroimaging. More recently, civil libertarians have expressed suspicion and concern that the United States government is using various neuroimaging techniques in the war on terrorism. Members of the personal injury bar have urged the use of functional neuroimaging to "make mild and moderate brain and nervous injuries 'visible' to jurors." Not surprisingly, members of the civil defense bar have published articles criticizing the reliability of such evidence and arguing that it should be inadmissible. Criminal defense attorneys have likewise expressed a strong interest in using neuroimaging evidence to help their clients.

The attraction of the legal community to cognitive neuroscience is by no means unreciprocated. Cognitive neuroscientists have expressed profound interest in how their discipline might impact the law. Michael Gazzaniga (who coined the term "cognitive neuroscience") recently predicted that someday advances in neuroscience will "dominate the entire legal system." Practitioners of cognitive neuroscience seem particularly drawn to criminal law; more specifically, they have evinced an interest in the death penalty. Indeed, from their work in the courtroom and their arguments in the public square, a well-formed cognitive neuroscience project to reform capital sentencing has emerged.

This article seeks to identify, articulate, take seriously, and provide a critique of this project in light of its own objectives. In the short term, cognitive neuroscientists

For the long term, cognitive neuroscientists aim to draw upon the tools of their discipline to embarrass, discredit, and ultimately overthrow retribution as a distributive justification for punishment.



seek to assist defendants in their mitigation claims by invoking cutting-edge brain-imaging research on the neurobiological roots of criminal violence. Neuroimaging experts appeal to such evidence to bolster defendants' claims that, although legally guilty, they do not deserve to die because the abnormal structure and/or function of their brains diminishes their culpability.


For the long term, cognitive neuroscientists aim to draw upon the tools of their discipline to embarrass, discredit, and ultimately overthrow retribution as a distributive justification for punishment. The architects of the cognitive neuroscience project regard retribution as the root cause of the brutality and inhumanity of the American criminal justice system, generally, and the institution of capital punishment, in particular. In its place, they argue for the adoption of a criminal law regime animated solely by the forward-looking (consequentialist) aim of avoiding social harms. This new framework, they hope, will usher in a new era of what some have referred to as "therapeutic justice" for capital defendants, which is meant to be both more humane and more compassionate.

This article provides a friendly critique of the cognitive neuroscience project. That is, the analysis proceeds from a position of sympathy and solidarity with the humanitarian impulses—and the general antipathy for the death penalty—that animate the cognitive neuroscientists working in this field. Thus, the wisdom and soundness of the cognitive neuroscience project will be appraised according to the metric of its own humanitarian ambitions: namely, success in helping convicted capital defendants persuade jurors and judges not to impose a sentence of death, thereby creating a more compassionate and humane legal regime for such defendants. Unfortunately, it seems unlikely that these ends would be achieved if the

short- and long-term aims of cognitive neuroscientists were ever actually realized. To the contrary, it seems likely that the criminal regime desired by cognitive neuroscientists would, tragically and ironically, prove far harsher and less humane for capital defendants than the current system.

Why? Simply put, the project, taken as a whole, is utterly at war with itself. The short-term aim relies on a particular theory of mitigation that is firmly grounded in retribution—a principle whose foundations are explicitly rejected by the architects of the cognitive neuroscience project. Conversely, the long-term aim is devoted to dismantling the doctrinal foundation (i.e., retribution) upon which the short-term aspiration depends. Thus, the success of the long-term goal would necessarily defeat the short-term goal. Worse still, the extant mechanisms that the long-term project would explicitly leave in place (that is, those features of the capital sentencing framework animated solely by the consequentialist goal of avoiding societal harms) constitute arguably the single gravest threat to a capital defendant's life. If the capital sentencing regime were remade according to the aspirations of the long-term plan, this threat would be dramatically amplified precisely because of the research of cognitive neuroscientists. Indeed, it is only by virtue of the doctrine of just deserts that neuroimaging evidence of the roots of criminal violence can be understood as reducing a capital defendant's culpability. This conclusion accords with the (perhaps counterintuitive) fact that just deserts has served as arguably the most valuable limiting principle in the American jurisprudence of capital sentencing, and perhaps the criminal law more broadly.

As Paul Robinson has observed, within the context of sentencing, desert and dangerousness inevitably conflict as distributive criteria: "To advance one, the system must sacrifice the other.



Thus, in a final ironic twist, once retribution is replaced with a regime single-mindedly concerned with the prediction of crime and the incapacitation of criminals, the only possible use in capital sentencing of the neuroimaging research on the roots of criminal violence is to demonstrate the aggravating factor of future dangerousness.

The irreconcilable differences reflect the fact that prevention and desert seek to achieve different goals. Incapacitation concerns itself with the future—avoiding future crimes. Desert concerns itself with the past—allocating punishment for past offenses.” The thrust-and-parry of this conflict is played out in dramatic fashion in the capital context. On the one hand, capital defendants introduce mitigating evidence to diminish their moral culpability, thus seeking a final refuge in the concept of retribution. On the other, the prosecution tenders evidence of future dangerousness, trying to stoke the consequentialist fears of the jury about violent acts that the defendant might commit if he is not permanently incapacitated by execution. In capital sentencing, pure consequentialism is the gravest threat to the defendant’s life, while appeals to retributive justice are his last, best hope.

The long-term aspiration of cognitive neuroscience decisively resolves this conflict between desert and crime control in favor of the latter by removing any consideration of diminished culpability. In so doing, the long-term scheme eliminates the last safe haven for a capital defendant whose sanity, capacity for the requisite *mens rea*, competence, and guilt are no longer at issue. Thus, in a final ironic twist, once retribution is replaced with a regime single-mindedly concerned with the prediction of crime and the incapacitation of criminals, the only possible use in capital sentencing of the neuroimaging research on the roots of criminal violence is to demonstrate the aggravating factor of future dangerousness.

Imagine for a moment how a jury concerned solely with avoiding future harms would regard an fMRI or PET image that purported to show the biological causes of a non-excusing disposition to criminal violence. Likely, neuroimaging would radically amplify, in the minds of jurors, the aggravating

effect of a diagnosis of APD (antisocial personality disorder) or psychopathy. In a sentencing system that focused the jury’s deliberation solely on the question of identifying and preventing crime, the work of the cognitive neuroscience project’s architects would be transformed from a vehicle for seeking mercy into a tool that counsels the imposition of death.

It is only through the lens of just deserts that such evidence could possibly be regarded as mitigating. This conclusion is bolstered by capital defense experts who have observed that “[e]vidence of neurological impairment . . . can be devastatingly damaging to the case for life. In presenting such evidence to a jury, counsel must be careful to avoid creating the impression that the defendant is ‘damaged goods’ and beyond repair.” In the regime contemplated by the long-term aspiration—where claims of diminished culpability are untenable—this is the only permissible inference that jurors can draw. Arguing for compassion or leniency in such a system would be as nonsensical as seeking mercy for a dangerously defective car on its way to the junkyard to be crushed into scrap metal. Reconciliation and forgiveness are not useful concepts as applied to soulless cars; they are only intelligible as applied to sinners.

The grave implications of the long-term aspiration for capital sentencing come into even sharper relief when one considers the role that retributive justice has played in modern death penalty jurisprudence. Contrary to the intuitions of the project’s architects, retribution has served as a crucial limiting principle on capital sentencing. The Supreme Court, itself, has referred to a “narrowing jurisprudence” of just deserts, which limits the ultimate punishment to “a narrow category of the most serious crimes” and defendants “whose extreme culpability makes them ‘the most deserving of execution.’” In the name of retributive justice, the Court has barred the execution of mentally retarded defendants, children who were under the age of 18 when the offense was committed, rapists, and defendants convicted of felony murder who did not actually kill or attempt to kill the victim. In each instance, the Court ruled that such defendants were not eligible for the death penalty because such punishment would be categorically disproportionate to their personal culpability. These same results could not have been reached if deterrence were the sole animating principle guiding the Court: General deterrence—i.e., whether the death penalty for a specific offense or a specific class of offenders will reduce crime overall—may be a contested issue. However, specific deterrence is always advanced by the execution of the convicted person, since execution guarantees that the same convicted person will not cause future harm.

In fact, the widely shared intuition that seems to be motivating the long-term aspiration—namely, that retributive justice

Regardless of neuroimaging's capacity or incapacity to predict such criminal behavior reliably, there is already a powerful demand for the use of such techniques in crime control.

is the primary source of the brutality and harshness of the modern American criminal justice system—may generally be misguided. Many features of the criminal justice system that are frequently criticized as draconian and inhumane are, in fact, motivated by a purely consequentialist crime-control rationale. Such measures include laws that authorize life sentences for recidivists (i.e., “three strikes” laws); laws that reduce the age at which offenders can be tried as adults; laws that punish gang membership; laws that require the registration of sex offenders; laws that dramatically increase sentences by virtue of past history; and, most paradigmatically, laws that provide for the involuntary civil commitment of sexual offenders who show difficulty controlling their behavior. These laws are the progeny of the principle animating the long-term aspiration and some are worrisome examples of its possible implications.

Paul Robinson has offered a provocative genealogy for such laws that provides further grounds for caution. He makes a powerful argument that abandoning retributive justice in favor of consequentialist values of rehabilitation laid the groundwork for the draconian measures described above. According to Robinson's account, once “the limited ability of social and medical science to rehabilitate offenders became clear,” reformers tried to salvage what was left of the consequentialist project by turning to incapacitation as the principle means of avoiding future crimes. He concludes that “the harshness of [the] current system may be attributed in largest part to the move

to rehabilitation, incapacitation, and deterrence, which disconnected criminal punishment from the constraint of just deserts.”

Robinson points to the possibility that “if incapacitation of the dangerous were the only distributive principle, there would be little reason to wait until an offense were committed to impose criminal liability and sanctions; it would be more effective to screen the general population and ‘convict’ those found dangerous and in need of incapacitation.” The short-term project—using cognitive neuroscience to identify the roots of criminal violence—may someday create novel and powerful opportunities to interfere with individual liberty.

Questions of whether a given individual poses a continuing threat to society are central to the criminal justice system. In addition to capital sentencing, fact-finders are charged with making such determinations in the context of non-capital sentencing, civil commitment hearings, parole and probation hearings, pretrial detention, and involuntary civil commitment of sexual offenders. Regardless of neuroimaging's capacity or incapacity to predict such criminal behavior reliably, there is already a powerful demand for the use of such techniques in crime control. Moreover, far less reliable methods for predicting future social harms have already been accepted by the Supreme Court in the capital sentencing context. This problem would be dramatically aggravated by adopting a criminal framework that places an even higher premium on the prediction and prevention of violence than the present one does.

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¹ Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 18 (2005).

² Cognitive neuroscience can be described as the science of how the brain enables the mind. See, e.g., MICHAEL S. GAZZANIGA, *THE MIND'S PAST* xii (1998).

³ U.S. GEN. ACCT. OFFICE, INVESTIGATIVE TECHNIQUES: FEDERAL AGENCY VIEWS ON THE POTENTIAL APPLICATION OF “BRAIN FINGERPRINTING” (2001).

⁴ See e.g., Press Release, Am. Civ. Liberties Union, ACLU Seeks Info. About Gov't Use of Brain Scanners in Interrogations (June 28, 2006).

⁵ Donald J. Nolan & Tressa A. Pankovits, High-Tech Proof in Brain Injury Cases, *TRIAL*, June 1, 2005, at 27.

⁶ E.g. J. Bruce Alverson & Sandra S. Smagac, *Brain Mapping: Should This Controversial Evidence Be Excluded?*, 48 *FED'N INS. CORP. COUNS. Q.* 131 (1998).

⁷ MICHAEL S. GAZZANIGA, *THE ETHICAL BRAIN* 88 (2005).

⁸ See Robert M. Sapolsky, *The Frontal Cortex and the Criminal Justice System*, *PHIL. TRANSACTIONS ROYAL SOC'Y B: BIOLOGICAL SCI.* at 1788.

⁹ In this article, “retribution,” “retributive justice,” and “just deserts” are used interchangeably to denote the concept that punishment should be distributed on the basis of the personal blameworthiness of the offender, in light of relevant mitigating and aggravating factors.

¹⁰ H.L.A. Hart distinguished the “General Justifying Aim” of punishment from its “distributive” principles. The former constitutes the ultimate legitimating goal of punishment, whereas the latter is a limiting or qualifying

principle that informs the scope of liability (i.e., who may be punished) and the amount of punishment that may be meted out. See HART, *PUNISHMENT AND RESPONSIBILITY* 8-13 (1968).

¹¹ E.g., Jana L. Bufkin & Vickie R. Luttrell, *Neuroimaging Studies of Aggressive and Violent Behavior: Current Findings and Implications for Criminology and Criminal Justice*, 6 *TRAUMA, VIOLENCE, & ABUSE* (2005).

¹² Paul H. Robinson, *Punishing Dangerousness: Cloaking Preventive Detention as Criminal Justice*, 114 *HARV. L. REV.* 1429, 1441 (2001).

¹³ Michael N. Burt, *Forensics as Mitigation*, <http://www.goextranet/Seminars/Dallas/BurtForensics.htm> (last visited July 28, 2007).

¹⁴ *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

¹⁵ *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

¹⁶ *Atkins*, 536 U.S. at 321.

¹⁷ *Roper*, 543 U.S. at 571.

¹⁸ *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

¹⁹ *Enmund v. Florida*, 458 U.S. 782, 801 (1982).

²⁰ See Robinson, *supra* note 12, at 1429–31 & nn.2–7.

²¹ See *id.* at 1449.

²² Paul H. Robinson, *The A.L.I.'s Proposed Principle of “Limiting Retributivism”: Does it Mean in Practice Anything Other than Pure Desert?* 7 *Buff. Crim. L. Rev.* 3, 14 (2003).

²³ Robinson, *supra* note 12, at 1439–40.

SALVATION AND THE SOPRANOS:

Redemption in New Jersey?

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In Romans 8:22, St. Paul says that the “whole creation has been groaning” while awaiting redemption. He wrote these words as an evangelist addressing the fledgling church in first-century Rome, but they might just as easily have been written by a current film or television critic.

Like Paul's Roman audience two millennia ago, American society is deeply engaged with the question of whether—and how—human beings can be redeemed. Many of us aren't sure the question has a positive answer. And in America, such pessimism expresses itself most visibly in popular culture.

I want to justify this claim by discussing the Emmy-winning HBO series *The Sopranos*, which will begin the second half of its sixth and final season in April. *The Sopranos* centers on the life of fictional New Jersey mob boss Tony Soprano. Although its violent subject matter and coarse language will shock the faint of heart, it is easily the best series on television, both a popular and a critical success. The show's complex characters and sharp dialogue have attracted a wide variety of attention over the years. The online magazine *Slate* has sponsored forums of psychotherapists and mob experts offering their reflections on the weekly episodes. A *Sopranos Family Cookbook* has been a big seller. And no television show has explored more relentlessly—or more compellingly—questions of moral character, responsibility, excuse, and self-deception.

I'm going to focus on the most recent complete season of the show, season 5 (now available on DVD)—in my judgment, the heart of the series. But first, a little background for those who don't subscribe to HBO.

The Sopranos chronicles the two overlapping “families” of mob boss Tony Soprano. Tony's work family comprises the capos and soldiers who help run his various unlawful enterprises, while his home family includes his wife, Carmela, his daughter, Meadow (an undergraduate at Columbia in season 5), and his son, A.J. (a high school student on the verge of delinquency). Orbiting this nucleus are Tony's increasingly senile uncle, “Junior” Soprano (the titular head of the mob family), and his free-spirited sister, Janice, who is married to one of his soldiers, Bobby Baccalieri.

Although *The Sopranos* deals with an organized crime family, it would be a mistake to call it a “mob saga” in the tradition of *The Godfather* (1972). Tony's soldiers revere

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that movie, seeing in it a grandiose reflection of themselves, but their own reality is grittier, more mundane, and more humorous than that of the *Godfather's* Corleone family. In the first season, we see Tony Soprano dutifully participating in a parent-teacher conference at his son's parochial school and visiting a psychiatrist, Dr. Melfi, to seek help for depression and a panic disorder; his sessions with her remain a central feature in many of the show's episodes. It's hard to imagine *The Godfather's* Vito Corleone on Prozac, or attending a parent-teacher conference.

In contrast with the Corleones, then, the lives of the Sopranos are shockingly ordinary. True, members of Tony's work family inflict brutal physical violence on their associates, but the show and its creator, David Chase, place even greater dramatic emphasis on the emotional violence inflicted by members of Tony's home family on one another. Over and over again, the series drives home one lesson: The everyday brutality of "civilian" American family life bears an uncomfortable resemblance to life in the "family" of organized crime. So the question of whether the Sopranos and their circle can be redeemed, in my view, is inextricably related to the question of whether we ourselves can be redeemed.

Fate and moral failing

Is there a path to a morally upright and socially respectable life? Is there a passage to physical security and emotional intimacy with the people we love? These two questions point to our elemental human understanding of what it means to be redeemed, what it means to be saved, and what it means to be safe. They outline our hopes for basic forms of salvation, not after death, but in the here-and-now of our lives. In two overarching story lines, season 5 of *The Sopranos* raises and then dashes these hopes.

The first has to do with the rise and fall of Tony Soprano's cousin Tony Blundetto. Seeking moral and social redemption, Blundetto returns to his mob family after spending years in

prison for a crime actually committed by Tony Soprano. Miraculously, he wants to go straight. In one of the show's perfect little ironies, he works hard to become a licensed massage therapist, healing human bodies rather than harming them, and initially resists the temptation to make easy money by resuming his mob activities. By the end of the season, though, Blundetto has not only been pulled back into the family business but has also been ejected from it in the most brutal possible fashion. Agreeing without Tony Soprano's knowledge to carry out a lucrative hit on a member of the New York mob, Blundetto enrages Tony, who decides to kill him (a shotgun blast to the chest) in order to keep the peace with the New York mob. A murderer, Blundetto is ultimately a victim of murder. There is doubtless some cosmic justice in this outcome. But there is no glimmer of hope for moral and social redemption.

Even more heartbreaking, though, is the downfall of Adriana La Cerva, fiancée of Christopher Moltisanti, Tony Soprano's nephew and protégé. In the end, it is Adriana's love for her family that proves to be her undoing. Forced by federal agents to choose between imprisonment on drug charges and life as a mob informant, she unwisely chooses the latter in order to stay with her beloved Christopher. When the feds increase the pressure for information, she finally tells Christopher the truth, imploring him to join her in the witness-protection program. Furious and terrified, Christopher viciously beats her, then collapses in tears. Ultimately he calls Tony and gives up Adriana. Tony's consigliere, Silvio, drives her out into the woods and kills her, shooting her as she attempts to crawl away in the fall leaves.

Neither Tony Blundetto nor Adriana La Cerva ever had a chance. In both cases, fate conspires with greed, the characteristic moral failing of mob life, to bring about their doom. Tony Blundetto's downfall begins when he picks up a bag thrown onto the sidewalk from the window of a speeding car. The bag contains drugs and money, around \$10,000. Blundetto tosses the drugs, but—chafing at the financial constraints of civilian life—keeps the cash. The money leads him back into gambling, then back into the mob life to pay

his gambling debts, and inexorably forward to his own death. As for Adriana, her moment of destiny occurs when Christopher, having initially agreed to leave his life as a “made” mobster and join her, heads out for cigarettes before leaving with her to meet with federal agents; he happens upon a beaten-down family piling into a rusted-out Chevy in front of the convenience store. Contemplating life in witness protection with no marketable skills, he caresses the gleaming hood of his pride and joy, a \$50,000 Hummer. Adriana’s fate is sealed.

These two grim tales suggest that we are trapped in a world ruled by an inexorable fate that seizes upon our moral failings in order to bring about our ruin. But the makers of *The Sopranos* have still more to say about redemption. Season 5 goes on to subvert three other prevalent American understandings of what it means to be redeemed: therapeutic redemption, redemption associated with 12-step programs based on Alcoholics Anonymous, and Christian redemption.

Tony and therapeutic redemption

Since the show’s outset, Tony Soprano has been in psychotherapy with Dr. Jennifer Melfi. As a “wise guy” expected by his men to be strong enough to deal with his own problems, Tony undertook therapy with some trepidation. But his panic attacks were undeniably bad for business. He wanted a quick fix for what he saw as a troublesome but isolated problem. And so the series began its notable effort to grapple with the nature and purposes of psychotherapy. The question in a nutshell: Is therapy a morally neutral technique, to be deployed for whatever ends the patient desires—including reconciling himself to a life of criminality and violence? Is it possible, in other words, to be a happy, healthy, and well-adjusted mobster?

University of Chicago professor Jonathan Lear, a philosopher and a practicing psychotherapist, would answer both questions

with a firm “no.” In *Therapeutic Action* (2003), Lear provides a deeply humane account of the larger redemptive goals of psychotherapy. He argues that therapy, far from being a neutral technique, aims at enabling patients to develop a more

Over and over again, the series drives home one lesson: The everyday brutality of “civilian” American family life bears an uncomfortable resemblance to life in the “family” of organized crime.

“objective” perspective on the world, one less distorted by the unconscious projection of past experiences upon the present. Such experiences, frequently emanating from a traumatic youth, are like ghosts, repeatedly intruding upon one’s ability to experience the present in a capable and confident manner. According to Lear, therapy does not banish these ghosts; rather, it soothes them, by helping a patient develop a conscious perspective on the events of the past and their effect on his life. Doing so can establish “a different kind of connection” between the past and the present, Lear writes, one that lets the patient “explore the world from which this ghost arose, and in so doing place him back in his context.”

The Soprano family has more than its share of ghosts. In therapy Tony finally realizes that his persistent depression is actually rage turned inward. His father, also a “made” member of the Jersey mob, was prone to fits of domestic violence. His mother, Livia, not only failed to protect Tony, but also was emotionally abusive and vindictive in ways that continued long into his adulthood. Resentful that Tony put her into a nursing home, she convinced his uncle, “Junior” Soprano, to order a hit on him in retaliation. No wonder Tony is angry and depressed.

During season 5, Tony comes to see that rage really is a family problem—in both senses of the word “family.” The pathology of his biological family is embedded in the pathology of his mob family, and vice versa. When his sister, Janice, is arrested after pummeling another woman at a kids’ soccer game, Tony forces her to enroll in anger-management therapy.

Almost miraculously, Janice's therapy seems to work. Yet Tony's response to his sister's newfound equanimity is mixed; he is genuinely happy for her, but also jealous. As Janice radiantly presides over a peaceful Sunday dinner with the family, his jealousy takes over. In one of the most emotionally brutal scenes in the entire series, Tony deliberately baits her, wondering out loud where her son, Harpo—a child Janice abandoned years ago—is eating his Sunday dinner. A shaken Janice attempts to deflect his sardonic comments, but her psyche proves too fragile. His provocations strip away not only her newfound serenity but also her basic dignity and self-possession. As his howling and disheveled sister is physically restrained by her husband, a smirking Tony strolls out of their house into the sunlight.

The scene demonstrates the impossibility of therapeutic redemption for the Sopranos, whose family relationships are based on violence and destruction. Again, Jonathan Lear

The question in a nutshell: Is therapy a morally neutral technique, to be deployed for whatever ends the patient desires—including reconciling himself to a life of criminality and violence?

offers a helpful framework. He argues that the therapist's work is ultimately an act of love for the patient, one that ideally exhibits three facets of loving relationships: an open-ended commitment to help the loved one achieve a higher level of self-understanding; an attempt to further the loved one's freedom, whatever that freedom might entail; and a ready imagining of what it would mean for the relationship to end, along with an associated determination to avoid causing (or needlessly perceiving) the kind of betrayal that could bring about that end.

In this light, Tony's actions toward his sister clearly subvert the therapeutic redemption toward which he initially pointed her; indeed, they exemplify the opposite of love. Tony does not help Janice achieve a higher level of self-knowledge, but deliberately conjures the family ghosts that haunt and

distort her perception. He does not promote her freedom, but provokes her into re-enslaving herself to her uncontrollable anger. Most disturbingly, he commits a fundamental act of betrayal, leaving her devoid of the capacity for self-reflection. Having brutally destroyed her psychic integrity, Tony takes pleasure in reducing his sister to the level of a wounded and enraged animal. That's not just betrayal—that's hate.

Twelve-step redemption

Tony is not, however, entirely heartless. He shows tremendous patience toward his nephew, Christopher, who suffers from an out-of-control addiction to drugs and alcohol. Rather than punishing or even killing him after his addiction triggers several serious mistakes at work, Tony packs him off to a rehab center in Pennsylvania. Christopher emerges clean and sober, a devoted 12-stepper.

Overcoming an addiction is always hard when you return to the pressures of your job. And what if your job description is "Mafia enforcer?" The values of Alcoholics Anonymous and its daughter programs don't exactly mesh with mob values. Where

12-step programs call upon the alcoholic or addict (in the words of Bill W., founder of AA), to "perfect and enlarge his spiritual life through work and self-sacrifice for others," Tony and his crew strive to perfect their material lives through the work and self-sacrifice of others. Where AA is firmly committed to the proposition that one gets by giving, Tony and his crew are firmly committed to the proposition that one gets by taking. And where AA is decidedly not a commercial enterprise—its Twelve Traditions include a strong caution against accumulating "money, property, and authority"—Tony and his crew grow rich by exploiting the addictions of those who are suffering, thereby piling misery upon misery.

The hard collision between the values of AA and the values of the Mafia reverberates in the story of a man Christopher meets

Religious redemption has long been a prominent theme in mob sagas, where “paying the price” receives richly ironic treatment.

in rehab, J.T. Dolan, a former Hollywood writer whose heroin habit destroyed his career. In the 12-step meeting the two attend after leaving rehab, Dolan publicly thanks “my man Chris” for all his support. The two strike up a friendship, and when Christopher finds out that J.T. likes to gamble, he offers to set him up with a high-stakes game. After two straight days of poker, J.T. is in the hole for \$57,000. He begs Christopher to lend him the money, which he does—at the usual exorbitant rate. “Don’t give me that look,” he tells an astonished J.T. “This is your problem. I will not fuckin’ enable you!”

As with Tony and therapy, Christopher’s actions don’t merely disappoint AA’s values, they actively subvert them. Rather than help J.T. stay clean, Christopher facilitates his descent into another form of addiction, gambling, which he then exploits for his own monetary gain while mouthing platitudes. The attempt to combine the roles of brutal Mafia loan shark and supportive fellow recovering addict is darkly hilarious, with Christopher packing a hollow-eyed J.T. off to another stint in rehab—while confiscating his BMW convertible as partial payment on the loan and admonishing him that “there is no chemical solution to a spiritual problem.”

Religious redemption

The word “redemption” comes from the Latin *redemere*, which means “to buy back,” a concept central to both the Old and New Testaments. In delivering the Israelites from Egypt, Yahweh is seen to ransom or redeem them. The New Testament extends, deepens, and sharpens this understanding of redemption, as the promised messiah comes to be identified with Jesus of Nazareth. As the obedient son of God, he “pays the price” for the sins of all humanity, offering himself as a sinless, perfect sacrifice out of love for humanity.

Religious redemption has long been a prominent theme in mob sagas, where “paying the price” receives richly ironic treatment. Who could forget Michael Corleone in the baptism scene in *The Godfather*? As Michael solemnly promises to reject

Satan and all his works, the dons of the other mob families in New York are murdered on Michael’s order. The subversion of religious redemption in *The Sopranos* is more subtle but no less decisive. Much of it centers on Carmela Soprano, Tony’s wife. A devout, intelligent Catholic, Carmela is no doubt familiar with the standard account of Christ’s redemptive activity and purposes. She sends her kids to parochial school and actively participates in parish life. Most of the time, no one could be nicer or more considerate. When the chips are down, though, she’s not above using the fear created by her husband’s way of life to get what she wants. In fact, she once delivered a threat gift-wrapped in a delicious ricotta pie to the lawyer who balked at recommending her daughter, Meadow, for admission to Georgetown. Needless to say, the letter was promptly written.

On rare occasions Carmela is directly challenged for her hypocrisy. In season 3, she consults a psychiatrist, Dr. Krakower. Unlike Tony’s therapist, Dr. Krakower has no time for nonjudgmental therapeutic affirmation. In fact, he speaks with the only morally unequivocal voice in the entire series. Like Jonathan Lear, Dr. Krakower does not consider therapy a morally neutral enterprise. He has no doubt that Carmela’s complicity in Tony’s mob life is incompatible with good psychological health. “You’ll never be able to quell the feelings of guilt and shame that you talked about,” he warns her, “so long as you are his accomplice.” Though she protests the label—after all, she only washes Tony’s clothes and cooks his food—the therapist insists on condemning her for taking “blood money.” “One thing you can never say,” he adds, is that “you haven’t been told.”

In season 5, Carmela is told again, and this time far more bluntly, by Tony himself. When she informs him that she is disgusted by him and wants a divorce—and “an equitable division of our assets”—Tony explodes. “The only reason you have anything is ‘cause of my fuckin’ sweat,” he berates her. “And you knew every step of the way exactly how it works. But you walk around that fuckin’ mansion in your five-hundred-dollar shoes and your diamond rings and you act like butter wouldn’t melt in your mouth.” In the end, after failing to find a lawyer

willing to cross Tony, Carmela decides to reconcile, but only at a price: \$600,000, the cost of the lot upon which she wants to build, decorate, and sell a “spec house.”

Tony agrees, and so Carmela is finally redeemed—“bought back” by Tony. But he does not free her; instead, and with her full consent, he buys her back into a state of moral slavery. And the price is indeed paid in blood money. When a now-reconciled Carmela and Tony tour the plot of land on which she will build her spec house, we can’t but notice that that lot is eerily similar to the wooded lot where Adriana was killed. In

At last, the two overarching story lines of season 5, the stories of Tony Blundetto and Adriana La Cerva, find their proper place—in the worldview of Greek and Roman mythology.

ensuing episodes, Carmela, increasingly troubled by Adriana’s absence and unable to believe the fiction that she has simply run away, dreams of having a conversation with her in the partly constructed house. In the end, Carmela cannot escape the fact that her spec house—in fact her whole life—is built on a foundation of murder.

As a self-described devout Catholic, Carmela surely knows that redemption from sin requires repentance and a firm resolve to amend one’s ways. From a Catholic perspective, redemption requires becoming a different person—in St. Paul’s terms, it requires putting off the “old man” of sin and putting on the “new man” of grace in Jesus Christ. But as her conversation with Dr. Krakower brutally revealed, Carmela cannot do this without leaving behind her family, her friends, and a substantial part of her own identity. No less than Tony or Christopher, Carmela has inextricably entwined her identity with the murderous double family. To redeem these characters is to erase them. And to the credit of the show’s creator, David Chase, we ourselves are forced to admit that as viewers of a drama, we would rather take these characters as they are, unredeemed.

Staging ground to the underworld

One of the fascinating features of *The Sopranos* has been the way its makers address the moral criticisms raised in previous seasons by audiences and critics alike. During season 2, some charged that the series downplayed evil by concentrating too much on Tony’s charming and sentimental side. Season 3 provoked worries that the show was dissolving moral responsibility in therapeutic excuse by highlighting the nonjudgmental attitude of Tony’s therapist, Dr. Melfi, toward her patient’s deeds. After season 4, which culminated in Tony’s vicious murder and dismemberment of his equally vicious cousin Ralph Cifaretto, critics wondered whether the series had become nihilistic, depicting moral monsters engaging in morally obscene actions with no apparent qualms or consequences.

Season 5 effectively responds to these concerns. Tony’s dark side is always apparent to the audience, and his therapeutic breakthroughs, such as they are, don’t function to excuse his bad actions. And the world of *The Sopranos* no longer seems nihilistic; in fact, it seems infused with a cosmic retributive justice, which even Tony himself dimly perceives, although his own time of reckoning has not yet arrived. But season 5 raises its own set of problems. In the end, it presents us with the grim specter of a cosmos emptied of all redemption—bereft not merely of the prospect of Christian salvation, but also of the most powerful and widely available alternatives.

Once *The Sopranos* has dispatched the most commonly held hopes for redemption in American culture, what does it put in their place? The key to this question, in my view, lies in the poster for season 5, reproduced on the cover of this issue of *Commonweal*. Evoking an era in the Sopranos’ Italian heritage that antedates Catholicism, it gives us the worldview of Rome—not Christian Rome, but pagan Rome.

In book 6 of the *Aeneid*, Virgil recounts Aeneas’s visit to the underworld, the realm of the dead. Here, Acheron, the river of grief, its “whirlpool thick with sludge, its giant eddy

seething, vomits all of its swirling sand into Cocytus,” the river of lamentation. The bleak marshlands teem with ghostly figures that “moved along in darkness, through the shadows, beneath the lonely night.” Virgil tells us that they are trapped; the ferryman Charon will not take them across the river Styx because “the waves will only carry souls that have a tomb. Before his bones have found their rest, no one may cross the horrid shores and the hoarse waters.”

The poster for season 5, set in the marshes of New Jersey’s inaptly named Meadowlands, perfectly captures the pervasive bleakness of the underworld in its dual sense: the world of organized crime and the world of their dead. Both those characters who are living and those who are dead remain trapped. Why should the dead hurry to cross? Only harsh and unrelenting judgment awaits them on the other side. The judge Minos pronounces sentence on each soul as it disembarks the ferry, sending the righteous to the Elysian Fields (the Meadowlands, properly speaking) and the wicked through the adamant gates of Tartarus to excruciating punishment.

At last, the two overarching story lines of season 5, the stories of Tony Blundetto and Adriana La Cerva, find their proper place—in the worldview of Greek and Roman mythology. Their lives were determined by inexorable Fate, which even the gods cannot defy. At the same time, their deaths were attributable to the moral flaw of greed, a flaw both shared with all those around them. In season 5 of *The Sopranos*, there is retributive justice. Indeed, in the end, there is only retributive justice.

How should we think about Tony’s fate as we approach the end of *The Sopranos*? In my view, Tony is the opposite of Aeneas, a sort of antihero. At the beginning of season 6, he makes his own visit to the underworld, after being shot in the stomach by his demented uncle, Junior. As Tony’s body fights to survive in an intensive care unit in Newark, his spirit dips a toe in the afterlife. He dreams he’s in California on a business trip, where he is pervasively mistaken for a man named Kevin Finnerty (which sounds a lot like “infinity”). After a series of mishaps,

including a scuffle with some Buddhist monks, he finds himself driving down a dark, winding road to a mysterious luxury resort, where he is met by an unctuous maitre d’hotel. Although neither man recognizes the other, the audience sees that the man is Tony’s cousin Tony Blundetto. Assuring him that his entire family is waiting for him, Blundetto gently but firmly insists that Tony relinquish the briefcase, which has come to symbolize his earthly affairs. Ever more uneasy, Tony glances over at the hotel, where shadowy figures drift in and out of sight against the brightly lit windows. As his eye captures the silhouette of his late mother, Livia, against the door frame, he hears a young girl sobbing in the shrubbery. As his spirit moves toward her, his body emerges from its coma, and his bleary eyes recognize the face of his daughter, Meadow, as she begs her father not to die.

Where exactly was the spirit of Tony Soprano? A man approaches an enticing California hotel, only to find out that he is trapped in it for eternity: a metaphor, perhaps, for the fate of a mobster, his trip to the afterworld demonstrating that you can never escape the family, in this life or the next. Later, trying to explain the vision he experienced while comatose, Tony will say, uneasily, “I saw something.” But what, exactly? As the Soprano saga draws to its close, heavy with intimations of its protagonist’s mortality, what redemption, if any, awaits? Is Tony’s vision one of heaven, or of hell?

My bet is on hell.

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NEW FACULTY

Bridgette Carr

**ASSOCIATE PROFESSIONAL
SPECIALIST IN LAW,
NOTRE DAME LEGAL AID CLINIC**

MARY HENDRIKSEN

“Helping those without a voice is my passion,” says Bridgette Carr, who joins the Law School’s Legal Aid Clinic this fall as an associate professional specialist in law with an emphasis on immigration and refugee law. “Despite a steady stream of talk in the press about an ‘immigrant problem,’ immigrants and refugees are invisible to many Americans largely because they lack a voice—with no vote, they lack a civic voice, and for those with little or no English proficiency, they lack a literal voice as well.”

Carr comes to Notre Dame from the Ave Maria School of Law, where she was an assistant professor of law and director of the Asylum and Immigrant Rights Law Clinic. At Ave Maria’s clinic, Carr and her students assisted immigrants and refugees with a wide variety of legal needs, but she adopted as a particular focus advocacy for women and child refugees, and victims of human trafficking here in the United States.

Carr earned her undergraduate degree in psychology from Notre Dame in 1998. She was awarded a full scholarship to Indiana University’s School of Medicine, but her life took a different turn when she decided to defer her admission to medical school for a year to do service with Americorps. At a Fort Wayne middle school, Carr taught English, science, and math to children from 23 different countries who spoke a total of 14 different languages. Carr loved that work—so much so that she undertook a second year of service to better discern her next step in life. At the end of that year, she opted for law rather than medicine—deciding “advocating for those without a voice in society is my true calling.”

Spending the next three years at the University of Michigan Law School, Carr immersed herself in advocacy for the poor. It was there that she began to focus on assisting refugees, further honing her advocacy skills in this area through an internship at Amnesty International’s London office and then at Detroit’s Freedom House, which represents homeless or indigent refugees seeking asylum in the United States or Canada.

In her move to Notre Dame, Carr will put her own stamp on the Law School’s longstanding interest in human rights and immigration law. Carr’s predecessors at the clinic, including Barbara Szweda, who began the clinic’s immigration work in the early 1990s, and Immigration Fellows Rebecca Houghton and



Lisa Koop, helped immigrant and refugee families reunite in the United States and handled human rights-related cases, such as asylum applications and petitions stemming from domestic violence against immigrants and refugees.

Carr is careful to distinguish between “immigrants”—broadly defined as people who choose to enter the United States, even out of economic necessity—and “refugees”—those “who flee their countries because of persecution or the fear of persecution, either because of race, nationality, political opinions, religion, or identification with a certain social group.”

Many times, Carr says, refugee women and children who are fleeing their own countries are treated particularly brutally here in the United States. At Ave Maria, she became deeply involved in the enormous problem of human trafficking, which, she notes, is classified (along with the illegal arms trade) as the second-largest criminal activity in the world. “Society’s most vulnerable—women and children—are often forced into slavery in neighborhoods throughout the United States.” She points out, though, that the extent of human trafficking in the national economy is a problem that has not penetrated the consciousness of the average American.

Carr’s passion for advocating for those without a voice is intertwined with her second passion—working with law students. “Engaging law students in awareness of the condition and needs of the poorest in our society is the best way to demonstrate to them the true power of being a lawyer. At a clinic, students have the opportunity to reflect on their advocacy and come to the realization that they can actually change lives.” Carr believes that advocacy for the poor can be a particularly powerful and rewarding experience at Notre Dame. “Because we are a Catholic school, students here know that it demonstrates a true appreciation of human dignity to serve all God’s people well.”

FACULTY SERVICE

Paolo Carozza

ELECTED FIRST VICE PRESIDENT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

MARY HENDRIKSEN

In March, Paolo Carozza, associate professor of law, was elected first vice president of the Inter-American Commission on Human Rights (IACHR).

Headquartered in Washington, D.C., the commission is the principal international body responsible for the promotion and protection of human rights in the Western hemisphere. It receives, investigates, and reports on violations of the American Declaration of Rights and Duties of Man (1948), the American Convention of Human Rights (1969), and other international instruments. The commission also monitors human rights in the 35 member states of the Organization of American States (OAS).

Carozza was elected in June 2005 to a four-year term as one of seven commissioners of the IACHR. As is true of all commissioners, he has responsibility for a specific set of countries—in his case, Peru, Paraguay, Guyana, Suriname, Trinidad and Tobago, and Uruguay. With the assistance of the staff attorneys of the IACHR Secretariat in Washington, D.C., he and his fellow commissioners adjudicate cases in which individuals allege that their human rights have been violated. They seek to resolve those disputes through friendly settlement processes, and make recommendations to states where a violation is found. The commissioners also regularly hold hearings on a broad range of current human rights issues, and produce reports on conditions in specific countries or on regional concerns. The commission can also refer specific cases to the Inter-American Court of Human Rights in Costa Rica, in which the individual commissioners can litigate on behalf of the entire commission based on the countries of their responsibility.

In addition, each commissioner acts as rapporteur for a specific area of human rights the commission has identified for



heightened attention. Thus, for example, there is a rapporteur for the rights of children, another for the rights of detainees and prison inmates, and a third assigned to women's human rights. When Carozza became a commissioner, he was also named the rapporteur for the rights of indigenous peoples, which has been a subject of intense interest in the OAS.

Commissioners meet for six weeks of ordinary sessions a year and sometimes also convene extraordinary sessions such as those slated for Paraguay this year. Last year, in fulfillment of his duties, Carozza traveled to Peru, Costa Rica, and Guatemala, and he has upcoming trips scheduled to Paraguay, Brazil, and Guyana.

As an officer of the IACHR, Carozza anticipates that one item on his agenda will be strengthening the internal workings of the commission. "Even before my election, I was interested in the structure and functions of the IACHR as an

international institution," he explains. "The commission's work is extremely important, but as an institution, it is in need of reform. With an enormous backlog of cases and a critical lack of resources, commissioners and staff are hampered in fulfilling their mandate to safeguard human rights in the OAS member states. It is time to address these issues."

Carozza's interest in reform of the commission also springs from the perspective he brings to it as one of the few academics on the seven-member commission. "As a law professor, I am more inclined to be attentive to the jurisprudence of the institution—both as to its depth and to consistency among decisions."

Carozza's position as a law professor provides benefits to NDLS students as well as to the commission itself. In the spring 2007 term, he taught a special seminar at the Law School on the Inter-American human rights system, which used pending IACHR cases as litigation exercises. And his student research assistants have become involved in working on commission matters, even traveling to Washington and Guatemala to participate in the IACHR's sessions. Thanks in part to the longstanding relationship between the institutions of the Inter-American human rights system and the Law School's Center for Civil and Human Rights, four of Carozza's former students have become staff members at the IACHR, four others have been awarded internships there, and four have worked at the Inter-American Court.

OAS Initiatives Concerning the Rights of Indigenous People

By OAS estimates, there are at least 40 million people who identify themselves as belonging to one of the more than 400 different groups of indigenous peoples in the Americas. In most of the states of the hemisphere, income and education levels, as well as health conditions, of indigenous peoples are significantly below those of the rest of the population.

As the IACHR rapporteur for indigenous peoples, Prof. Carozza regularly conducts commission hearings to examine such issues as the effects of displacement and economic and agrarian policies on indigenous communities.

He oversees the preparation of commission reports addressing indigenous peoples' rights in specific countries, and helps bring forward cases in which those rights have been violated.

Earlier this year, Carozza argued before the Inter-American Court an important case for indigenous peoples' rights involving the failure of Suriname to recognize the ancestral lands of tribal communities there and to protect them from the destruction being caused by the illegal exploitation of natural resources. A decision is expected in the case, *12 Saramaka Clans v. Suriname*, this fall.

FACULTY SCHOLARSHIP AND HONORS

Anthony J. Bellia, Jr. published "Sosa, Federal Question Jurisdiction, and Historical Fidelity," *Virginia Law Review in Brief* 93 (2007): 15–21. Bellia will also publish "The Origins of Article III 'Arising Under' Jurisdiction," *Duke Law Journal* (forthcoming 2007).

Geoffrey J. Bennett published "Criminal Procedure and Sentencing," *All England Law Reports Annual Review 2006* (2007): 159–75.

G. Robert Blakey was referenced by Andy Grimm, "Conspiracy Behind Flooding, Suit Charges," *Gary Post Tribune* (Merrillville, Ind.), 5 April 2007.

Margaret F. Brinig published "The Public Choice of Driving Competence Regulations," *Notre Dame Journal of Law, Ethics and Public Policy* 21, 2 (2007): 405–40; *Economic Approaches to Law: Economics of Family Law* (Northampton, Mass.: Edward Elgar Publishing, 2007). Brinig presented "Norm Creation in Family Law: Legal Status and Effects on Children" (panelist, The International Society of Family Law 2007 North American Regional Conference, Vancouver, B.C., Canada, 19 June 2007); "Developing Values in Family Law" (moderator, The International Society of Family Law 2007 North American Regional Conference); and with Steven L. Nock, "One Size Fits All Family Law" (lecture, Association of American Law Schools Mid-Year Meeting—Bridging the Gap Between Social Science and Law, Vancouver, 21 June 2007). Prof. Brinig has been promoted to the associate dean for faculty research of the Law School.

Alejandro E. Camacho will publish "Can Regulation Evolve? Lessons from a Study in Maladaptive Management," *UCLA Law Review* 55 (forthcoming 2007). Camacho presented "Collaboration and Public Participation in Regulatory Decision-Making" (lecture, International Legislative Drafting Institute, The Public Law Center, Washington, D.C., 11–22 June 2007); "Election and Lobbying Reform: Can Congress Really Change the Political System?" (moderator, *Journal of Legislation* Symposium, University of Notre Dame Law School, 29 March 2007); "The Other Alien Debate: The Biology and Policy of Invasive Species" (respondent, Law &... Series, An Interdisciplinary Colloquium, University of Notre Dame Law School, 8 February 2007); and "Making Regulation Evolve: Lessons from Regulatory Maladaptive Management" (lecture, Faculty Workshop Series, University of Illinois School of Law, Champaign, 29 January 2007).

Paolo G. Carozza published "La sussidiarietà e la sovranità negli ordinamenti sovranazionali" in *Libro Della Sussidiarietà* (Dario Chiesa ed., Guerini e Associati, 2007). Carozza

also presented "Subsidiarity and the Rights of Indigenous Peoples in the Americas" (lecture, Distinguished Colloquium Series, University of Arizona James E. Rogers College of Law, Tucson, March 2007); and "Human Rights and Violence Against Women" (lecture, Edith Stein Project: Toward Integral Healing for Women and Culture, University of Notre Dame, 23 February 2007). Prof. Carozza was quoted in an editorial by Rev. Alphonse de Valk, C.S.B., "Pope Benedict on War and Peace," *Catholic Insight* (Toronto, Ontario, Canada), February 2007, online publication date 14 April 2007.

Douglass W. Cassel was interviewed and quoted in "Guatemala Fails to Protect Freedom of the Press" in *PR Newswire* (19 May 2007), sev.prnewswire.com/publishing-information-services/20070509/NYW08009052007-1.html.

Fernand N. Dutile was chosen by the Assumption College Alumni Association to receive the 2007 Dion Outstanding Achievement Award. The award was bestowed on 2 June 2007 in Worcester, Mass. during an alumni reception.

Edmund P. Edmonds presented "Labor, Antitrust and Baseball" (lecture, continuing legal education course, University of Notre Dame Law School, 1 June 2007); and "The Impact of Curt Flood's Minor League Baseball Experiences on His Lawsuit Against Bowie Kuhn" (lecture, "Nine: A Journal of Baseball History and Culture, 14th Annual Spring Training Conference," Tucson, Ariz., 16 March 2007).

Barbara J. Fick published, with Alma C. Garcia, "Social Security for Migrant Workers: The EU, ILO and Treaty-Based Regimes" *Rev. Colomb. Derecho Int. Bogotá* 9 (2007): 45. Fick also published "What's on Your Mind? Imputing Motive in a Title VII Case, An Analysis of *BCI Coca-Cola Bottling Co. v. EEOC*" in *Preview of United States Supreme Court Cases* 7 (16 April 2007): 391.

Judith L. Fox was awarded a Ganey Collaborative Community-Based Research Mini-Grant. Fox, with Jeff Vitton, City of South Bend; Richard Williams, Notre Dame Department of Sociology; and Brian Miller, graduate student, Notre Dame Department of Sociology, are researching the high foreclosure rates and causes in South Bend, Ind. The project title is "Foreclosed and Abandoned Homes in South Bend: A Search for Causes and Solutions."

Richard W. Garnett published "Church, State and the Practice of Love," *Villanova Law Review* 52 (2007): 281; "Free to Believe," *First Things* (May 2007), reviewing Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* (2007); "Individuals

First" *Commonweal* (6 April 2007), reviewing Charles Fried, *Modern Liberty and the Limits of Government* (2006); "Carhart, Casey, and the Court's Catholics," *Jurist* (25 April 2007); and "China's Lesson on Freedom of Religion," *USA Today* (26 March 2007). Garnett will also publish "Pluralism, Dialogue, and Freedom: Prof. Robert Rodes and the Church-State Nexus," *Journal of Law and Religion* (forthcoming 2007); "Our Structural Constitution: Religious Freedom and Church Autonomy," *Chicago Studies* (forthcoming 2007). He wrote the chapter "'Everlasting Splendours': Death-Row Volunteers, Lawyers' Ethics, and the Dignity of Creatures" in *Recovering Self-Evident Truths: Catholic Perspectives on American Law* (Washington, D.C.: Catholic University of America Press, 2007). Prof. Garnett presented "The New Media: Bloggers and the Court" (lecture, annual meeting of the Seventh Circuit Bar Association, Milwaukee, 8 May 2007); "Are Churches (Just) Like the Boy Scouts?" (lecture, Faculty Works in Progress Workshop, University of Chicago Law School, 19 April 2007); "Two There Are: Understanding the Separation of Church and State" (lecture, Conference on the American Experiment in Religious Freedom, The Garaventa Center for Catholic Intellectual Life and American Culture, University of Portland, Ore., 14 April 2007); "Two There Are: Understanding the Separation of Church and State" (lecture, The Kamm Memorial Lecture on Jurisprudence, Wheaton College, Ill., 10 April 2007); "Rethinking Separation: Churches as First Amendment Institutions" (lecture, Faculty Workshop Series, Marquette University School of Law, Milwaukee, 3 April 2007); "Religion and Group Rights" (lecture, Religion and Morality in the Public Square: A Symposium on Philosophy, History and Law, St. John's University School of Law, Queens, N.Y., 23 March 2007); "Do Churches Matter? Toward an Institutional Understanding of the Religion Clauses" (lecture, The Gianella Memorial Lecture, Villanova University School of Law, Pa., 21 March 2007); "What is Morality? The Philosophical and Theological Foundations of Moral Debate" (lecture, The Federalist Society Student Symposium, Northwestern University School of Law, Chicago, 23 February 2007); and "Catholicism and American Freedom" (lecture, Yves Simon Series, The Lumen Christi Institute, Chicago, 15 February 2007). Prof. Garnett was quoted by David Reinhard, "How Many Supreme Court Judges are Catholic?" *Idaho Mountain Express* (Sun Valley, Ind.), 9 May 2007. Garnett was also quoted by Michael Gaynor, "The Long/Brown 'Electronic' Debate on Abortion: The Comments," *RenewAmerica.us* (Washington, D.C.), 31 March 2007, renewamerica.us/columns/gaynor/070331. Prof. Garnett was featured by Gail Hinchion Mancini, "Garnett's Dedication to Catholic School Choice Rooted in Law, and Life" *The Office of News and Information University of Notre Dame Spotlight*, 1 February 2007.

Jimmy Gurulé was interviewed and quoted in “Editorial: Don’t Make the Wrong Decision,” *The Herald Bulletin* (Anderson, Ind.), 3 April 2007. Gurulé was also interviewed and quoted by Alicia Gallegos, “Manhole Slayings Drawing National Attention to South Bend,” *South Bend Tribune* (Ind.), 2 February 2007.

Paul Horwitz appeared on the television game show *Jeopardy* in March 2007. Horwitz, who was a visiting professor during the spring 2007 semester, now teaches at the University of Alabama Law School.

Roger F. Jacobs was awarded the 2007 Marian Gould Gallagher Distinguished Service Award from the American Association of Law Libraries at the closing banquet of the American Association of Law Libraries annual meeting in New Orleans on 17 July 2007.

Michael J. Jenuwine presented “Understanding and Evaluating Child Custody Evaluations in Family Law” (lecture, Allen County Bar Association, Ind., June 2007); “Using Scientific Research in the Courts and Private Practice” (lecture, St. Joseph County Bar Association, Ind., June 2007); “Assessing Issues of Competence in Juvenile Justice Proceedings” (lecture, Juvenile Delinquency Defense Seminar of the Indiana Public Defender Council, Indianapolis, May 2007); “Juvenile Waiver of Counsel: Developmental Issues and Empirical Findings” (lecture, The Promise of Gault: Promoting and Protecting the Right to Counsel in the Juvenile Court, Rutgers School of Law, Newark, N.J., April 2007); “Psychobabble 101: Deciphering the Language of Mental Health Practitioners” (lecture, Indiana Judicial College Spring Meeting, Indianapolis, April 2007); and “Seeking Justice for People with Mental Illness” (lecture, The Sixth Annual Norman Amaker Public Interest Law and Social Justice Retreat, Martinsville, Ind., February 2007).

Robert L. Jones, Jr. presented “Seeking Justice for Clients With Mental Illness” (lecture, The Sixth Annual Norman Amaker Public Interest Law and Social Justice Retreat, Martinsville, Ind., February 2007) and “Ethical Norms as a Social Mirror: The Evolution of Rules on Joint Representation of Clients” (lecture, continuing legal education course, University of Notre Dame Law School, 2 June 2007).

M. Cathleen Kaveny published “Salvation and *The Sopranos*: Redemption in New Jersey?” *Commonweal* 134, 3 (9 February 2007); “Forever Young: The Trouble with the *Ashley Treatment*,” *Commonweal* 134, 4 (23 February 2007); “Regulating Abortion: What did the Roberts Court Do?” *Commonweal* 134, 9 (4 May 2007); “Model Atheist: Jeffrey Stout and the

Culture Wars,” *Commonweal* 134, 13 (13 July 2007). Kaveny also presented “Hope, Solidarity, and Human Rights” (lecture, inauguration of the Institute for Legal Studies, Australian Catholic University, Melbourne, Australia, 22 June 2007). In addition to lecturing at Australian Catholic University in Melbourne, Prof. Kaveny also lectured at the University’s Sydney and Brisbane campuses. While in Australia, Kaveny also met with distinguished members of the bench and bar from Melbourne, Sydney, and Brisbane. Prof. Kaveny has been invited to the November 2007 Science, Theology and the Ontological Quest 2007 International Conference in Rome. She will present “Embodiment and Ensoulment in Twins” in the Philosophical and Theological Aspects Section of the conference. Prof. Kaveny was interviewed and quoted by Elizabeth Redden, “A Challenge to Catholic Colleges” *Inside Higher Ed* (Washington D.C.), 5 February 2007, insidehighered.com/news/2007/02/05/catholic.

Michael S. Kirsch published “Taxing Citizens in a Global Economy,” *New York University Law Review* 82, 2 (May 2007): 443–531. Prof. Kirsch also was granted tenure.

Donald P. Kommers delivered the commencement address at St. Norbert College in DePere, Wisc. on 13 May 2007. Prof. Kommers was also awarded an honorary doctor of laws degree at St. Norbert College. Kommers published “To Be Revised,” *America* (15 January 2007): 38–40, reviewing *Sanford Levinson Our Undemocratic Constitution* (2006). Prof. Kommers presented “The War Powers and the Constitution” (lecture, Teachers as Scholars Seminar, University of Notre Dame, 10 April 2007 and 17 April 2007); “Is the US Constitution Obsolete?” (lecture, Hesburgh Lecture Series, Notre Dame Club of McHenry County, Crystal Lake, Ill., 16 November 2006); “Religion and the Constitution” (lecture, Hesburgh Lecture Series, Notre Dame Club of Palm Beaches, West Palm Beach, Fla., 28 February 2007); and “Religion and the Constitution” (lecture, Hesburgh Lecture Series, Notre Dame Club of Central California, Fresno, 14 March 2007).

Lloyd H. Mayer presented “Serving on a Charity’s Board: Legal and Ethical Duties in an Age of Accountability” (lecture, continuing legal education course, University of Notre Dame Law School, 1 June 2007).

Mary Ellen O’Connell published *International Law and the “Global War on Terror”* (Assa-Pantheon Editions Pedone, 2007); with Maria Alveras-Chen, “The Ban on the Bomb—and Bombing, Iran, the U.S. and the International Law of Self-Defense,” *Syracuse Journal of International Law and Commerce* 54 (2007): 497; “The Legal Case Against War with Iran,” *Jurist* (13 February

2007), jurist.law.pitt.edu/forumy/2007/02/legal-case-against-war-with-iran.php. Prof. O’Connell presented “Identifying the Core Amidst Specialization and Critique” (lecture, Association of American Law Schools and American Society of International Law Joint Conference, What is Wrong with the Way We Teach and Write International Law? in Vancouver, B.C., Canada, 20 June 2007); “Beyond Wealth, Possessing and Re-Possessing Great Art” (lecture, Meador Lecture Series on Wealth, University of Alabama School of Law, 5 April 2007); “The Importance of Theory in Teaching International Law” (panelist, Are We Teaching International Law or U.S. Foreign Relations Law? at the annual meeting of the American Society of International Law, Washington, D.C., 30 March 2007); “To Preserve and Protect Through Force and Belief: The International Law Against War Between States in the Case of Iran and the United States” (lecture, California Western Law School and the University of California—San Diego Center for International Law and Comparative Studies, San Diego, 23 February 2007); and “The Remedy of Return in International Art Law Today” (lecture, Antiquities Symposium, University of Notre Dame, 23 February 2007).

Robert E. Rodes, Jr. published “The Law and Chastity” *America* (9 April 2007). The most recent issue of the *Journal of Law and Religion* contains a festschrift in honor of Prof. Rodes. Among the contributors are his colleagues Professors Kaveny, Rougeau, and Richard Garnett. Other contributors are Richard Church, Emily Albrink Hartigan, and Amelia Uelman. All of the contributors acknowledge Prof. Rodes as, in Prof. Kaveny’s words, “a founding father of interdisciplinary scholarship at the intersection of faith, laws, and morality.”

Vincent D. Rougeau was named a fellow with the Centre for Contextual Theology in London. Rougeau hosted “Strangers no Longer” at the Notre Dame London Law Centre on 20 April 2007.

Thomas L. Shaffer presented “Using Scientific Research in the Courts and Private Practice” (lecture, St. Joseph County Bar Association, June 2007).

O. Carter Snead will publish “Neuroimaging and the ‘Complexity’ of Capital Punishment,” *New York University Law Review* 82 (forthcoming 2007); and “Neuroimaging and the Law: A Reply to Professor Tovino,” *American Journal of Bioethics* (invited Peer Commentary Article, forthcoming 2007). Snead presented “Stem Cell Research, Abortion, Assisted Reproduction, and Contraception” (panelist, Second Annual Meeting on Catholic Thought, University of St. Thomas Law School, Minneapolis, 14 June 2007); “The Future of Bioethics” (lecture, Center for Bioethics and Human Dignity Annual Conference, “Bioethics

FACULTY SCHOLARSHIP AND HONORS

Nexus: The Future of Healthcare, Science, and Humanity," Trinity International University, Deerfield, Ill., 12–14 July 2007); "The Impact of Genomic Knowledge on Assisted Reproduction" (lecture, 2007 Forester Lecturer, Huntington University, Ind., 3 May 2007); "Neuroimaging, Capital Sentencing and the 'Complexity of Punishment'" (lecture, University of Illinois Law School Faculty Workshop, Champaign, 23 April 2007); "*Vita Umana E Liberta Di Ricerca*" (panelist, Human Life and the Freedom of Scientific Research, University of Milan, Milan, Italy, 19 April 2007); "The Law, Ethics and Public Policy of Stem Cell Research" (panelist, The National Catholic Prayer Breakfast, Washington, D.C., 13 April 2007); "Physician-Assisted Suicide and Its Effect on Aging Americans" (faculty respondent, 2007 Notre Dame Student Scholarship Symposium, University of Notre Dame Law School, 4 April 2007); "Mandatory Vaccination Programs" (lecture, 22nd annual Philip and Doris Clarke Medical Ethics Conference, Notre Dame Center of Ethics and Culture, 23–25 March 2007); "Stem Cell Research" (lecture, inaugural Law and Religion Symposium, "Matters of Life and Death: Religion and Law at the Crossroads," Boston College of Law, 20 March 2007); "Science and Human Dignity" (lecture, 2007 Archdiocese of Denver: Living the Faith Conference, 9–10 March 2007); and Prof. Snead was an expert panelist at UNESCO's Global Ethics Observatory, Law and Bioethics Working Group (Paris, 29–30 March 2007). Prof. Snead was appointed in June 2007 as a permanent observer to the Council of Europe Steering Committee on Bioethics (CDBI), Strasbourg, France. He, along with Dr. Edmund Pellegrino, chairman of the President's Council on Bioethics, will observe and comment on the CDBI's efforts to elaborate international instruments and standard for the ethical governance of science and medicine. Snead was a visiting professor at the University of Milan, Italy, in April 2007, for a one-week course on law and bioethics.

Jay H. Tidmarsh published, with Suzanna Sherry, *Civil Procedure Essentials* (New York, N.Y.: Aspen Publishers, 7 May 2007); and with Thomas D. Rowe, Jr. and Suzanna Sherry, *2007 Supplement to Civil Procedure, University Casebook Series* (Foundation Press). Tidmarsh presented "Choice of Law Considerations in State Class Actions" (lecture, Symposium on State Civil Procedure, Western State College of Law, Fullerton, Calif., 21–22 April 2007).

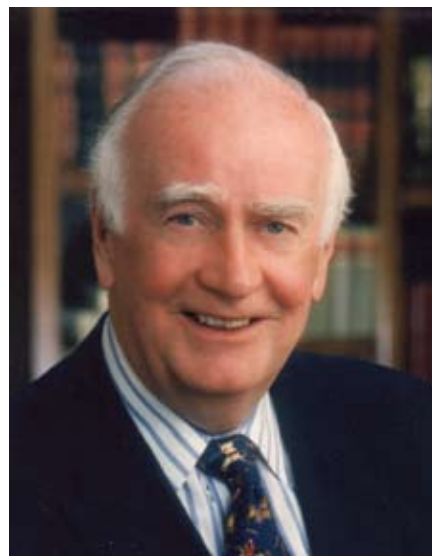
Julian P. Velasco published "The Fundamental Rights of the Shareholder," *University of California Davis Law Review* 40, 2 (2006–07). Prof. Velasco also was granted tenure.

IN MEMORIAM

William B. Lawless, Jr., '44 J.D.

William B. Lawless, who served as dean of the Law School from 1968 to 1971, died April 23, 2007, in the San Francisco Bay area at the age of 84. Dean Lawless received his law degree *cum laude* from Notre Dame in 1944 and was editor-in-chief of the *Law Review*. Following graduation, he served with the Navy in the South Pacific during World War II. He earned a master of laws from Harvard in 1950. In the 10 years that followed, he moved between private practice and the public sector in New York, including service as president of the Buffalo Common Council, as Corporation Counsel for the City of Buffalo, and as special counsel to then Governor W. Averell Harriman.

In 1960, Dean Lawless became a justice of the New York Supreme Court. He resigned from this position in 1968 to accept the deanship of the Law School. He was dean of the Law School during its centennial celebration in 1969 and also at the launch of the London Law Program.



In 1971, Dean Lawless left Notre Dame to return to private practice in New York City, initially with Mudge, Rose, Guthrie and Alexander, and then with Hawkins, Delafield and Wood. In his later years he moved west. He served as president of Western State University College of Law in Southern California, as dean of the National Judicial College in Reno, and as president of the Judges Mediation Network in Newport Beach. Dean Lawless was a life member of the American Law Institute and a fellow of the American College of Trial Lawyers.



STAFF NOTES

Roger Jacobs Receives AALL Award

With law librarians in attendance sporting "Roger!" stickers on their badges, Roger Jacobs, associate dean emeritus of the Law School and director emeritus of the Kresge Law Library, was awarded the 2007 Marian Gould Gallagher Distinguished Service Award at the annual meeting of the American Association of Law Libraries (AALL). The meeting was held July 14–17 in New Orleans.

The Distinguished Service Award recognizes "outstanding, extended, and sustained service to law librarianship." It is the highest honor that the AALL confers on one of its members.

Dean Jacobs joined the Notre Dame faculty as director of the Kresge Law Library and professor of law in 1985, after serving from 1978 to 1985 as the librarian of the United States Supreme Court. He oversaw a five-fold increase in the size of the Kresge Law Library collection during his tenure as its director. He retired as director in July of 2006.



As demonstrated by the award, Dean Jacobs is much admired by his peers. His scholarship includes work on legal research and writing. He has also frequently given lectures and presentations to other library professionals as an active member of numerous professional organizations. He is the only person to have served as president of both the Canadian Association of Law Libraries and the AALL.

Wendy Barnes joined the Admissions Office as a senior staff assistant. Barnes previously worked for Stanley Clark School in South Bend, Ind.

Carla DeVelder, director of the Career Services Office, presented "CSO Cold Case Files: Tips and Tricks for Finding Graduates When Reports Are Due," at the 2007 Annual Education Conference of the National Association for Legal Career Professionals on April 25, 2007 in Keystone, Colo.

Julie Foster has been named the assistant director of Career Services. Foster came from the William S. Boyd School of Law in Las Vegas, Nev., where she served as the director of Career Services. She previously held the position of vice president and dean of students at Olivet College in Olivet, Mich., and served as an associate with the law firm of Seyfarth Shaw in Chicago, Ill., specializing in labor and employment law. Foster earned her B.A. in history from Olivet College, her M.S. in college student personnel services from Miami University, and her J.D. from Notre Dame in 2001. While a student at Notre Dame Law School, she was the "Executive Notes" editor for the *Journal of College and University Law* and a legal writing teaching assistant.

Melissa Fruscione, assistant director of admissions, presented "Forum Decorum: The Importance of Professionalism and an Ethical Code of Conduct Among Admissions Professionals" at the Law School Admissions Council Annual Meeting and Educational Conference on June 1, 2007 in Tucson, Ariz.

Carol Jambor-Smith, formerly director of external relations, has left the University of Notre Dame to join the International Education of Students (IES) in Chicago, Ill. She will serve as the associate vice-president for Institutional Relations.

Melanie McDonald has been appointed director of External Relations. Since August of 1999, McDonald has been the Director of Public and Media Relations at Saint Mary's College. She graduated from Drake University in Des Moines, Iowa, where she majored in broadcast news and earned a degree in journalism. Following a stint as a television news reporter, McDonald did public relations work for Barnes and Noble in the Atlanta area. After returning to the Midwest to be closer to her family, she worked at a local public relations agency before joining Saint Mary's, where she recently completed eight years of service.



PROMOTIONS, VISITORS, AND NEW APPOINTMENTS

Bridgette A. Carr has joined the faculty as an associate clinical professor of law. She comes to us from the faculty of Ave Maria School of Law, where she had been an assistant professor of law and director of the Asylum and Immigrant Rights Law Clinic. Before joining the faculty at Ave Maria, she was an associate at Miller, Canfield, Paddock & Stone.

David Fischer is a visiting professor this semester from the University of Missouri-Columbia School of Law.

William K. Kelley has returned from leave and has been appointed associate dean. Kelley had been serving as deputy counsel to President George W. Bush.

Mark P. McKenna is a visiting professor from Saint Louis University Law School. McKenna will be teaching during the spring semester.

Robert A. Mikos is a visiting professor from the University of California Davis School of Law. Mikos will be teaching during the fall semester.

Andy Strauss will be a visiting professor from Widener University School of Law during the spring semester.

Commencement

May 20, 2006 dawned gray and ominous in South Bend, and rain threatened all day long. Still, at 9:45 a.m., the class of 2007 strode from the north entrance of the Law School to the Basilica of the Sacred Heart for a hooding ceremony untouched by even a drop of rain. They gathered again, after the general commencement ceremony, for an outdoor diploma ceremony by the reflecting pool in front of the Hesburgh Library, again untouched by more than a few drops of rain. As the winds played havoc with their graduation robes and even shuffled the pages of the dean's final charge to the class, they listened intently to Prof. Mason's address to them, walked proudly across the stage to receive their diploma from the dean, then listened again as the dean shared with them her recollected thoughts on happiness in the lives of lawyers. For our graduates, for their families, and for the faculty who taught them, it was a day to remember.

— John H. Robinson



Notre Dame Law School Commencement Speech

JENNIFER M. MASON
ASSOCIATE PROFESSOR OF LAW

Thank you so much for this honor. I can't tell you how much it means to me to have this chance to celebrate with you today. Two short years ago, you had just finished your first year of law school. At that same moment, I was preparing to move to South Bend and try my hand at teaching. You were exhausted but very relieved. I was energized but very anxious. And so our paths converged at the beginning of your 2L year. You have welcomed me into this community. You have continually impressed me with your intelligence and insight. You have taught me numerous lessons in thoughtfulness, prayerfulness, and generosity. This is the most rewarding job I ever could have asked for, and I am deeply grateful to you for making it so.

Now, as those of you who have taken my classes know, I can be a stickler for obscure details. I dredge up the human stories behind many of the cases we read. I plumb the hidden meanings of random footnotes. Today, I hope you'll indulge me in one more detour into obscure facts—this time, etymology.

Everyone refers to today's events as "Commencement," a word that has its roots in the Latin term meaning "to begin." I suppose that's technically an accurate description, as today marks the beginning of your careers in the law.

But, with all due respect to the event planners, I think that the word "Commencement" is a wholly inadequate way to describe what this event is really about. Today is not just about new beginnings. Today is a much more profound celebration of where you've been and where you're going.

Therefore, if I had my way, we would call this event a "Commissioning," a word that also has its roots in Latin. But those roots are much more nuanced. In one sense, "To Commission" can mean "To Gather Together." "To Commission" can also mean "To Entrust." And, in a third sense, "To Commission" can mean "To Send."

To Gather Together. To Entrust. To Send. These three things, I believe, are really what today's commissioning ceremony is all about.

You gather together today as a community of scholars, who have spent the past three years in common pursuit of knowledge, wisdom, and truth. You gather as a community of friends, who have spent



that time encouraging each other, praying together, serving together, and relaxing together. And today, you gather with your families, those people who have been your primary sources of love and support throughout your lives and your education.

By gathering together for today's celebration, you reflect the truth that human beings flourish in community. Not one of you has gotten to this day on your own, and not one of you can thrive alone in the days to come. It is only by being in community with others that you can fully engage your hearts, your minds, and your souls.

By gathering today, you also acknowledge the call of our chosen profession. As lawyers, you are called to be both community leaders and community servants. In a culture that often encourages greed and materialism, you must prize generosity and service, and dedicate your professional efforts to making your communities stronger, more vibrant, and more just.

So, you've gathered together as both a sign and symbol of the community you have been and will be. And in just a few minutes, you will be handed a diploma. In that one small gesture, in that one brief moment, you are being entrusted with great and profound power—the power to invoke and shape the law.

The law can be a tremendous force for good in this world. It can be used to promote human dignity and build up community. It can also be used to denigrate and divide. After today, the power of the law is in your hands, and we are entrusting it to you with the confidence that you will use it to serve the common good rather than selfish interest.

The common good requires that you promote and honor the dignity of every person with whom you come into contact. This is easy enough to do when you have a sympathetic client—and each of you should have sympathetic clients throughout your career. Whatever your chosen field in the law, I believe that each of you has a moral obligation to work pro bono on behalf of the poor and to speak on behalf of the voiceless. With great power comes great responsibility.

The common good also requires that you honor the dignity of those who are not your clients. Even unsympathetic opponents deserve justice and a measure of compassion. And because any particular case or deal can have ripple effects far beyond the parties, you must be conscious of the consequences of your decisions and actions. Let wisdom and the cause of justice be your guide.

So, we have gathered together to entrust you with great power. And at the end of today's Commissioning Ceremony, we will send you. Not in the sense of sending you away from here, for you will always have a place here, just as Notre Dame will always have a place in your hearts. Rather, we are sending you forward to bring Notre Dame and its spirit to other people and other places that are in desperate need of your energy, your wisdom, and your compassion.

We, the faculty, are sending you forward, having given you our best efforts to share our knowledge with you. We are sending you forward with our gratitude for the many gifts you have shared with us. And we are sending you forward with our prayers, our blessing, and our confidence that, commissioned here today, you will do great things in the days and years to come.

Congratulations, good luck, and may God bless you.





2007 Commencement Awards

ALI-ABA Scholarship and Leadership Award

Brian P. Morrissey, Jr.
Manhasset, New York

Edward F. Barrett Award, The Arthur A. May Award, Clinical Legal Education Association Outstanding Student Award

Toni Mardirossian
Germantown, Maryland

Edward F. Barrett Award

James Michael Paulino
Rochester, New York

Joseph Ciraolo Memorial Award, The A. Harold Weber Moot Court Award

Adèle Hutton Auxier
Fort Langley, British Columbia, Canada

The Farabaugh Prize

Brian Ernest Foster
Buchanan, Michigan

The Farabaugh Prize

Matthew Michael Killen
Maumee, Ohio

The Colonel William J. Hoynes Award

Tara Michele Stuckey
Waterville, Ohio

International Academy of Trial Lawyers Award, The A. Harold Weber Moot Court Award

Stephen Heuron Robinson
Stamford, Connecticut

International Academy of Trial Lawyers Award

Patrick Albert Salvi II
Lake Forest, Illinois

Jessup International Moot Court Award

Andrew Paul Moosmann
Washington, Missouri

Conrad Kellenberg Award

Stephen Michael Duvernay
Chico, California

William T. Kirby Award

Adam Keith Butman
Atlanta, Georgia

William T. Kirby Award

Craig Michael Perrotta
Miller Place, New York

Dean Konop Legal Aid Award

Jessica Lynn Hensley
Saint Charles, Illinois

The Jon E. Krupnick Award

Angelo Salvatore Gambino
Buffalo, New York

The Jon E. Krupnick Award

Kevin Frawley Moot
Park Ridge, Illinois

David T. Link Award

Kristine Schmidt
Northbrook, Illinois

The Judge Joseph E. Mahoney Award, The A. Harold Weber Moot Court Award

Heather Ann Cameron
Woodbridge, Virginia

Captain William O. McLean Law School Community Citizenship Award

Jon Douglas Schoenwetter
Waterloo, Wisconsin

National Association of Women Lawyers Award

Jeanine Marie Valles
San Dimas, California

Dean Joseph O'Meara Award

Glenn David Mathues
Aiken, South Carolina

The A. Harold Weber Moot Court Award

Charles Richard Hedman, II
Mishawaka, Indiana

The A. Harold Weber Moot Court Award

Katherine Davis Spitz
Sussex, Wisconsin

The A. Harold Weber Writing Award

Jennifer Lynne Morris

Reunion 2007

2007 Reunion Gift Final Report

Ten classes participated in the Law School's Reunion Giving Program this year, and each generated a class gift. Cumulatively the reunion classes contributed well over a half-million dollars to the Law School. Listed below are the participation rates for these reunion classes.

REUNION	CLASS YEAR	NUMBER OF DONORS	PARTICIPATION
50 th	1957	26	80.0%
45 th	1962	22	61.1%
40 th	1967	22	40.7%
35 th	1972	50	41.3%
30 th	1977	60	43.8%
25 th	1982	68	48.6%
20 th	1987	52	35.1%
15 th	1992	44	26.0%
10 th	1997	45	26.3%
5 th	2002	51	31.3%

* Participation rates are based on contributions made 7/1/06 – 6/30/07.



Congratulations to the golden Class of 1957 for the highest participation rate, and a big high-five to the silver Class of 1982 for the highest dollar total, at \$187,950.50, and for the most donors.

Our thanks to all the reunion classes for returning to campus and for supporting the Law School.

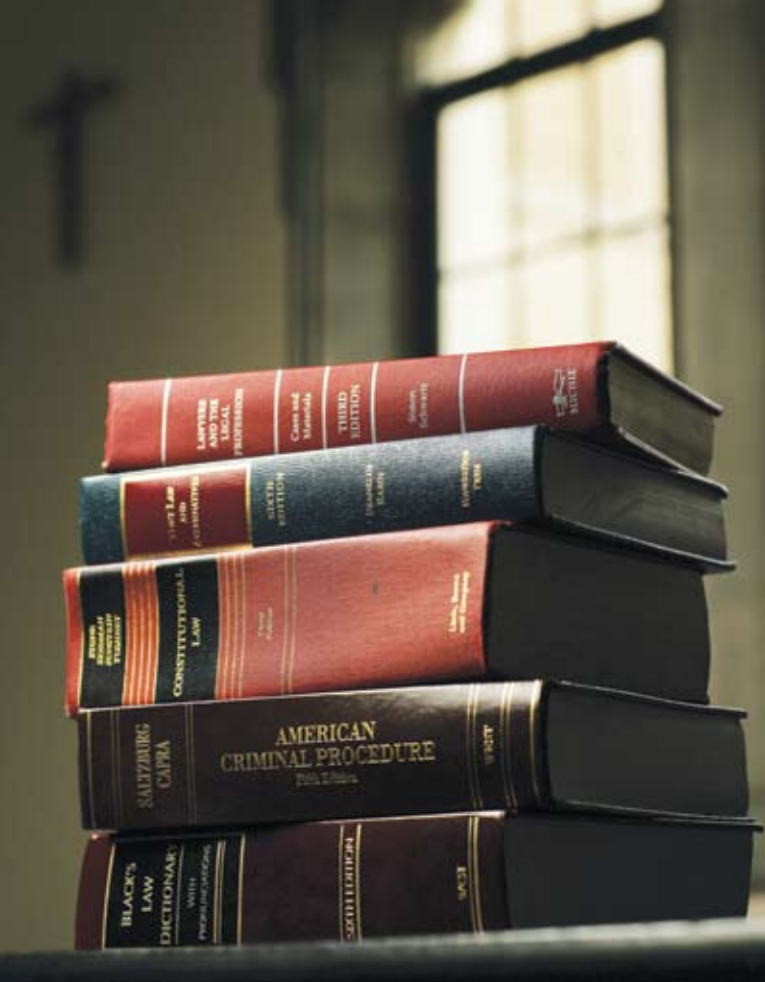




Law Reunion Chairpersons

- 1957** Ronald Smith
William McLaughlin
Thomas Calder
- 1962** George McAndrews
- 1967** James Heinhold
- 1972** Christopher Schraff
- 1977** Jane Bennett
- 1982** Frank Julian
Cecilia Baty
Liz Imhoff
Greg Moore
- 1987** Jay Brinker
- 1992** Paul Drey
- 1997** Erica Anaya
- 2002** Matt Bozzelli





1957

front: Patrick Berrigan, Michael Maloney, Vernon Teofan, James Sullivan **back:** Thomas Calder, James Booth, Thomas Ryder, Thomas Beeler, Ronald Smith, Paul Kraus, A. Gene Kubicki, William McLaughlin, Thomas Carmody, H. Theodore Werner, Hugh Grigereit, Jr., K. Wayne Kent, Karl Jorda



1982

first row seated (l to r): Shawn Conway, Bruce Bovin, Mary Persyn, Ed McNally **second row kneeling:** Ralph Linden, Cele (Glacy) Baty, Ginny Boyle, Jean Berg, Sr. Rita Murillo, CSJ, Bob Clemens and Rob Neate **third row standing:** Frank Julian, Liz (Medina) Imhoff, Greg Imhoff, Bill Raby, Greg Kruzel, Andy Zepeda, Bruce Baty, Jim Burns, Tim Abeska, Mark Spitler, Tim Nickels, John Smith, Ophelia Camina, Ed Sommer, Trish (Neary) Salerno, Tom Veldman, Tom Salerno, Monty Bottom and Jeff Stuckey



1987

Stephen Garcia, Dean O'Hara, Theresa Conners Hursh



1977 (FIRST ROUND)
front: Kathryn Szczepanik Lamping, Gina Fishman Wilkinson, Mary Woytek **back:** John Borman '78 J.D., Greg Garber, William Thee, Jr., Archie Blake, Craig Rice



1977 (SECOND ROUND)
front: Kathryn Szczepanik Lamping, Gina Fishman Wilkinson, Mary Woytek **back:** Greg Garber, William Thee, Jr., Craig Rice, Diane Langston, Cecelia McGregor



1992
 Thomas Hipp, Dean O'Hara



1997
 Nancy Bride, Jennifer Girard Gehrlein, Kate Singer, Ben Allison



2002
 Brian Lester, Katherine Aertker-Day, T. Emmet Day

Law School Celebrates Father Mike McCafferty's Life and Legacy



On Sunday, June 3, 125 of Father Mike McCafferty's family, friends, teaching colleagues, former students, and brothers in Holy Cross gathered on the Notre Dame campus to celebrate his life and legacy. The day began in worship, with Father David Tyson presiding at a Mass in Alumni Hall's St. Charles of Borromeo Chapel. After Mass, we convened for brunch in the Main Reading Room of the Kresge Law Library, and a program commemorating Father Mike followed.

Tom Lange, '81 B.B., '86 J.D., and Ann Firth, '81 B.A., '84 J.D. offered moving testimonials about the profound impact as teacher and friend that Father Mike made upon their personal and professional lives. Dory Mitros Durham, '01 B.A., '06 J.D., a recent McCafferty Fellow at the Law School, shared her reflections about Father Mike and marveled at how remarkably her life and opportunities had been enriched by a man she had never been blessed to meet. We then viewed the compelling film on Father Mike that the Law School commissioned in conjunction with the 10th anniversary of his passing. Dean O'Hara concluded the program with a poignant, heartfelt tribute to her dear friend and teaching colleague.

The McCafferty Celebration provided vivid evidence that Father Mike's memory and influence is anything but

ephemeral in the Law School and the broader Notre Dame community. He is an ever-present lodestar in the lives of countless people, guiding them daily with his legacy of spirituality, service, and selfless dedication to family, friends, and Notre Dame. It is particularly gratifying that Father Mike's parents, Bob and Margaret McCafferty, his five sisters, and many of his nieces and nephews were able to join us for this occasion. We trust that the McCafferty family departed campus with a sense of joy and certitude that, for as long as there is a Notre Dame, we will remember and celebrate Father Mike.



Black Law Students Association to Celebrate 35th Annual Reunion

Each spring, alumni who were involved with the Notre Dame chapter of the National Black Law Students Association (BLSA) are invited back to campus for the annual Alumni Reunion Weekend. Traditionally, the weekend starts on Friday with a reception hosted at the home of the Honorable Roland Chamblee, '96 J.D., and his wife, Associate Dean of First Year of Studies Angie Chamblee. Saturday consists of a day of planned events, ending with a formal dinner to recognize the accomplishments of alumni and students (see 2007 award recipients to the right). Keynote speakers in recent years have been Max Siegel '92 J.D., president of Dale Earnhart Inc., and Rev. Joseph Isanga '06 J.S.D., human rights activist. On Sunday, the weekend wraps up with an informal prayer breakfast or brunch.

April 4–6, 2008 will mark BLSA's celebration of its 35th annual reunion. Cochairs Krishna Thomas, '08 and Shawtina Ferguson, '08 are hoping to make the reunion an event that alumni will not want to miss. In addition to the traditional events, the cochairs are adding two components to the weekend that have not been included in recent years. The first is continuing legal education training. "We are looking into CLE options, including ethics training; however, we would like feedback from alumni about other topics that are timely and of interest," said Ms. Ferguson.

The cochairs also plan to include an oral advocacy exhibition in the Reunion Weekend. The purpose of the exhibition is to give students a chance to display the talents they are learning in law school related to oral advocacy. The cochairs will ask alumni with an interest in assisting with this portion of the program to take an active role as a coach or judge. The oral advocacy component is designed to be self-contained so that alumni do not have to spend time reviewing materials prior to the reunion in order to participate.

The BLSA executive board and cochairs are excited about the weekend, but they will need the assistance of alumni to ensure maximum participation. "One of the challenges we've faced in recent years has been keeping the mailing addresses of BLSA alumni up-to-date," said Ms. Thomas. Alumni who wish to be kept abreast of BLSA activities are asked to send their updated mailing address, e-mail address, and telephone number to lawalum@nd.edu.

2006–07 BLSA Awards:

Alvin McKenna Alumna of the Year Award

Stephanie Giggetts, '92 J.D.

Presented to a graduate who distinguishes himself or herself within the legal or African American community and through support of BLSA programs and activities. The honoree also demonstrates a commitment to service through active involvement with the community.

Charles F. Crutchfield Award

Prof. Lloyd Mayer

Named in honor of the first African American member of the Notre Dame Law School faculty. The award is presented to a current professor who, like Prof. Crutchfield, demonstrates a commitment to diversity, both in and out of the classroom, as evidenced by scholarship and personal example.

Thurgood Marshall Award for Academic Achievement

Akia Haynes, '08

Annabelle Pereira, '08

Melissa Patterson, '08

Kyle Smith, '08

Krishna Thomas, '08

Maria Alevras-Chen, '07 J.D.

Steve Duvernay, '07 J.D.

Presented to members who earn a place on the Dean's List, receive the Dean's Award, earn a position on the *Notre Dame Law Review*, or are selected as Thomas J. White Scholars.

BLSA Appreciation Award

Rebecca Ward

Presented to a member of the University, NDLS, and local communities who consistently contributes time and assistance to furthering the goals and objectives of the organization.

Dwight King Service Award

Janelle Burgoyne Pannell, '09

Awarded to a BLSA student who has devoted considerable time, energy, and attention to both BLSA and the NDLS community.

40s

Robert L. Miller, Sr., '42 B.S., '47 J.D., wrote "Jury Sees Clearly in Eye-Loss Case," 2007. The article reflects a personal experience of a disability incurred by an unsafe product design and the results of a jury trial.

50s

William D. Bailey, Jr., '56 B.A., '59 J.D., has joined Biggs and Battaglia in Wilmington, Del. Bailey will continue to practice in the areas of eminent domain, utility regulation and civil litigation.

60s

James F. Dougherty, II, '66 J.D., is pleased to announce his retirement.

Thomas R. Curtin, '68 J.D., was presented the Medal of Honor Award by the New Jersey State Bar Foundation on June 14, 2007 at the New Jersey Law Center in New Brunswick, N.J.

70s

Louis A. Stahl, '71 J.D., has been named in the June 2007 issue of *Southwest Super Lawyers* magazine as one of the top 5 percent of attorneys in Arizona and New Mexico in business litigation. Stahl is with Quarles & Brady LLP, in Phoenix.

Michael W. Mullane, '64 B.A., '72 J.D., was appointed to the Ben C. Altheimer Chair of Legal Advocacy at the University of Arkansas School of Law in Fayetteville.

Christopher R. Schraff, '72 J.D., was ranked in the 2007 edition of the *Chambers USA* directory. Schraff is a partner with Porter Wright Morris & Arthur's Environmental/Energy/Government practice.

Michael S. Brenton, '76 J.D., of Murphy, Brenton, and Spagnuolo in East Lansing, Mich. has been named in *The Best Lawyers in America® 2007*. Brenton has also been named as a 'Michigan Super Lawyer.'

Nora Barry Fischer, '76 J.D., was confirmed by the US Senate on February 15, 2007 to become a US district judge for the Western District of Pennsylvania.

Timothy J. Howard, '76 J.D., was named to the "Illinois Super Lawyers." Howard is with Howard & Howard in Peoria.

Vincent R. Johnson, '78 J.D., is serving as an

Open Society Institute International Scholar in 2007-2008, assisting faculty development at a pro-democracy law school in Kiev, Ukraine. Johnson published "Rehnquist, Innsbruck, and St. Mary's University," *St. Mary's Law Journal* 38 (2006): 1-45.

John Ruhl, '78 J.D., was president of the King County (Washington) Bar Association for 2006-07.

Patrick A. Salvi, '78 J.D., was presented with the Liberty Bell Award by the 19th Judicial Circuit Court on April 27, 2007 at the Lake County, Illinois Courthouse. Salvi is the managing partner of Salvi, Schostok & Pritchard P.C., in Chicago.

Douglas R. Weimer, '78 J.D., wrote *The Townsend Circle*, a play, which was performed in January 2007 at the Cosmos Club in Washington, D.C.

Dean A. Calland, '79 J.D., with Babst, Calland, Clements and Zomnir, P.C. in Pittsburgh, Pa. was named a 2007 Pennsylvania Super Lawyer.

Donald R. Schmidt, '70 B.A., '79 J.D., received board certification in Antitrust and trade regulation law from the Florida Bar Board of Legal Specialization and Education. Schmidt is a shareholder with Carlton Fields in Tampa.

80s

Judge Sheila M. O'Brien, '77 B.A., '80 J.D., was presented the Rev. Edward F. Sorin, C.S.C., Award at the Reunion All-Classes Banquet on June 2, 2007.

John E. Selent, '80 J.D., has been named a Kentucky Super Lawyer. Selent is with the firm of Dinsmore Sholh in Louisville.

Carolyn P. Short, '77 B.A., '80 J.D., received the 2007 Lynette Norton Award from the Pennsylvania Bar Association Commission on Women in the Profession. Short is a partner at Reed Smith LLP, in Philadelphia.

John "Jack" C. Greiner, '83 J.D., partner with Graydon Head & Ritchey LLP, in Cincinnati, testified before the State of Ohio House Committee on Juvenile & Family Law arguing for more public access to foster care records.

Stephen M. Naughton, '85 J.D., was promoted to the vice president of compliance at PepsiCo, Inc. in Chicago.

James F. Slaterry, '81 B.B.A., '84 J.D., has been promoted to vice president, business and legal affairs for NBC Universal TV Networks Distribution in Englewood Cliffs, N.J. Slaterry will be responsible for Comcast, Time Warner, AT&T, and Verizon accounts in the NBCU cable properties and multi-platform distribution partners.

Diane M. Haller, '86 J.D., has been named in the June 2007 issue of *Southwest Super Lawyers* magazine as one of the top 5 percent

of attorneys in Arizona and New Mexico in real estate. Haller also was ranked in the 2007 edition of the *Chambers USA* directory.

Bradley K. Benson, '88 J.D., has joined Greenberg Traurig LLP in Denver, as Of Counsel. Benson will focus his practice on the acquisition, financing, development, leasing, and sale of commercial real estate. He also represents business and property owners in planning, entity formation, contract negotiations and mergers and acquisitions.

Margot Moore Cairnes, '88 J.D., and her husband Mike, recently moved from Atlanta to Dallas.

Lesli K. Hosford McLinden, '84 B.A., '88 J.D., has joined the law department of The Northwestern Mutual Life Insurance Company in Milwaukee, as an assistant general counsel and assistant secretary on the investment products and advisory services team.

90s

Christine S. Azar, '91 J.D., has joined Blank Rome LLP in Wilmington, Del., as an associate in the corporate litigation group.

Randall Roybal, '91 J.D., was elected to the board of directors for the National Association of Judicial Disciplinary Counsel. Roybal serves as deputy director for the New Mexico Judicial Standards Commission.

Thomas M. Madruga, '92 J.D., has expanded and relocated Clark, Goldberg & Madruga in Los Angeles.

Max Siegel, '86 B.A., '92 J.D., was named President of Global Operations of Dale Earnhardt Inc. in Mooresville, N.C.

James P. Sledge, '92 J.D., has been appointed the director of the Illinois Department of Employment Security. Sledge was appointed by Governor Rod R. Blagojevich.

Lynne M. Pregonzer Hook, '93 J.D., has joined Fox Rothschild LLP in Los Angeles as a partner in the labor and employment department.

Domenique Camacho Moran, '93 J.D., a partner with Farrell Fritz, P.C., in Uniondale, N.Y., has been elected to the board of directors for the Nassau County Girl Scout Council in Garden City, N.Y.

Patricia L. McKinnon, '94 J.D., was named a director for the Indianapolis Bar Foundation.

Martin A. Foos, '92 B.A., '95 J.D., has been named an "Ohio Rising Star" by *Ohio Super Lawyers* magazine. Foos is with Faruki Ireland & Cox, P.L.L. in Dayton. His practice focuses on complex commercial litigation.

Annette Brands Hurley, '95 J.D., has rejoined Sachnoff & Weaver in Chicago, as a partner. Hurley

will concentrate her practice area on estate and gift planning.

Clark Jordan, '95 J.D., has been named deputy general counsel in the legal department at Clariant Corporation in Charlotte, N.C.

David J. Butler, '94 B.B.A., '97 J.D., has been named an "Ohio Rising Star" by *Ohio Super Lawyers* magazine. Butler is with Chester Willcox & Saxbe, LLP in Columbus. His practice focuses on civil litigation.

Scott E. Moran, '90 B.A., '97 J.D., has joined the Turner Broadcasting Company in Atlanta, as senior counsel.

Andrew M. Bojko, '98 J.D., was named partner at Porter Wright Morris & Arthur LLP in Columbus. Bojko practices in the areas of finance and commerce, financial institutions, mergers and acquisitions, and real estate.

Brian P. Crotty, '98 J.D., was named partner with Barnes & Thornburg in South Bend.

Bryan P. Lord, '98 J.D., testified on intellectual property law in front of the US House of Representatives Small Business Committee. Lord is the vice president of finance and licensing and general counsel for AmberWave Systems in Salem, N.H.

Katherine A. McAvoy, '98 J.D., was elected partner of Winston & Strawn LLP in Chicago.

Niclas T. Schmiedmaier, '98 LL.M., is the senior legal advisor at Century Casinos, Inc., in Vienna, Austria.

William L. Esser IV, '99 J.D., has been named partner with Parker Poe Adams & Berstein LLP in Charlotte, N.C. Esser is a member of the financial, commercial and construction disputes practice group and focuses his practice primarily on commercial litigation, bankruptcy and creditors' rights, and foreclosure and loan servicing litigation.

Stacy M. Soper-Stine, '99 J.D., and her husband, Samuel, are pleased to announce the birth of their second child, Ethan Michael, on April 9, 2007. Soper-Stine has joined Hunt Suedhoff Kalamaros, LLP in St. Joseph, Mich., where she will practice insurance defense litigation, legal counsel to employers, and immigration law.

00s

Michelle Mack Fiore, '99 J.D., '00 LL.M., and her husband, Sam, are pleased to announce the birth of their daughter, Mia Isabella.

Daniel W. Hardwick, '00 J.D., is a real estate associate with Bingham McCutchen LLP in Washington, D.C.

Adam J. MacLeod, '00 J.D., has been appointed as an associate professor at Jones School of Law in Montgomery, Ala.

Marissa J. McDermott, '00 J.D., is teaching undergraduate classes at Purdue University in Lafayette, Ind.

M. Dave O'Guinn, '01 J.D., with Dinsmore & Shohl LLP, in Cincinnati, has been named as an Ohio Super Lawyers – Rising Stars.

Myra L. McKenzie, '02 J.D., is the assistant general counsel with Wal-Mart Store, Inc. in Fayetteville, Ark. McKenzie is in the employment practices division.

Sean T. McLaughlin, '02 J.D., was appointed as an assistant United States attorney with the US Department of Justice. McLaughlin published "Pandora's Box: Can HIPAA Still Protect Patient Privacy Under A National Health Care Information Network?" *Gonzaga Law Review* 42, 1 (forthcoming). He also published a review of US Supreme Court Justice Stephen Breyer's book *Active Liberty* for the Washington State Bar Association, the Young Lawyers Division.

Jane A. Dall, '03 J.D., received the 2007 Leadership in Law Award from *Indiana Lawyer*.

Douglas G. Iler, '03 J.D., married Erika Amadi, '04 J.D., in Coronado, Calif. on May 26, 2007.

Mark F. Juba, '03 J.D., has joined the legal department of The Medical Protective Company in Fort Wayne, Ind., as counsel. The Medical Protective Company is a member of the Berkshire Hathaway Group.

Nicole E. Juba, '03 J.D., has joined the Allen County Prosecuting Attorney's Office in Fort Wayne, Ind., as a deputy prosecuting attorney in the child support division.

Ann Kulprathipanja, '03 J.D., has joined Faegre & Benson in Minneapolis, as an associate. Kulprathipanja focuses her practice on the drafting, prosecution, and litigation of patents for a wide range of technology applications for clients in the aerospace and chemical industries.

Gregory P. Ripple, '94 B.A., '03 J.D., has joined Miller Johnson in Grand Rapids, Mich., as an associate in the employment and labor section.

Erika Amadi Iler, '04 J.D., married Douglas Iler, '03 J.D., in Coronado, Calif. on May 26, 2007.

Ryan P. Blaney, '99 B.A., '01 M.EDUC., '04 J.D., was awarded, on May 21, 2007, an Equal Justice Medal from Legal Services of New Jersey and the New Jersey State Bar Association.

James W. Murray '04 J.D., and his wife, Anna Marie, are pleased to announce the birth of their son, Thomas James on June 28, 2007 in San Francisco.

Elizabeth A. Gray, '05 J.D., has joined Dinsmore & Shohl LLP, in Cincinnati, as an associate in the corporate department.

Brian P. Comerford, '05 J.D., is a law clerk to the Honorable William M. Skretny, US District Court, Western District of New York.

Josephine N. Sioson, '05 J.D., has joined Walso, Luna-Reyes, and Associates, LP in Anaheim Hills, Calif. Sioson will focus her practice on real estate litigation and probate matters.

Kiley L. Kane, '06 J.D., has joined the Department of Justice in the Office of Immigration Litigation in Washington, D.C.

Sean Seymore, '01 PH.D., '06 J.D., has joined the faculty at Northwestern University Law School as a visiting assistant professor for the 2007–2008 academic year.

Cordell Carter, '07 J.D., received a \$3,000 scholarship from the Illinois Bar Foundation. Carter was presented the award by John G. O'Brien, '68 B.A., of Arlington, Ill.

Gordon D. Strickland, '02 B.A., '07 J.D., has moved to the Maryland area. He is presently studying for the bar and seeking employment in the D.C. metro area.

IN MEMORIAM

James Murphy, son of Mary Ann Murphy and the late Prof. Edward J. Murphy, passed away on April 22, 2007 following a motorcycle accident in Crystal Lake, Ill. Jim is survived by his wife and three sons.

John J. Witous, '44 B.S., '50 J.D., passed away in Springfield, Ill., on July 7, 2007. His wife, Rose, survives him.

Charles E. Pope, '56 J.D., recently passed away.

Robert P. Gorman, '54 B.A., '57 J.D., passed away in Princeton, Ill., on May 3, 2007. His wife, Kathryn, and five children survive him.

David M. Costantino, '62 B.A., '65 J.D., passed away in Greenwood, Ind., on December 31, 2006. He is survived by his mother, Margherita; one son, Tony; and one daughter, Angela Costantino-Hardick.

Gayle E. Arnold, '80 J.D., passed away on July 25, 2007 in Ohio. He is survived by his wife, Sue Anne, and six children.

Luis G. Flores, '87 J.D., passed away on February 23, 2007 at his home near Los Angeles after a battle with cancer. He is survived by his wife, Pilar, and their two children.

Ryan A. Rudd, '07 J.D., passed away on April 7, 2007 in Crestline, Ohio, after a battle with cancer. Ryan's mother, Judy, was awarded his Juris Doctorate at the May 20, 2007 Commencement Exercises.

Loan Repayment Assistance Takes a Big Step Forward

BY ROBERT L. JONES, JR.
DIRECTOR, LEGAL AID CLINIC, AND CHAIR,
LOAN REPAYMENT ASSISTANCE COMMITTEE



The groundbreaking for the Law School expansion is not the only tangible fruit this fall of the *Spirit of Notre Dame* campaign. The Loan Repay-

ment Assistance Program (LRAP) is also taking a leap forward this year, thanks largely to a growing LRAP endowment. During the 2008 funding cycle, LRAP will provide substantially increased benefits to program participants.

The Law School created LRAP in 2001 to help graduates in low-paying public interest and public service jobs make their law school loan payments during their first five years after graduation. The program's goal is succinctly stated by current LRAP participant Sarah Looney, '06 J.D., a staff attorney at Blue Ridge Legal Services in Harrisonburg, Va., who contends that the decision whether to pursue public interest work "should be based on your calling, not your budget." Carla DeVelder, director of Career Services, confirms "public service is indeed a calling for many Notre Dame students. In fact, commitment to service is one of the defining characteristics of our student body."

Budgets do preclude many interested students from pursuing public interest work. The average law school debt burden of recent graduates exceeds \$80,000.

LRAP Program Changes at a Glance

	CURRENT PROGRAM	2008 CHANGES
Maximum Qualifying Income	\$50,000	\$54,000
Maximum Income at Which Program Covers 100% of Law School Loan Payments	\$26,000	\$34,000
Years of Public Service Work Necessary to Qualify for Partial Loan Forgiveness	2 years	1 year
Years of Public Service Work Necessary to Qualify for Full Loan Forgiveness	5 years	3 years

Many public interest jobs pay no more than half that amount. Factor in undergraduate student loans, and it may be literally impossible to make ends meet. When Sarah began calculating household budgets, for example, she realized that her student loan payments would eat up more than a third of an already bare-bones legal services salary. Without LRAP assistance, Sarah says, she honestly does not know whether she could have taken her current legal services position, in spite of a bedrock commitment to public interest work.

Twenty-seven Law School graduates have received LRAP assistance during the program's first five years, many of them for more than one year. LRAP provides graduates earning less than \$50,000 with loans to cover a portion of their monthly payments on law school debts. (LRAP provides forgivable loans instead of outright grants to minimize participants' income tax liability.) A typical participant receives LRAP loans sufficient to cover about 40 percent of monthly payments on law school debts. After two full years in public service work, a portion of the LRAP loans is forgiven. The LRAP loans are fully forgiven if a graduate remains in public service for five years.

Although LRAP has been a difference-maker for some graduates, the program's benefits have been too limited to elimi-

nate law school debt as an obstacle for all who wish to pursue public service. The limited benefits have been attributable in part to uncertain funding sources. Over the past few years, however, substantial contributions have increased the value of endowments for LRAP and related public interest initiatives to nearly \$1 million. Consequently, the Law School will be able to significantly expand program benefits next year. The income ceiling will be raised to \$54,000. The percentage of monthly law school debt payments covered by the program will also increase significantly. Finally, LRAP loans will be forgiven much more quickly. One third of LRAP loans will be forgiven after a single year of public service work, and the program loans will be fully forgiven after just three years of public service work. Those changes should more than double the total annual benefits paid by LRAP, and they should make public service work possible for more graduates.

LRAP will not achieve its ultimate goal until the program is able to cover all law school debts for graduates in low-paying public service positions. Nonetheless, the Law School has taken a major step toward the day when graduates' career choices are, in Sarah Looney's words, "based on your calling, not your budget."

FALL CLASS SESS

*Football tickets are sold out.

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