

2-1-1997

NDLS Update 02/1997

Notre Dame Law School

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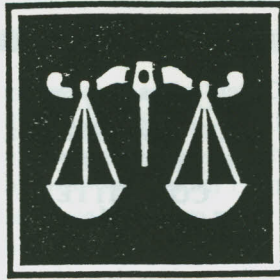


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Recommended Citation

Notre Dame Law School, "NDLS Update 02/1997" (1997). *NDLS Updates*. Paper 81.
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NDLS Update

News from the Notre Dame Law School

Vol. VI, No. 7
February, 1997

TEX DUTILE
EDITOR

NEWS FLASH!! NDLS Ranked Number 20 In New *U.S. NEWS* Poll

JUSTICE SCALIA HEADS STELLAR MOOT COURT PANEL

On February 11, in the NDLS Courtroom, the Forty-Seventh Annual Final Argument took place before Antonin Scalia, Associate Justice of the United States Supreme Court; Frank H. Easterbrook, Judge of the United States Court of Appeals for the Seventh Circuit; and Randall T. Shepard, Chief Justice of the Indiana Supreme Court. The hypothetical case, *State of Windsor v. Doe*, involved the constitutionality of a sex-offender registration statute and of its application to John Doe, the Respondent in the case. Arguing for petitioners were law students Karen Dixon and Kathleen Ley; for the respondent Adam Brezine and Christina Henriques. Following the argument, the faculty met with the judges at a reception in the Civil Rights Reading Room. Immediately thereafter, the jurists attended a banquet at the University Club with members of the faculty, administration, and student body.

Earlier in the day, Justice Scalia, two of whose former clerks--Pat Schiltz and Bill Kelly--now grace the NDLS faculty, delivered a public lecture on "Constitutional Interpretation" in DeBartolo Hall. The lecture was co-sponsored by NDLS and the Federalist Society. On February 12, Justice Scalia became "guest teacher" in John Garvey's Constitutional Law class. Also on Wednesday morning, concluding a busy trip indeed, Justice Scalia presided over a "Question-and-Answer" session in the NDLS Courtroom.

Justice Scalia's visit, and those of the other two judges, brought great honor to the Law School. Congratulations and thanks to all who made it possible and successful.

NDLS ALUM FEATURED IN CHICAGO PAPER

Zhidong Wang, NDLS '94, was featured in an article in the CHICAGO CHINESE DAILY NEWS on January 10. Zhidong now serves the Chinese community of the Greater Chicago area. The article noted his "enthusiasm in what he is doing, his accessibility to all his clients, and his willingness to take on cases regardless of the degree of difficulty or the potential for earnings. . . ."

As a teenager during the Cultural Revolution in China, Zhidong taught himself history, literature, algebra, and other subjects through reading textbooks. After twelve years in the Chinese Army, he earned his Master's Degree in military science and began work in a research institute in Beijing.

Zhidong came to New York in 1988. He came to NDLS on a full scholarship. Barbara Gasperetti remembers that he was commonly known, during his time at the Legal Aid Clinic, as "Z" and "was a big hit with Spanish clients;" to this day they still ask if "Z" is available. While at NDLS, he published "Immigration Status Has Major Effects on Chinese Nationals in the United States," in THE JOURNAL OF INTERNATIONAL TAXATION. The article attracted much attention and garnered him an offer from Coopers & Lybrand. In 1994, he became a member of the Federal and Illinois Bars. In January 1996 he officially started his own business as a general practitioner.

LUCY PAYNE TESTIFIES BEFORE INDIANA HOUSE COMMITTEE

On February 6, Lucy Payne testified in behalf of a proposal for an Indiana CLEO program. Joining her on the list of witnesses were Indiana Chief Justice Randall Shepard, Dean Norman Lefstein of the Indiana University (Indianapolis) Law School, and Dean Ed Gaffney of the Valparaiso Law School. The bill containing the proposal for an Indiana CLEO passed out of committee, 13-0, and with but one minor addition. Lucy reports that when she finished her "pep rally" approach to the proposal, the committee yelled "go Irish!" Besides her oral testimony, Lucy distributed to the committee a prepared statement.

BRUCE WELLS FOUNDS MINISTRY FOR PASTORS

Bruce Wells, who teaches in the Legal Aid Clinic, has begun a non-profit ministry called Harvest of Peace. The ministry is intended to train pastors in techniques of mediation to help toward the resolution of conflicts in the pastors' churches and communities. In the seminars, Bruce teaches essentially the same content used in his class for law students; only the context will differ.

The first seminar is set for April 17 and 18 at the Clay United Methodist Church in South Bend. Its title: "Learn how to resolve conflicts through mediation."

This project originated

from a directed reading Bruce did under the supervision of Bill Hoye, Associate General Counsel of the University, during Bruce's third year at NDLS. Bill Hoye now serves on the Board of Directors of the ministry.

BLAKEY WINS (ANOTHER) APPEAL

Bob Blakey is on a run in the United States Courts of Appeals. He has "won" the last five: two in the Ninth Circuit, two in the First Circuit, and one in the Fourth Circuit. On January 28, the First Circuit decided *Legault v. Zambarano*, in which it affirmed the grant of sanctions to a civil-rights plaintiff who successfully attacked sex discrimination in the Town of Johnson's Fire Department. Bob argued the appeal for a friend who was unable to present it herself. The court credited its decision, in part, to Bob's "dexterous oral argument."

CCHR GRANTED OBSERVER STATUS BY AFRICAN COMMISSION

The Center for Civil and Human Rights has been granted Observer Status with the African Commission on Human and Peoples' Rights. The action came at the organization's 20th Ordinary Session, held in Grand Bay, Mauritius. In accordance with this status, the Center for Civil and Human Rights will submit to the African Commission, every two years, a report covering "your protection and promotional activities in the field of human rights."

CCHR WILL SPONSOR HUMAN RIGHTS CONFERENCE

On March 22, at the Hesburgh Center for International Studies, the Center for Civil and Human Rights will sponsor a conference entitled, "International Human Rights Litigation in U.S. Courts: State of the Law and Future Prospects." The conference, presented in cooperation with the Midwest Coalition for Human Rights and the American Society of International Law, will bring together a variety of scholars, including our own Dinah Shelton, who will speak on "Jurisdiction: Violations of Treaties or the Law of Nations." Dean Link will welcome the conferees.

At the conference, litigators of major cases under the Alien Tort Statute will discuss problems and issues that have arisen in practice. The program will solicit views of the judiciary, the State Department, and representatives of foreign governments. Other potential statutory bases for suing human-rights violators will also be addressed.

WHITE CENTER CO-SPONSORS CONFERENCE ON WELFARE

On February 6-8, the White Center on Law and Government sponsored a conference on the welfare revolution and Catholic social thought. The conference keynoter was Cheryl Sullivan, who served

until recently as the State Director of Family Health and Human Services in Indiana. She was followed by Wendell Primus and Lawrence Mead, two major figures in the recently concluded debate over federal welfare policy. They addressed the pros and cons of the welfare legislation that President Clinton signed last August.

Primus and Mead were followed by Rev. William O'Neill, from the Jesuit School of Theology in Berkeley, and by Professor Christine Firer-Hinze, a theologian from Marquette University, who tested current welfare-reform efforts against the background of Papal teaching.

Stanley Carlson-Thies, from the Center for Public Justice in Washington, D.C., then addressed the deficiencies in the ways that several evangelical churches have responded to welfare reform. In the final session of the conference, Bishop William Murphy, from the Archdiocese of Boston, moderated a discussion among a dozen Catholic theologians on the role of the Church in the formulation and implementation of welfare policy.

The conference was co-sponsored by the Center for Scholarship in the Liberal Arts and by the United States Catholic Conference. It presented a good example of the sort of interdisciplinary normative analysis of domestic-policy options that the Center was intended to sponsor.

NDLS ALUM CO-CHAIRS ND WOMEN'S REUNION

Jamee Decio, NDLS '80, co-chairs Notre Dame's Women's Reunion Committee. To

commemorate twenty-five years of Notre Dame's coeducation, the alumnae from the first four classes are invited to attend the women's reunion on campus this summer. Said Jamie, who graduated from the undergraduate school in 1975: "We are a unique group of women who had the opportunity to make history at Notre Dame. We look forward to celebrating this twenty-five year milestone as a group."

The weekend will include a Friday evening Mass at Sacred Heart, with Father Hesburgh celebrating. Dinner for the four classes will follow in the South Dining Hall. Other events and surprises are promised.

FATHER-SON ALUMS WIN LARGE SETTLEMENT

Robert H. Muhlbaugh, NDLS '57, and his son Michael, NDLS '92, recently secured a \$2.15 million settlement in connection with a fatal industrial accident that took place in 1990. The settlement is one of the largest in Ohio's history. Bob Muhlbaugh called the case a landmark decision in Ohio and the nation on the subject of product liability and on warnings of danger in the workplace.

The case had been appealed to Ohio's Supreme Court after a trial court granted summary judgment to a major defendant. Michael Milbaugh argued and won the case before the Supreme Court, whose ruling effectively overturned the summary judgment.

OHIO JURIST, NDLS ALUM, RETIRES

Joseph E. Mahoney, NDLS '49 and a judge of the 11th district court of appeals in Ashtabula County, Ohio, retired in late January. On March 1, a dinner will honor his service. The net proceeds from the event go to the Law School, in Judge Mahoney's name, to establish a student award.

ADVISORY COUNCIL MEMBER SPEAKS AT ND

On February 24, in DeBartolo Hall, Allen Page, a member of the Law School Advisory Council, Associate Justice of the Minnesota Supreme Court, and a 1967 graduate of Notre Dame, spoke on the importance of education and mentoring. The Page Education Foundation helps minority and other disadvantaged youths with post-secondary educational opportunities. The lecture was sponsored by the Notre Dame Chapter of the National Association for the Advancement of Colored People.

In 1992, Page became the first African American elected to the Supreme Court of Minnesota. He had, prior to that, served as Assistant State Attorney-General for six years. He received an honorary doctorate of laws from Notre Dame in 1993.

An All-American defensive lineman at Notre Dame, Justice Page played for the Minnesota Vikings and the Chicago Bears for a total of fifteen years. Chosen the league's most valuable player in 1971, he was

inducted into the NFL Hall of Fame in 1988.

NEWS FROM THE LEGAL AID CLINIC

Barbara Gasperetti reports a busy start to the second semester as interns and the supervising attorney review the new immigration statute and regulations and re-tool the Immigration Clinic to accommodate the changes.

Three days before Christmas the INS raided factories in Goshen and Elkhart and on the spot deported people to Mexico, leaving children in school with no idea they no longer had parents in the United States. The raid caused much concern in the community. As a result, Barbara spent a day in Goshen speaking with the Goshen School Board, other community leaders, and employers about the new statute and what it means for them. Other meetings with the community, in which NDLS students too will do presentations, are scheduled. The Immigration Clinic currently handles 127 cases and has had to declare a moratorium on new cases.

Katherine DiSalle is "immigration intern of the month." She successfully made her court debut in Chicago and has reunited two Rwandan clients with their families by persistently dealing with the US Consulates in Rwanda and Belgium to secure the families' release. Three Rwandans and a Nigerian journalist currently seek asylum through the NDLS office.

On February 24, teachers and students in the Clinic met with on-campus medical students and some of their teachers. The topic: advance directives. A second meeting, addressing medical malpractice, will take place on March 3. NDLS faculty have been invited to both sessions. The sessions are the work of Tom Shaffer and Professor Kevin McDonnell, who teaches medical ethics to the on-campus medical students of Indiana University.

NEWS FROM THE FACULTY

Tom Broden authored a "Michiana Point of View" piece entitled "Coalition Seeks Housing Harmony," in the January 26 issue of the SOUTH BEND TRIBUNE. Tom is chair of the Task Force on Housing for Disabled and Disadvantaged Citizens of St. Joseph County.

Rick Duncan, former visiting professor at NDLS and now a chaired professor at Nebraska, authored *Homosexual Marriage in the Myth of Tolerance: Is Cardinal O'Connor a "Homophobe?"*, in the NOTRE DAME JOURNAL OF LAW, ETHICS AND PUBLIC POLICY.

In September 1996 John Finnis gave three Hanley Lectures at the University of Winnipeg, on the theme of public reason. John gave the Harry B. Burns Lecture at Loyola Law School, Los Angeles,

on November 22, 1996, in the form of a two-hour debate with Ronald Dworkin of Oxford University and New York University Law Schools, on the subject of "Euthanasia, Morality, and Law". In January 1997, he gave the Ver Heyden de Lancey Lecture at the University of Cambridge, on "End of Life Decisions: Purposes, Consequences, and Ethics," to an audience which included the President of the British Medical Association and two Law Lords whose judgments on such decisions were discussed in the lecture.

An Italian translation of his book, *NATURAL LAW AND NATURAL RIGHT*, was published in Milan in 1996. Professor Finnis' 1996 publications included "Unjust Laws in a Democratic Society: Some Philosophical and Theological Reflections," in the *NOTRE DAME LAW REVIEW*, and an Italian version of the same paper published in a collection of papers on behalf of the Congregation of the Doctrine of the Faith.

His publications with the Oxford University Press were: "Intention in Tort Law," in David Owen (ed.), *PHILOSOPHICAL FOUNDATIONS OF TORT LAW*; "The Truth in Legal Positivism," in Robert P. George (ed.), *THE AUTONOMY OF LAW: ESSAYS ON LEGAL POSITIVISM*; "Is Natural Law Theory Compatible with Limited Government?", in Robert P. George (ed.), *NATURAL LAW, LIBERALISM, AND MORALITY*; "The Ethics of War and Peace in the Catholic Natural Law Tradition," in Terry Nardin (ed.), *THE ETHICS OF WAR AND PEACE*; and "Loi naturelle," in Monique Canto-Sperber (ed.), *DICTIONNAIRE DE*

PHILOSOPHIE MORALE.

On February 21, John Garvey discussed his book, *WHAT ARE FREEDOMS FOR?*, at Barnes & Noble in Mishawaka.

Doug Kmiec authored "It Takes a Family," in the Winter 1996-1997 issue of *NOTRE DAME MAGAZINE*.

Don Kommers published, in both paper and hardback, a revised and expanded edition of *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY*. Duke University Press did the honors.

Dean Link spoke at the 1997 Midwest Law Symposium on February 24 at DePaul University in Chicago. Representatives from six law schools participated. A reception followed the Symposium.

Former NDLS prof Sabrina McCarthy and Ronald Hopson have announced the birth of their son, Christopher David Allen Hopson, on January 11 in Knoxville, Tennessee. Christopher weighed in at 6 lbs, 5 oz.

Pat Schiltz was interviewed about clergy sexual abuse on the Fox News Channel on Feb. 17 and made several appearances on WSBT-TV during January and February regarding the O.J. Simpson litigation. He also was quoted in an article on sports marketing appearing in the *INDIANAPOLIS STAR* on February 6 and in an article on clergy sexual abuse appearing in the *MIAMI HERALD* on Feb. 8.

On February 13, Tom Shaffer gave the inaugural Glen Tabor Lecture in Legal Ethics, at Valparaiso University, entitled "On Living The Same Way in Town and at Home." He also conducted a continuing-legal-education seminar for practicing lawyers. On February 14, Tom led a law-faculty colloquium in Valparaiso's Law School and gave guest lectures in two legal-ethics courses.

Dinah Shelton will present a talk entitled "The Role of Specialized Agencies in Protecting Rights," at a conference on "International Human Rights at the Grass Roots: Putting International Standards to Work for our Children." Garth Meintjes, along with Douglas Cassel, will make a presentation on "Seeking Justice in the World" at the same conference. The Midwest Coalition for Human Rights will present the conference on March 14-15 in Iowa City, Iowa.

Eric Smithburn published
PROBLEMS IN FAMILY LAW (Little,
Brown).

NEWS FROM THE ALUMNI

Tom Clements, NDLS '86, has been signed by Mike Ditka as an assistant coach for the New Orleans Saints. Tom, a former Notre Dame quarterback who led Notre Dame to the 1973 national championship, capped an undefeated season by earning Sugar Bowl MVP honors in a 24-23 victory against previously unbeaten Alabama. Tom served as coaching assistant to Lou Holtz at Notre Dame from 1992 through 1995. Tom is a *magna cum laude* graduate of the Law School.

Laura A. Curliss, NDLS '93, has opened her own law practice at 300 North Michigan Street, in South Bend. She will concentrate on employment law, small-business law, and estate planning. Following law school, Laura clerked for Sixth Circuit Judge Boyce F. Martin, Jr. She earned her undergraduate degree at Notre Dame and her M.Div. at Yale Divinity School.

John Goldrick, NDLS '84, has returned to the United States after several years as head of the Peace Corp in Ghana and Kenya. John is now assistant vice president of the enrollment and retention program at the University of Portland.

David F. Guin and John P. McCabe, both NDLS '89, have become partners at Ross & Hardies. Both work in the firm's Chicago office. Dave focuses on corporate law, while John works in litigation.

Valerie G. Kanouse, NDLS '74, recently authored a piece entitled "Crime won't dampen my spirit," in THE (Boca Raton, Florida) NEWS on December 14. The article described how a break-in of her car--shortly after a burglary of her house--did not discourage her, in light of the richness of her spiritual life.

Mike Fisher, the new Attorney General of Pennsylvania, has appointed Gerald J. Pappert, NDLS '88, as first deputy attorney general. Gerry had served Fisher as campaign manager. A graduate of Villanova University, Gerry had been associated with Duane, Morris & Heckscher, in Philadelphia, since 1988.

Gene Smary, NDLS '75 and a partner at Warner Norcross & Judd in Grand Rapids, has been elected to a three-year term on the Council of the Section of Natural Resources, Energy and Environmental Law of the American Bar Association. He was also reappointed as Vice-Chair of the Section's Brownfields Task Force. Gene did his

undergraduate work at Aquinas College and earned his M.A. at Notre Dame.

Jeff S. Turner, NDLS '92, has moved his practice of law to 3700 Abrams Road, Dallas, Texas 75214. He is concentrating his practice on corporate representation and estate planning.

Dan Tyconovich, NDLS '96, passed the Indiana Bar, the Ohio Bar, and the Patent Bar this past summer while working full time. Congratulations, Dan!

John E. Tyler III, NDLS '89, has been named a member of the firm at Lathrop & Gage, in Kansas City. John, who did his undergraduate work at Notre Dame, focuses on commercial and personal-injury litigation.

Nelson J. Vogel, NDLS '71 and a partner at the South Bend Office of Barnes & Thornburg, was recently named firm-wide chair of the tax and estate department. The appointment was announced by Steve Seall, NDLS '66 and managing partner of the firm's South Bend Office. Nellie has been a partner with the firm since 1977. He has served as chair of the taxation section of the Indiana State Bar Association.

Kevin Warren, NDLS '90, was the subject of a feature article in the KANSAS CITY STAR on December 24. Entitled "Daring to Live his Dreams," the article describes his work with Kevin Warren Enterprises, through which he advises about a dozen clients, including Greg Hill, Tamarick Vanover, and Donnell Bennett of the Kansas City Chiefs, and Pro-Bowl players Kimble Anders and Will Shields. (N.D. grad Chris Zorich was Kevin's first client.)

The business, now three years old, focuses on sports-and-entertainment consulting and the negotiation of contracts for athletes. Kevin recently moved his business to Lewis Rice & Fingersh, where he practices.

Kevin and his wife Greta have a baby daughter, Peri. Kevin was an academic and athletic All-American at Grand Canyon College in Phoenix. He earned an MBA from Arizona State University in 1987.

James P. Zavell has become an associate at the Robert B. Joslyn firm in St. Clair Shores, Michigan. James did his undergraduate work at Johns Hopkins and earned an LL.M. in taxation at NYU. James will engage in the practice of estate planning, taxation, probate, and trust law.

MISCELLANY

On February 28, the Faculty Colloquium welcomed Professor Cynthia L. Estlund, of

the University of Texas Law School. Her topic: *Free Speech and the Workplace*. Thanks to John Garvey and Darlene Carlson for the arrangements.

NDLS student Mark Kromkowski, of Baltimore, Maryland, has received the North Central Regional Scholarship of the National Italian American Foundation. The NIAF scholarship program, now celebrating its twentieth anniversary, has grown from four scholarships to over one hundred scholarships in the humanities, medicine, engineering, business, music, the Italian language and other specialized fields. Selection criteria include merit, financial need, and community service.

John Dunn, NDLS '93 and an associate at McCormick, Barstow, Sheppard, Wayte & Carruth, in Fresno, California, took his training at Notre Dame seriously: his home in Modesto, California, is located on Thomas More Way.

A Barristers Team representing NDLS competed in Chicago on February 20 and 21. Members of the team: Jennifer Girard, Bret Heidemann, Tamara Herdener, Bernie Keller, Catherine Hall, Katherine Singer, Dorphene Payne, and John Michaels.