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NDLS Update 05/1998

Notre Dame Law School

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NDLS Update

News from the Notre Dame Law School

Vol. VII, No. 9
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TEX DUTILE
EDITOR

NDLS GRADUATES 174

On May 17, the Law School conferred degrees on 174 graduates. These graduates earned 159 J.D. degrees, 14 LL.M. degrees, and 1 J.S.D. degree.

Among the J.D. graduates, the three top awards went to Rosemarie Kay Nixon, who received the Hoynes award; Kristen Elise Polovoy, who received the O'Meara Award; and Jean Marie Wilson, who received the Farbaugh Award. All three were graduated *summa cum laude*.

The LL.M. program yielded four students who graduated *summa cum laude*: John William Blakeley, Willem Hendrik Gravett, Raphael Zolokere Kasambara, and Kolawole Tajudeen Olaniyan.

Law School Commencement ceremonies began with a Prayer Service at Sacred Heart on campus. Following the University Commencement at the Joyce Center, the Law School Diploma Ceremony took place just south

of the Reflecting Pool. A reception for faculty, graduates, family and friends ensued at the Joyce Center.

ALAN GUNN TEACHER OF THE YEAR

Alan Gunn, the John N. Matthews Professor of Law at NDLS, was honored with the 1998 Distinguished Teacher Award. Alan accepted the Award, conferred each year by the graduating class at NDLS, at the "Faculty 3L Dinner," which took place at the Windsor Park Conference Center on May 11.

Alan did his undergraduate work at Rensselaer Polytechnic Institute and his law work at Cornell, where he was Articles Editor of the CORNELL LAW REVIEW. After a stint in private practice in Washington, D.C., Alan moved quickly up the academic ladder, becoming the J. duPratt White Professor of Law at Cornell in 1984. He came to Notre Dame in 1989. A provocative and popular

teacher of, among other things, taxation and torts, Alan has published widely.

As 1998 Distinguished Teacher, Alan addressed the graduating students and their guests at the Law School Diploma Ceremony on Commencement Sunday, May 17. Congratulations, Alan!

BAUER, PRATT HONORED AT PRESIDENT'S DINNER

At the annual President's Dinner on May 19, held in the North Dining Hall, two members of the law faculty were honored: Joe Bauer, celebrating his twenty-fifth year at NDLS; and Jack Pratt, celebrating his promotion to Full Professor. At the dinner, Jack received a Special Presidential Award for his distinguished service to the Law School and to the University. Congratulations, Joe and Jack!

NDLS STUDENT WINS PUBLIC-INTEREST FELLOWSHIP

Alexzandrea Barrau, a graduating NDLS student, has won a fellowship sponsored by the New York law firm of Fried, Frank, Harris, Shriver & Jacobson. This fellowship will allow Ms. Barrau to spend two years working with the Mexican American Legal Defense and Educational Fund (MALDEF). The law firm sponsors two fellowship programs, one established in 1994 with MALDEF and the other established in 1996 with the NAACP Legal Defense and Educational Fund (LDF). In both programs, the recipient of the fellowship works at Fried, Frank as an associate for two years. The following two years are spent working full-time at MALDEF or LDF.

FIRST ANNUAL "SENDING MASS" HELD FOR SFF RECIPIENTS

On April 26 NDLS saw its first annual "Sending Mass" in the Law School Lounge. Father Bill Beauchamp, C.S.C., NDLS '75, presided and preached at the Mass. The Mass was said for this year's recipients of the NDLS Summer Student Funded Fellowships. Refreshments followed the Mass.

This year's recipients and the organizations they will work for: Titilaya Marinho, Covenant House; Marisa Salazar,

Casa de Proyecto Libertad; Wilda Wahpepah, Oklahoma Indian Legal Services; Aniki Olson, Washington State CASA; Akram Faizer, Palestinian Peace Project; Timothy Curran, Legal Action of Wisconsin; Sara Garvey, Legal Aid Society of Nassau County; Stasia Mosesso, Legal Services of Northern Virginia; Steven Glickman, National Lawyers Guild; Daniel Esrey, Midwest Center for Justice; Sarah Brite, San Diego Public Defender; Teresita Mercado, Arizona Justice Institute; and Jennifer Gardiner, San Mateo County District Attorney's Office.

JOSEPH CIRAOLLO HONORED POSTHUMOUSLY

The Clarkson Center, in Buffalo, honored the memory of Joseph Ciraolo, NDLS '97, the NDLS student who died in April of 1997, with one of its 1998 "Courage to Come Back" awards. Winners of the award were named on April 21; a dinner honoring the winners took place on May 6 at the Hyatt Regency Buffalo.

Mr. Ciraolo, who displayed phenomenal courage during a lifelong battle with polyostotic fibrous dysplasia, was graduated with honors from Depew High School and Canisius College. He died three weeks before receiving his law degree from the University of Notre Dame.

CLAIRE SKINNER, NDLS ALUM, HONORED

Claire (Corson) Skinner, NDLS '81 and Chairman and Chief Executive Officer of Coachmen Industries, of Elkhart, recently received her industry's National Legislative Award. The Recreation Vehicle Industry Association (RVIA) made the award at its Annual Membership Meeting on March 7, in Palm Springs, California.

Ms. Skinner received the award "in recognition of her tireless efforts to protect the interests of the RV industry in the legislative arena." A long-time member of RVIA's Public Relations and Public and Legislative Affairs Committees, she most recently proved instrumental to the industry's success in effecting changes to the Florida Lemon Law. RVIA chairman Kelly Rose said, "Claire Skinner is known as a forward-thinker, who can clearly look at all sides of an issue, enabling her to see how things fit into the big picture. As a great strategist and master of details, she has been invaluable to RVIA on many legislative matters."

Like her dad, Tom Corson, Claire serves on the Law School's Law Advisory Council. She did her undergraduate work at Southern Methodist University.

DAN MANIER JOINS NDLS STAFF

Daniel P. Manier joined the Law School staff on May 18

to assume responsibilities for computing and technology maintenance and development. Dan brings to the Law School eleven years of computer experience. He served two years in private industry as a computer-marketing representative and then, for the past nine years, in posts of increasing responsibility at the University's Office of Information Technology (OIT), most recently as Campus Workstation Program Coordinator.

Dan earned a Bachelor of Arts in Sociology and a Master of Science in Administration at Notre Dame in 1987 and 1993, respectively. He has won OIT awards for outstanding contributions and leadership.

His work in the OIT has given him a strong background in the total development of computing on the campus and the initiatives introduced to meet the growing demands of faculty, staff, and students. In interviews with an ad hoc committee consisting of Dean Link, Roger Jacobs, Jack Pratt, Matt Barrett, Pat Schiltz, and Warren Rees, Dan's potential for bringing his wide-ranging OIT experience to the Law School was, according to Roger, noteworthy. Dan will continue the steady growth and significant contributions made by Joe Rosenfeld over the past three years.

NEWS FROM THE CENTER FOR CIVIL AND HUMAN RIGHTS

Luc Reydam, NDLS

LL.M. '95 and current J.S.D. candidate, published: *Justice dans l'après-Apartheid: La Commission de vérité et de réconciliation sud-africaine*, in the YEARBOOK OF AFRICAN LAW - ANNUAIRE DE DROIT AFRICAIN. He also published a piece in ZOEKLICHT, the journal of international humanitarian law issued by the Belgian Red Cross.

On March 6, Luc delivered a lecture on "The universality principle of international criminal jurisdiction," at the Arusha School on International Criminal Law and Human Rights. Luc is midway through "a most interesting" internship with the International Tribunal for Rwanda.

NEWS FROM THE FACULTY

On May 20, the Annual Law School Faculty Dinner took place in the Library Reading Room. Due to his wife's surgery the day before, Dean Link was unable to attend. Tex Dutile stood in for him at the Dinner.

Matt Barrett found himself quoted by Justice Scalia in a recent opinion. Writing for a unanimous court in *Atlantic Mutual Insurance Company v. Commissioner*, Justice Scalia observed that the relevant Internal Revenue Code Provisions enable the insurer to claim "a current deduction for

future loss payments without adjusting for the time value of money—the fact that '(a) dollar today is worth more than a dollar tomorrow,' D. HERWITZ AND M. BARRETT, ACCOUNTING FOR LAWYERS 221 (2d ed. 1997)." Congratulations, Matt!

April 17, the "Multi-employer Funds Tobacco Litigation Group Counsels," who represent over 30,000 Taft-Hartley health-and-welfare funds throughout the United States, held a meeting at the Southern New England School of Law outside Boston, Massachusetts. Bob Blakey addressed the group on the promise (and difficulties) of using RICO in smoking cases in light of his successful experience in Texas and Florida.

On April 20, a Chicago jury returned a verdict for \$85,926 against Joseph Scheidler, the leader of the Pro-Life Action League, under the federal racketeering statute (RICO), for anti-abortion demonstrations. The verdict allegedly represented the extra security costs borne by two abortion clinics as a result of Scheidler's protests. Bob Blakey represented Scheidler in the Supreme Court in 1994, arguing, unsuccessfully, that RICO did not apply to social or political protest, as such activity was excluded from the 1970 Act to prevent it from being applied by the Nixon Administration to anti-war demonstrators. Bob also argued two other points, neither of which the Court reached:

protest activity, even if unlawful, is not "extortion," a larceny-type offense that prohibits "obtaining" property by fear, not "depriving" another of it, as, for example, by malicious mischief, and that applying RICO to protests threatens First Amendment values. The verdict represented an unfavorable answer to Bob's two unanswered questions before the Supreme Court. Bob was interviewed by the NEW YORK TIMES; despite Bob's criticisms, the TIMES editorialized in favor of the verdict. Bob says the TIMES sometimes makes mistakes; in fact, he notes, it misspelled his name ("Blakely," not "Blakey") when it quoted him. He also says the CHICAGO TRIBUNE and the BOSTON GLOBE, both quoting him, got it right when they editorialized against the verdict. Bob published a letter in the TIMES responding to the editorial; he also published an op-ed piece in THE TRIBUNE and an article on the verdict in the National Law Journal.

On May 13, Bob gave the keynote address to the 20th International Asian Organized Crime Conference held in Toronto, Canada. His talk, "Myths That Inhibit Effective Prosecution of Organized Crime," was much enhanced by the able research of Patti Ogden, who found several "impossible-to-find" Canadian sources on the Internet. Bob has done work for the Canadian Ministry of Justice for a number of years: he helped in 1971 to design Canada's wiretap legislation; he also helped design Canada's

"Criminal Organizations" statute, which received royal assent April 25, 1997. Over 900 police, prosecutors, and academics attended the conference.

While at the conference Bob met Xie Hua, an official of the Ministry of Public Security of The People's Republic of China. Apparently, China is interested in adopting RICO legislation. Bob says he cannot figure out why, as even though RICO is broad, it still limits the government, and he cannot figure out what RICO would give law enforcement in China that it does not already have.

On May 12, Bob appeared on the network television program "Frontline." He explained RICO in the context of the tobacco litigation. (Explaining RICO to a lay audience speaks volumes for Bob's ability and courage!)

Jewel Crutchfield, wife of longtime NDLS prof Charlie Crutchfield, suffered a stroke in early May. She has been hospitalized at Compass Hospital of San Antonio, 14743 Jones Maltsberger Road, San Antonio, Texas 78247-3713. Please keep Professor and Mrs. Crutchfield in your thoughts and prayers.

Rick and Nicole Garnett, who will join the NDLS faculty in the fall of 1999, spent Commencement week-end at Notre Dame.

John Garvey will give a lecture entitled "Religious Freedom in America" at a conference on "Religious Freedom and Proselytism: Ethical, Political and Legal Aspects," at the Tantur Ecumenical Institute for Theological Studies in Jerusalem on June 1. John also gave the Sawyer Lecture on Law and Religion at the University of Chicago Divinity School and the University of Chicago Law School on May 13. His subject was "Catholic Judges in Capital Cases." The lecture series was funded by the Mellon Foundation. On May 1, he gave a talk to the Notre Dame Board of Trustees on the subject of "Teaching Ethics to Professionals." John also gave a lecture entitled "School Vouchers: Enlightened Social Policy or Threat to the Constitutional Separation of Church and State?" at the Cornell Law School on April 24.

John was honored at a symposium sponsored by the Drake Law School on April 17 and 18. The symposium, entitled "The Role of Freedoms," was held to mark the publication of his book WHAT ARE FREEDOMS FOR? Featured speakers included Lawrence A. Alexander (University of San Diego), Barbara Armacost (University of Virginia), Kevin Saunders (Drake University), and Frederick A. Schauer (Harvard University).

John co-authored *Catholic Judges in Capital*

Cases, published in the MARQUETTE LAW REVIEW. He also wrote *The Architecture of the Establishment Clause* published in THE WAYNE LAW REVIEW.

In February Doug Kmiec gave two lectures: "Thomas Aquinas and Catholic Natural Law," at the Law and Morality Seminar in Pepperdine, California; and the G.K. Chesterton Society Lecture, "The Natural Law and Constitutional Interpretation," at Princeton University. In March he delivered a keynote address entitled "The Law of the Declaration and the Law of the Constitution," at the Ethics and Public Policy Center in Washington, D.C. Doug debated school vouchers on the television show *Firing Line*, as part of its "Debates; Debates" series, in New York. On May 7 he served as the moderator for the Pepperdine Entertainment Law Symposium on Media and Privacy. Also in May, he presented "The Optimism of Self-Evident Truth," at the Malibu Optimist Club; made the invited presentation "No 'Wall of Separation' Between Family, Faith and Education—the Case for Even-Handed Funding of all Schools—Public and Private," at the Religion and Public Policy Conference at Pepperdine; and delivered an address entitled "The Empirical Advantages of Private Education and Public Funding of Private Schools," in Colorado Springs, Colorado.

Doug recently debated the issue of executive privilege, on the *Lehrer NewsHour*; discussed the constitutional questions regarding the independent counsel investigations, on MSNBC; addressed the *Jones v. Clinton* case, on Warren Olney's *Which Way L.A.*; and discussed cultural issues and the revival of federalism, on Peter Forst's KIEV radio program.

Barbara Link, wife of Dave Link, underwent surgery on May 19 to remove a growth ultimately determined to be malignant. The doctors are optimistic that all affected areas have been removed. Nonetheless, Barbara will soon begin chemotherapy. Please keep her, Dave, and the entire family in your thoughts and prayers.

Dean Link gave a lecture entitled "The Idea of a Catholic University," at the Kevin Kline Theatre in St. Louis on May 4. A reception followed this Hesburgh Lecture.

On May 22, Father John Pearson celebrated the 25th Anniversary of his ordination as a priest of the Congregation of Holy Cross. This special occasion was marked by a Mass at Sacred Heart and a dinner at the North Dining Hall. Congratulations, John!

Terry Phelps presented a half-day writing workshop at the 1998 Education Program for Appellate Law Clerks and Central Staff Attorneys of the Florida Courts on April 22, in Orlando, Florida.

Pat Schiltz spoke on "Improving Legal Ethics," at a meeting of the Sagamore American Inn of Court, in Indianapolis, May 13.

Tom Shaffer published *Faith Tends to Subvert Legal Order*, in the FORDHAM LAW REVIEW. The article grew out of remarks given by Tom at a symposium entitled "The Relevance of Religion to a Lawyer's Work: An Interfaith Conference." Tom introduces his piece with reminiscences about our two late colleagues, Frank Booker and Father Bill Lewers.

Eric Smithburn has contracted with Anderson for the publication of *CASES AND MATERIALS IN JUVENILE LAW*.

Eric also has contracted with West to write the third volume of his treatise on Indiana Family Law. Eric currently teaches in our London Programme, where he is also working with an English co-author on a Comparative Family Law book.

The Federal Judicial Center has published Jay Tidmarsh, *Mass Tort Settlement Class Actions: Five Case Studies* (1998). This book is a shortened version of the report that Jay did for the FJC last year on the same subject.

On May 14, Jay addressed the American Law Institute at its annual meeting in Washington, D.C. The subject of Jay's talk was the future of American civil law in the twenty-first century.

At the invitation of the Honorable Anthony Scirca of the Third Circuit, Jay attended a meeting of the Mass Tort Working Group on May 27 and 28 in Philadelphia. The Working Group was constituted by Chief Justice Rehnquist and Judge Paul Niemeyer, NDLS '66, the Chair of the Advisory Committee on Civil Rules, to examine the problems of mass tort litigation and to propose possible solutions to them. The Working Group invited a small number of judges, practitioners, and academics (including Jay) to provide their input into this process.

Jay has tentatively agreed to write two more books for Foundation Press, one a textbook on complex civil litigation and the other a textbook on the *Erie* doctrine. Both are due to be published in 1999.

NEWS FROM THE ALUMNI

Thomas J. Arkell, NDLS '97, published *Agent*

Interference With College Athletics: What Agents Can and Cannot Do and What Institutions Should Do In Response, in SPORTS LAWYERS JOURNAL.

Jeff Bauer, NDLS '97, has joined Lathrop & Gage, in Kansas City, as an Associate. Jeff will focus his practice on personal injury, workers' compensation, and business litigation. Jeff did his undergraduate work at Southwest Missouri State.

THE ILLINOIS LEGAL TIMES recently ran a large feature and profile on Joseph A. Cari, Jr., NDLS '78. Mr. Cari is a senior partner at Ungaretti & Harris. He also "is a consummate Democratic insider." He has worked in capacities ranging from legal counsel to fund raiser on the presidential campaigns of Jimmy Carter, Walter Mondale, Joe Biden, Bob Kerrey and Bill Clinton. He has done this while maintaining a "thriving regulatory and a legislative affairs practice in Washington and Chicago."

St. Joseph County attorneys Tom Brunner, NDLS '66, Paul Crowley, NDLS '95, and Eugenia Schwartz, NDLS '80, were among those inducted as Fellows of the Indiana Bar Foundation during the

organization's annual dinner meeting on April 23 in Indianapolis. Tom practices with Baker & Daniels; Paul with Alan Fedder Herendeen & Kowals; and Eugenia with Nickle & Piasecki.

Kristen Fletcher, NDLS '96, has become editor of WATER LOG, the quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Kristen joined the Mississippi-Alabama Sea Grant Legal Program in the summer of 1997. WATER LOG is published at the Lamar Law Center at the University of Mississippi. Its most recent issue contained three articles by Kristen: *Horn Island Owner Prevails in Fifth Circuit*; *Antarctica Treaty Purports to Protect Ocean*; and *The Red Snapper Fishery: High Stakes in Limited Entry* (in addition to her *From the Editor's Desk!*).

Richard J. Garcia, has become a partner at Lynch, Gallagher, Lynch & Martineau in Lansing. Mr. Garcia practices commercial and personal-injury litigation, administrative, civil-rights and employment law.

Deepa Iyer, NDLS '97, has accepted an offer to join the National Asian Pacific American Legal Consortium, a nonprofit civil-rights organization in Washington, D.C. In her work,

Ms. Iyer will address issues such as affirmative action, voting, and language rights.

John Refermat, NDLS '96 and a second-year associate at Chernin & Gold in Binghamton, New York, recently was named special Counsel to State Senator Thomas W. Libous and Counsel to the Broome County Republican Committee.

Charles P. Rice, NDLS '88 and a lawyer in private practice in South Bend, will serve on the faculty of a program entitled "Planning Your First Personal Injury Case," on June 17. Sponsored by the Indiana Continuing Legal Education Forum, the event will take place at the ICLEF Conference Facility in Indianapolis.

Frank J. Romano, Jr., NDLS '49 and a partner at Romano & Romano in Skokie, Illinois, died April 24 at his home in Ponce Inlet, Florida, at the age of 76. Mr. Romano served in World War II before coming to the Law School. Mr. Romano was one of three brothers who shared family offices on Lincoln Avenue in Skokie, owned homes next to one another on Lawndale Avenue in Skokie, and had wives named Pat.

Mr. Romano served as commander of Lincolnwood Post

1226 of the American Legion and served as Justice of the Peace in Niles Township from 1953 through 1957. He served on the Board of Governors for the Notre Dame Club of Chicago and was a member of the American Academy of Matrimonial Lawyers. He leaves two sons, two daughters, and nine grandchildren. A memorial service took place on April 31 in St. Joan of Arc Church, Evanston.

Brian Sagrestano, NDLS '95, recently began a "new career" in planned giving. He has joined the Development Office at Clarkson University.

Scott Whipple, NDLS '97, recently won the "Best Expert Cross-Examination Award" at Clark Hill, in Detroit. This marks the first time ever that the Award, honoring the best cross examination of an expert witness by an associate at the firm, has gone to a first-year associate. Congratulations, Scott!

MISCELLANY

Erik Ablin has been named Editor-In-Chief for Volume XIII of the NOTRE DAME JOURNAL OF LAW, ETHICS AND PUBLIC POLICY. The Thomas J. White Center on Law and Government, directed by Father

John Pearson, publishes the JOURNAL.

Vernon J. Bourke, long-time Philosophy prof at St. Louis University and member of the board of the Natural Law Institute at NDLS, died on May 4. This prominent ethics and medieval-philosophy educator, whose work emphasized St. Augustine and St. Thomas Aquinas, wrote twenty books, lectured worldwide, and served as president of the American Catholic Philosophic Association in 1948. In 1988 he received the Distinguished Alumnus Award at the University of Toronto.

Maureen Kramlich, NDLS 1L, published a Letter to the Editor in the April 26 edition of the CHICAGO TRIBUNE. The letter addressed the verdict in *NOW v. Scheidler*.

NDLS will co-sponsor Notre Dame's 41st Annual Union-Management Conference, to be held June 12. Representatives from unions, industry and corporate management will attend the day-long event, which will take place in the auditorium at St. Mary's college. The conference will feature three speakers and two panels for discussion and debate of current issues.
