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## NDLS Update 11/1996

Notre Dame Law School

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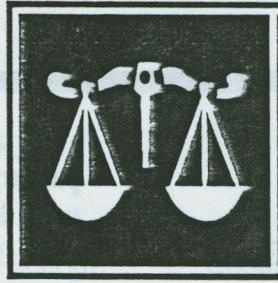
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# NDLS Update

News from the Notre Dame Law School

Vol. <sup>VI</sup>V, No. 4  
November, 1996

TEX DUTILE  
EDITOR

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## NDLS UPDATE CELEBRATES FIFTH ANNIVERSARY

This issue marks the fifth anniversary of the NDLS UPDATE. The first issue appeared in November of 1991. The newsletter was called LAW SCHOOL UPDATE in its first appearance. The second issue appeared under the name NDLS UPDATE, the newsletter's name since then. The current masthead, complete with those little scales of justice, dates from January of 1994. The newsletter's editor, Tex Dutile, dates from much before that!

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## MASS OF REMEMBRANCE CELEBRATED FOR DOUGLAS STREITZ

On November 8, at Sacred Heart, Father Edward A. Malloy celebrated a Mass of Remembrance for Douglas S. Streitz. Representing the family at the Memorial Mass were Sister Vicky Bartowski and Sister Lisa DeSabitino, Felician nuns who were long-time friends, and former teachers, of Doug. Doug, a member of the Law School Class of 1997, was one of three persons killed in the crash of a private plane in Gloucester County, New Jersey, on June 13. A resident of Clayton, New Jersey, Doug had been working this past summer as a law

clerk for Pepper, Hamilton and Sheetz in Philadelphia. Doug had done his undergraduate work at Notre Dame, earning a B.A. in 1994.

A reception at the Morris Inn followed the Mass. Memorial contributions may be sent to St. Brigid's Catholic School, West High Street, Glassboro, New Jersey 08028.

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### OFFICE AT ST. MARY'S LAW SCHOOL NAMED FOR TOM SHAFFER

The School of Law at St. Mary's University, in San Antonio, Texas, will soon boast an outstanding Center for Legal and Social Justice. Only one block from the Law School campus, the new Center will house the Law School's four clinical-education programs, provide a center for pro-bono and campus-ministry activities, afford new classroom space, and include a state-of-the-art moot courtroom and mediation facilities.

How fitting, then, that an office in this Center has been dedicated to the name of our own Tom Shaffer. The donation underlying this tribute came from Vincent Johnson, NDLS '78 and Professor of Law at St. Mary's, and his lawyer-wife Jill Torbert. Congratulations, Tom, on this wonderful honor.

\* \* \*

### BLAKEY WINS NINTH CIRCUIT APPEAL

On November 5, the U.S. Court of Appeals for the Ninth Circuit reinstated a federal racketeering lawsuit filed by a class of alleged fraud victims in Las Vegas, Nevada. The suit, *Forsyth v. Humana*, was filed under ERISA, the Sherman Act, and RICO. Bob argued the ERISA and RICO points. The Court affirmed in part and reversed in part.

The suit accused Humana Insurance and Humana Hospital of engaging in a

pattern of fraud and kickbacks in connection with health insurance. The court affirmed the District Court's finding that the "promises" involved were "puffing," not fraud, but it reversed the District Court's holding that the "kickback" scheme was not cognizable under RICO because of the McCarran-Ferguson Act, which entrusts to the states the regulation of insurance. Parts of the ERISA claim were rejected (the equity relief) and upheld (the damage relief). The court reversed the lower court's dismissal of the antitrust claim. Bob, as co-counsel for the class, argued the appeal on December 4, 1995.

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### NDLS HOSTS CLE ETHICS SESSION

On November 23, the Law School co-sponsored, along with the Notre Dame Alumni Association, a program entitled, "Continuing Legal Education in Ethics." Held in conjunction with the Notre Dame-Rutgers game, the program featured (1) Dean David T. Link, whose presentation was entitled, "A Return to the Roots of the Legal Profession--Lawyers as Healers and Peace Makers;" and (2) Professor John H. Robinson, whose presentation was entitled, "'And The Two Shall Become One Flesh. . .'"--the Ethical Constraints on Joint Representation in Estate Planning."

\* \* \*



## CAROL KAESEBIER SPEAKS AT NDLS

On November 6, in the Law School, Carol Kaesebier, General Counsel at the University of Notre Dame, addressed the student body concerning her experiences as a lawyer. The Women's Legal Forum sponsored the event, as well as the accompanying lunch.

\* \* \*

## NDLS ALUMS SWORN INTO HOOSIER BAR

On November 4, at the Indiana Convention Center in Indianapolis, ten NDLS alums were admitted to the Bar of the Indiana Supreme Court and admitted to practice before the federal courts of the Northern and Southern Districts. Joining approximately 400 other successful takers of the July 25-26, 1996, Indiana Bar Examination, the Notre Dame graduates admitted to practice included: William Jaquinde, Mary Loranger, Debra Miller-Shlakman, John Smarrella, Christopher Spataro, Susanne Spisak, Thomas Stipp, James Sweeney II, Daniel Tychonievich, and Bruce Wells. Tex Dutile represented the Law School at the ceremony and the ensuing reception.

\* \* \*

## NEWS FROM LONDON

On November 12 students in the London Programme attended the Annual Dinner of the Society of English and American Lawyers in Middle Temple Hall. The occasion provided a very good mix of lawyers from practice, both American and British, academics and students. Guests of honor were Lord Woolf, the Master of the Roles, and Admiral Crowe, the American Ambassador.

\* \* \*

On November 18, Judge Diarmuid O'Scannlain spoke to the London students on current cases coming before the United States Supreme Court. A question-and-answer period followed.

\* \* \*

## NEWS FROM THE LAW LIBRARY

Lucy Payne had additional oral surgery on November 20 to address problems lingering from her skiing accident last winter. She is now recovering at home.

\* \* \*

Warren Rees will join the Kresge Law Library staff January 1 as its new research/computer librarian. Welcome!

\* \* \*

Arlene Spitz has left the Law Library to take a position in the Registrar's Office. Best of luck and thanks, Arlene.



## NEWS FROM THE LEGAL AID CLINIC

The Clinic has filed five cases, four of which remain alive, for injunctions and damages against Northern Indiana Public Service Company, the regional supplier of natural gas. At issue in all cases is the denial of service to applicants whose unpaid gas bills are barred by the statute of limitations and relate to service at other addresses. (In the fifth case, brought against both the gas and electric companies, the Clinic settled the dispute and the utilities were connected.) The Clinic has asserted both the six-year account statute and the four-year limitations provided in the Uniform Commercial Code; all cases involved bills more than six years old. A succession of Clinic interns has worked on these: Matt Hicks, Stan Wruble, and, currently, George Spaeth.

\* \* \*

Judge George N. Beamer, Jr., of the St. Joseph Superior Court in Mishawaka, joined the Legal Aid I orientation session on professional responsibility, on November 13.

\* \* \*

The Clinic has opened 254 civil cases in 1996, in addition to 70 immigration cases. Acceptance of new cases had to be suspended on November 11, because the interns were unable to take on additional work. In the last several weeks before this suspension, the Clinic was forced to turn away two out of three applications for legal assistance.

## NEWS FROM THE FACULTY

Alan Gunn, Jimmy Gurulé, Father Bill Lewers, and Eric Smithburn, along with Dean Link, *ex officio* Chair, constitute the 1996-97 Faculty Committee on Promotions.

\* \* \*

Barbara Fick presented a conference paper entitled, "Review and Assessment of Collective Labor Law in Eight Central and Eastern European Countries," at the Conference on the Promotion of the Defense of Trade Union Rights in Central and Eastern Europe. The Conference, held at Zakopane, Poland, on September 27, was sponsored by the International Labor Organization, the International Confederation of Free Trade Unions, and the Free Trade Union Institute.

\* \* \*

John Garvey addressed the judges of the Florida Supreme Court and the Florida Courts of Appeals at their annual meeting in Naples, Florida, on September 16. He spoke about the role of moral judgments in adjudication.

This semester he has lectured at various law schools about his forthcoming book, *WHAT ARE FREEDOMS FOR?* His stops include: Northwestern Law School, October 25; Colorado Law School, November 1; Minnesota Law School, November 7; McGeorge Law School, November 15; and Case Western Reserve University Law School, December 4.

John also gave a lecture for the Montgomery County (Kentucky) Schools



Education Foundation's Distinguished Performance and Lecture Series on November 11. He talked about the declining significance of separationism in first-amendment law.

\* \* \*

Jimmy Gurulé has been appointed to the Editorial Advisory Board of the *HARVARD JOURNAL OF HISPANIC POLICY*, for a four-year term. The John F. Kennedy School of Government publishes the *JOURNAL*.

\* \* \*

Roger Jacobs will spend the Spring Semester in our London Programme.

\* \* \*

On January 10 Cathy Kaveny will present a paper entitled, "The Persons & Masks of Illegal Aliens: Judge John Noonan's Immigration Jurisprudence," at the 1997 Annual Meeting of the Society of Christian Ethics in Washington, D.C. At the same Meeting, she will participate in a panel discussion on "Ethics and Law."

\* \* \*

Judge John T. Noonan, Jr., former law prof at NDLS and current member of the Ninth Circuit Court of Appeals, has been appointed by the late Cardinal Joseph Bernardin of Chicago to an advisory committee for the Catholic Common Ground Project. The committee comprises eight

bishops and sixteen priests, nuns and laypersons. The Cardinal's initiative--to seek a "Catholic common ground"--presents a call for new dialogue and a spirit of civility. Other members include Robert P. Casey, former governor of Pennsylvania; Father Brian Daley, theology professor at Notre Dame; Professor Mary Ann Glendon of Harvard Law School; and Michael Novak, religion and public-policy scholar at the American Enterprise Institute in Washington.

\* \* \*

Terry Phelps presented a paper entitled, "'If Power Changes Purpose': Images of Authority in Literature and Film," at a program on how literature and films can stimulate ethical reflection in the business world, sponsored by the Notre Dame Center for Ethics and Religious Values in Business, on October 2.

\* \* \*

At the Second Annual Conference of the Separation Alliance, held from November 24 through 26 in Arlington, Virginia, Charlie Rice debated Chris Cross, President of the Council for Basic Education. The topic: "Resolved: Government at any level should not set academic standards."

\* \* \*

On October 15 Eric Smithburn served on a panel, along with The Honorable Lord Justice Christopher Staughton, discussing "Civility in the Practice of Law: Learning from the British Experience." at the Seventh



Circuit Bar Association Judicial Conference in Indianapolis.

Eric served as faculty coordinator and lead lecturer in a one-week course entitled "Evidence in Juvenile and Family Court," at the National College of Juvenile and Family Law, in Reno, Nevada, October 19-25.

Eric recently contracted with the National Council of Juvenile & Family Court Judges to write a book on Prevention and Reunification Services in Child Welfare, to be published in February of 1998. Finally, Eric was recently appointed to the Board of Directors of the Indiana Trial Advocacy College.

\* \* \*

#### NEWS FROM THE STAFF

Marlou Hall's granddaughter, Madeline, two years old, died November 5 in Wisconsin due to a heart problem. Madeline is the daughter of Pat Hall and Missy (Byrne) Hall, both NDLS '92. Services were held on November 9 at St. Dominic's Catholic Church in Brookfield, Wisconsin. Memorials may be made to the family or to the Heart Center at Children's Hospital of Wisconsin.

\* \* \*

Lois Plawecki's sister, Linda Howard, passed away on November 4, in Bastrop, Texas. Please keep Lois and her family in your thoughts and prayers.

\* \* \*

#### NEWS FROM THE ALUMNI

Leslie C. Bender, NDLS '83, was featured in a cover picture and in a lengthy article of the "Business" section of the Baltimore Jewish Times. The article described her work in heading up "the Economic End of Baltimore City's \$100 million federal Empowerment Zone." She serves as executive director of the Business Empowerment Center in Baltimore.

\* \* \*

Mary Ann Boulac, NDLS '83, will serve on the faculty of a conference entitled, "LLC/LLP: What are they and when to use them," at the ICLEF Conference Facility in Indianapolis on December 4.

\* \* \*

On September 5, Rob Clemens, NDLS '82 and a partner at Bose, McKinney & Evans, in Indianapolis, and Patricia McKinnon, NDLS '94 and an associate at Baker, Siegel & Page, also in Indianapolis, joined three other members of the Indianapolis Bar Association in making a presentation at NDLS entitled, "Is There Life After Law School?" The event was co-sponsored by the Indianapolis Bar Association's Liaison with Law Schools Committee and the Career Services Office at Notre Dame Law School. The program was intended to provide information on the lifestyle of typical lawyers. Refreshments were served.

\* \* \*

Arizona-based Employee Solutions, Inc., has appointed Paul M. Gales, NDLS '82, as Vice President and General Counsel. Paul did his undergraduate work at Notre Dame and is a member of the Illinois, Minnesota, and Arizona Bars.

\* \* \*

Vincent R. Johnson, NDLS '78 and a Professor at St. Mary's University Law School in San Antonio, has been appointed to a second three-year term as a member of the Judicial Fellows Commission.

\* \* \*

Michael P. Muhlbaugh, NDLS '92 and a partner at Muhlbaugh & Muhlbaugh in Lima, Ohio, was selected for the second consecutive year by the Ohio Supreme Court to grade bar examinations of prospective Ohio attorneys. Michael did his undergraduate work at the University of Chicago and is a member of the Ohio Bar.

\* \* \*

Mary Jo (Naples) Miller and Ron Miller, both NDLS '95, announce the birth of a baby boy, Nicholas August, on October 14. All are doing well.

\* \* \*

Todd Miller, NDLS '97, will join the firm of Simpson & Zelenock in Birmingham, Michigan, upon his graduation next May.

\* \* \*

Phillip I. Morse, NDLS '75, is Executive Director of In Harm's Way, Inc. In Harm's Way deals with various life-threatening environmental issues resulting from military action. As its initial concern, the group seeks to remove from developing countries the landmines planted during war; once conflict has ended, neither side tends to remove the mines. The majority of the victims of such mines are children and farmers. According to United Nations estimates, more than 110 million landmines kill and maim 2,000 people a month around the world. Unfortunately, only 100,000 mines are eliminated as a result of all international efforts annually.

\* \* \*

Robert Phillips, NDLS '85, has left his partnership at Bledsoe, Cathcart, Diestel, Livingston & Pederson, in San Francisco, to form a new firm, Phillips & Spallas. Robert earned an LL.M. from the London School of Economics & Political Science in 1986. With offices in San Francisco & San Luis Obispo, Phillips & Spallas specializes in defending premises-liability, construction-defect, product-liability and employment-related cases.



## MISCELLANY

John E. Amerman, NDLS '68 and a member of the firm of Honigman, Miller, Schwartz & Cohn in Detroit, passed away on November 12. He did his undergraduate work at Michigan State and was a member of the Michigan Bar. Our thoughts and prayers are with him and his family.

\* \* \*

Paul Tagliabue, Commissioner of the National Football League, was a guest of the Law School on November 15. After a short address in the Courtroom, Mr. Tagliabue entertained questions. He then joined the Law School community for informal conversation at the TGIF.

\* \* \*

Reverend Mac Wells, father of Bruce Wells, NDLS '96 and Director of the Mediation Clinic, passed away on November 21. Funeral services took place on November 25 at the 2nd Presbyterian Church in Indianapolis. Cards to Bruce and his family should be addressed to: Rev. and Mrs. Bruce Wells, 1328 Northwood Drive, Nappanee, Indiana 46550.

\* \* \*

The NDLS National Moot Court Team traveled to Chicago on November 20 through November 22 to represent the School at the Regional Moot-Court Competition. Team members: Adam Brezine; Amy Dixon; Karen Dixon; Jennifer Dole; Christina Henriques; and Kathleen Ley.

\* \* \*

William Erickson and Mark Woodmansee both passed the Connecticut Bar.

Theresa Hizon and Jose Hizon both passed the Nevada Bar.

Stephen W. Sawyer, Stephen D. Scallan, and Zheng-Chao V. Wang were successful on the July 1996 Wisconsin Bar Examination.

\* \* \*