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NDLS Update

News from the Notre Dame Law School

Vol. VIII, No. 3
November, 1998

TEX DUTILE
EDITOR

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NDLS PROFS ADDRESS ROLE OF JUDICIARY

Gerry Bradley and Steven Smith spoke at a conference entitled "Reining in Judicial Imperialism: Effectively Limiting the Judiciary To Its Constitutional Powers." The conference, sponsored by the American Public Philosophy Institute, took place in Washington on October 1. Gerry Bradley spoke on "The New Constitutional Covenant." Steven Smith spoke on "The Legal Academy as Court Ideologue." Others on the program included Gary Bauer, President of the Family Research Council; William Kristol, Editor of The Weekly Standard; and Michael McConnell, of the University of Utah Law School.

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MARK CHOPKO ADDRESSES NDLS STUDENTS

On October 2, at NDLS, Mark Chopko, general counsel for the United States Catholic Conference, spoke on "Practicing Law with a Faith Perspective." As general counsel, Chopko serves as the chief legal officer to the Conference and supervises a staff providing comprehensive corporate legal services. The Catholic Bishops of the United States organized the Conference to provide a framework through which they can address in one voice important issues of national policy and matters of Church life.

Chopko earned a bachelor's degree from the University of Scranton and a juris doctor degree from the Cornell Law School. He served as assistant general counsel for the Catholic Conference from 1984-87. He was senior attorney and attorney for the U.S. Nuclear Regulatory Commission from 1977 to 1984 and trial counsel for the Cornell Legal Aid Clinic from 1972 to 1976.

Chopko recently participated in a colloquium on structures of church-related entities, held at the Pontifical Angelicum University in Rome. He served as advisor to the Vatican delegation to the International Conference on the Regulation of Religion Under Constitutional Law, held in Warsaw in 1996.

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GORDON DURNIL SPEAKS AT NDLS

Gordon K. Durnil, author of *The Making of a Conservative Environmentalist and Is America Beyond Reform?*, spoke at NDLS on October 28. The Environmental Law Society and the Federalist Society co-sponsored the event, which took place in the Courtroom. Refreshments accompanied the talk.

Mr. Durnil served as United States chairman of the International Joint Commission for over four years. He also served as Indiana Republican State Chairman and on the Executive Committee of the Republican National Committee.

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DAVID CROCKER LEADS CCHR ROUNDTABLE

On October 15, in the Civil Rights Reading Room, the October edition of the Center for Civil and Human Rights Roundtable addressed the topic "Truth Commissions, Transitional Justice and Civil Society." Addressing the group: David Crocker, Senior Research Scholar at the Institute for Philosophy and Public Policy and the School of Public Affairs at the University of Maryland. Mr. Crocker, who has also taught philosophy at Colorado State University, the

University of Munich and the University of Costa Rica, is a founding member and the current president of the International Development Ethics Association (IDEA) and the author of numerous articles on ethical issues in international development. With other scholars at the University of Maryland, Mr. Crocker is conducting a multi-year, interdisciplinary project, "Reckoning with Past Wrongs in New Democracies: Ethical Aspects of Transitional Justice." Informal discussion and refreshments followed Mr. Crocker's presentation. Paolo Carozza arranged the event.

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NDLS ALUM, DAVID THORNTON, DIES

David M. Thornton, NDLS '53, died October 21. Although the University of Notre Dame offered him a basketball scholarship, his basketball career terminated with the onset of World War II. In the Navy, he served as executive officer of Landing Craft Support; he participated in eleven amphibious assaults, most of them taking place in the Philippines.

After law school, he received a fellowship to study oil and gas law at Southern Methodist University. He began his forty-plus years of practicing law in Tulsa, Oklahoma, in 1954, at his firm, Thornton & Thornton. Oklahoma's Governor appointed him chair of the Oklahoma Housing Finance Agency.

His wife of fifty years, Margaret Jane, survives him, as do three sons, one daughter, three sisters, a brother, and two grandchildren. Memorial prayer services took place October 30 at Christ The King Catholic Church, in Tulsa.

Memorial contributions may be made to the David M. Thornton Scholarship Fund, University of Notre Dame, P.O. Box 519, Notre Dame, IN 46556.

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NDLS ALUM WRITES PRE-MED BOOK

Gregory Andrews, NDLS '84, wrote The Complete Guide to Premedical Success. Mr. Andrews explains that his short tenure as a law practitioner revealed that "the most fascinating aspects of law dealt with medical issues." This discovery prompted his decision to become a doctor as well as a lawyer. He received his medical degree from the State University of New York at Buffalo and is now in the general practice of medicine. The book, a comprehensive guide for students, includes chapters on interviewing skills and other aspects of the pre-medical period.

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NEWS FROM THE OFFICE OF CAREER SERVICES

Lisa Bolanz wrote *Counseling the "Rest of the Class" After (and During) OCI*, in the October issue of NALP Bulletin.

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NEWS FROM THE LAW LIBRARY

Janis L. Johnston received the 1998 Law Library Journal Article of the Year Award for her article *Managing the Boss*. The award was presented at the annual meeting of the American Association of Law Libraries, in Anaheim, California, in July.

Janis attended the 17th Annual Course of the International Association of Law Libraries in Rome on September 20-24. The course was held at UNIDROIT headquarters and focused on developments in international private law. At the meeting she represented both Notre Dame and the American Association of Law Libraries.

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NEWS FROM THE FACULTY

Joe Bauer made an invited presentation on a forthcoming article, entitled *The Erie Doctrine Revisited: Does a Conflicts Perspective Aid the Analysis?*, to a faculty colloquium at Seton Hall Law School, in Newark, New Jersey, on October 9.

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On October 16, Senator Dan Coats introduced S.2614, the First Amendment Freedoms Act of 1998. At Senator Coats' urging, Bob Blakey drafted the bill. It protects first-amendment freedoms in the context of civil RICO and other litigation against demonstrators. While Senator Coats will retire at the end of the 105th Congress, Senators Hatch and Leahy have expressed interest in the legislation. Bob hopes the bill will be reintroduced in the 106th Congress.

On November 30, Bob will make his Supreme Court argument in *Humana v. Forsyth*. He seeks to uphold a Ninth Circuit decision, a difficult task these days, as that Circuit is the nation's most reversed. Fortunately, he has help; the Solicitor General has filed a brief supporting Bob's position. Bob notes that, wisely, he will share his argument time with the S.G.'s Office.

More news from the front in the tobacco wars: Judge John Heyburn upheld parts of the federal RICO claim that Bob argued for the Kentucky Labor's District Council Health & Welfare Trust Fund in its litigation against the major companies in the tobacco industry. In upholding parts of the complaint, Judge Heyburn observed: "Counsel have greatly assisted the Court in its task by providing comprehensive briefs and superb oral argument." A nice compliment, Bob says, but more important, the Judge ruled for Bob's client!

On October 5, Judge William Bauer forwarded to the Judicial Council for the Seventh Circuit revised pattern jury instructions for criminal cases. The instructions were the multi-year product of an Instructions Committee headed up by Judge James B. Zagel. The committee included prosecutors, defense counsel, and judges from the Seventh Circuit. Bob

Blakey was the only law professor on the Committee. The commentary to the instructions was cite-checked and shepardized by James M. Evans and Michael S. Rafford, both NDLS '98 .

On August 26, Attorney General Janet Reno announced that the Department of Justice would reopen, on a limited basis, the investigation of the 1968 assassination of Rev. Martin Luther King, Jr. On October 6, Bob, along with Congressman Louis Stokes, met with Bill Lann Lee, the Assistant Attorney General for Civil Rights, in Washington, to brief the Department on the details of the investigation into Dr. King's death conducted from 1977 to 1979 by the House Select Committee on Assassination. Congressman Stokes chaired that Committee; Bob was its chief counsel and staff director. Congressman Stokes pledged full Congressional cooperation with the DOJ probe.

In 1996, Bob Blakey won an appeal in the Fourth Circuit: *Chisolm v. Transouth Financial Corp.* Transouth, along with Charlie Falk Auto Sales, allegedly ran a scam that cheated poor people by foreclosing on auto mortgages, but not crediting the person with his or her equity on resale. Bob designed a RICO suit for *Trial Lawyers for Public Justice v. Falk*. The district court threw the suit out. Bob got the dismissal reversed. The district court threw it out again. On October 5, Bob got the dismissal reversed once again. Bob hopes that the district court will let the suit go forward this time.

Bob Blakey attended the 14th Annual Tobacco Products Liability Conference in Boston, from October 30 through November 1. There he gave one of the principal addresses: "Tobacco and RICO." The conference considered the status of international, national, and state litigation against the tobacco industry.

Bob published *Of Characterization and Other Matters: Thoughts About Multiple Damages*, in *Law & Contemporary Problems*. The piece traces the history of multiple damages in Jewish, Greek, Roman, English and American law and reconsiders that history in light of modern economic analysis.

* * *

Former visiting prof Teresa Collett has been elected to the American Law Institute.

* * *

Jewel Crutchfield, wife of Professor Emeritus Charles Crutchfield, passed away on October 12. Funeral services took place on October 15 at St. Philip's Episcopal Church in San Antonio, Texas. The Crutchfield home address: 3522 Lake Sunset Court, San Antonio, Texas 78217. Our thoughts and prayers are with the Crutchfields.

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Barbara Fick wrote *Employment Discrimination: U.S.A.*, published in *Discrimination and Employment*, Volume I, 15th World Congress of Labour Law and Social Security. Peeters, of Leuven, Belgium, published the volume, which was edited by R. Blanpain.

Barbara taught a three-day seminar titled "International Labor Standards and Worker Rights," funded by the American Center for International Labor Solidarity, to trade-union leaders in Sarajevo, Bosnia, August 14-16; and in Tuzla, Bosnia, August 17-19.

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In September Jimmy Gurulé published the 1998 Comprehensive Supplement to *Complex Criminal Litigation: Prosecuting Drug Enterprises and Organized Crime*.

On October 22, Jimmy gave an invited lecture to the faculty of the School of Law at the University of Kentucky. His topic: "The 1988 U.N. Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances—A Ten Year Perspective: Is International Cooperation Merely Illusory?" Jimmy's article of the same title has been accepted for publication in the Fordham International Law Journal.

* * *

Doug Kmiec has co-authored three new books on the American Constitution. Published this fall, each book provides an appraisal of modern constitutional development from historical and natural-law perspectives.

The first volume, *The History, Philosophy and Structure of the American Constitution*, begins with the continuing search for universal truth, from Aristotle to Cicero to Augustine and Aquinas, as well as how the work of these writers became a part of the American tradition, especially in the structural features of the Constitution, such as the separation of powers and federalism.

A second book, *Individual Rights and the American Constitution*, begins with America's first freedom—the protection of religious conscience—and continues with analysis of the protection of vested rights of property, contract, and speech, and guarantees of procedural due process. It concludes with constitutional and moral considerations dealing with the unalienable right to life, and includes discussions of Catholic social teaching in notes and analysis on the questions of family rights, abortion and assisted suicide.

A third volume, *The American Constitutional Order*, combines elements of the first two books in an effort to provide teachers involved in the instruction of fundamental constitutional jurisprudence with a single volume containing structural as well as rights-based approaches.

Kmiec and Stephen B. Presser, Raoul Berger Professor of Legal History at Northwestern University, completed work on the three books this past summer after several years of collaboration. They are intended for law schools as well as for graduate and senior undergraduate programs in government, public policy, and political science.

Doug Kmiec was one of twelve professors from "prestigious law schools" interviewed for a front-page article in the *National Law Journal* on September 28. Its title: *Verdict From a Jury Of Top Constitutional Law Professors: Don't Impeach Clinton*.

* * *

Shirley McLean, wife of "Captain" Bill McLean, broke her hip on October 30. The ensuing surgery went well, Bill reports.

* * *

On October 9, Jack Pratt, who underwent prostate surgery on September 25 in New Orleans, sent good news: "The final visit with the surgeon Thursday morning proved to be just that, final. He certifies me as completely healthy." Following a visit with family in Jackson, Mississippi, Jack and Dottie flew back to Ireland, where he will continue his year-long research visit.

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On September 23, the Chicago Daily Law Bulletin featured Judge Kenneth F. Ripple in a story entitled *He Got His Training at the Nation's Top Court*.

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Robin Kornegay-Rougeau, M.D., F.A.A.P., wife of Vince Rogeau, has joined Centennial Square Pediatrics in South Bend.

* * *

Dinah Shelton has been elected to the Board of Patrons of Redress International, a London-based non-governmental organization addressing reparations for torture victims around the world. The Board is currently involved with the Pinochet extradition to Spain.

Dinah has been invited to participate in a project entitled "Managing Global Issues," sponsored by the Carnegie Endowment for International Peace. Dinah will write the section on human rights.

On November 16, Dinah, currently teaching in our London Programme, will take students in her human-rights course to Geneva for a special seminar organized for them by the High Commissioner's Office in the Human Rights Center of the United Nations.

* * *

Eric Smithburn served on the Planning Committee for Youth, Justice & Citizenship Week in St. Joseph County and presented lectures on "Child Welfare Law in Indiana" at the Juvenile Justice Center on October 28. Students in his Juvenile Law class performed four mock trials in a delinquency case at the Open House of the Juvenile Justice Center on October 28.

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NEWS FROM THE

STAFF

Debbie Sumption's father, Tom Farmer, passed away unexpectedly on October 19 at the age of 71. He lived in South Bend and was well known by many of us for his expertise in restoring and repainting cars and vans. Please keep Debbie and her family in your thoughts and prayers.

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NEWS FROM THE

ALUMNI

Geoffrey Bennett published *Criminal Procedure and Sentencing* in All England Law Reports Annual Review of 1997.

* * *

Ivan Bodensteiner, NDLS '68 and professor of law at Valparaiso University, and Kathleen Brickley, NDLS '82 and a partner at Barnes & Thornburg, in South Bend, will constitute part of the faculty of a seminar entitled "Sexual Harassment Litigation," sponsored by the Indiana Continuing Legal Education Forum. The event will take place November 17 at the ICLEF Conference Facility in Indianapolis.

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Kathleen Brickley, NDLS '82, and Patricia Hackett, NDLS '91, both of whom practice with Barnes & Thornburg, in South Bend, and Aladean DeRose, Deputy City Attorney and wife of Eric Smithburn, served as panelists in a discussion entitled, "Women in Law: A Unique Perspective on the Justice System." Margot O'Brien, NDLS '92 and an Instructor of Business Law at Notre Dame, served as Facilitator. The event, sponsored by the Diversity Program of the College of Business Administration at Notre Dame, took place October 28 in the Jordan Auditorium on campus.

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Warren Byrd, NDLS '89, has been named Vice President of ADESA Corporation, in Indianapolis. Prior to joining ADESA, Mr. Byrd worked in private practice with the Indianapolis law firm of McHale, Cook & Welch. ADESA Corporation is one of North America's largest providers of wholesale vehicle remarketing services. The company operates twenty-eight automobile auctions throughout the United States and Canada.

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Laura L. Hirschfeld, NDLS '86 and an associate prof at Detroit Mercy, received the James E. Barnes Award for scholarly excellence. Laura did her undergraduate work too at Notre Dame.

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Cook County (Illinois) State's Attorney Richard A. Devine announced, on October 1, the appointment of former Judge Michael Howlett, NDLS '73 and a partner at Shefsky & Froelich, in Chicago, to head the newly formed Commission to Study Children Under Age 10 Charged With Crimes. The Commission includes leaders in juvenile law enforcement, child development and psychiatry, and related fields.

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Chris Iamarino, NDLS '95, and his wife Katrina (Noznesky) Iamarino, NDLS '95, announce the birth of Matthew Joseph on September 8 in Lansing, Michigan. Dad works as an associate at Thrun, Maatsch and Nordburg, in Lansing. Mom works for the Office of the Children's Ombudsman, in Lansing. Congratulations, all!

* * *

On October 2 at NDLS, Rep. Peter King, R-N.Y. and NDLS '68, discussed the Irish peace process. Patrick Hennessy, political counselor for the Irish Embassy in Washington, joined him in the discussion. The Law School's Irish Law Society sponsored the event.

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Nancy Moate Ley, NDLS '77, is a finalist for a circuit-court vacancy in Florida. Her name has been sent to the Governor by the Judicial Nominating Commission. The Governor has sixty days in which to make the appointment. Before entering private practice, Nancy served as an assistant public defender for nine years. At Notre Dame, she was President of the Student Bar Association.

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Scott E. Moran, NDLS '97, recently completed his federal clerkship in Puerto Rico. He has begun his work as an associate at Troutman Sanders' main office in Atlanta. Scott serves in the firm's international corporate group, focusing primarily on Latin America. He reports that he has joined Atlanta's ND alumni organization, which is headed by Jeff Woodward, NDLS '87. On a recent swing through South Bend, Scott attended the law-school Mass. He reports that "current members of the choir remembered me and they asked me to sing with them. Father Pearson did a double take when he saw me up there"

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Vanessa Pierce, NDLS '96, has become an associate in the Palo Alto, California, office of Washington, D.C.-based Finnegan, Henderson, Farabow, Garrett & Dunner. She formerly worked with Workman, Nydegger & Feely, in Salt Lake City.

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In September Patrick A. Salvi, NDLS '78 and a partner at Salvi & Schostok, in Waukegan, Illinois, settled a \$3.9 million case in Lake County, Illinois. The day before that settlement, Mr. Salvi announced a \$5 million settlement in a high-profile case 2,000 miles away, in Phoenix, Arizona. According to the recent edition of Chicago Lawyer 1998 Settlement Survey, released this month, Salvi and Schostok had the seventh-highest sum of dollar-amount settlements in the state of Illinois (seven cases totaling \$21.15 million) reported between July 1, 1997 and June 30, 1998. No other firm outside Cook County, Illinois, was listed in the survey.

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David Winstead, NDLS '95, and his wife Tammy announce the birth of a baby girl, Hannah Iris, at Scott Air Force Base, Illinois. All are doing well. Congratulations!

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MISCELLANY

Former Senator and possible presidential candidate Bill Bradley spoke at NDLS on October 29. Joe Bauer arranged the event and introduced Senator Bradley.

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On September 30 the Notre Dame Law School presented "Clarence Darrow: Crimes, Causes and the Courtroom." Written by Anna Marie and Graham Thatcher, the one-person (played by Graham Thatcher) presentation took place in the Hesburgh Library Auditorium. A reception followed in the Library's Faculty Lounge.

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The Dean and Faculty of Notre Dame Law School, the National Institute for Trial Advocacy, and the St. Joseph County Bar Association will co-sponsor a reception celebrating the appointment of Hon. Sanford M. Brook to the Indiana Court of Appeals. The event will take place on November 5 in the Marriott Atrium in South Bend. Sandy has long served on our adjunct faculty. Judge Brook took the oath of office on October 30 in the courtroom of the Indiana Supreme Court. Tex Dutile represented The Law School at the ceremony.

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Jessie Barrett and Patrick Ryan, both third-year students at NDLS, were awarded the Charles Sweeney Scholarship for Achievement. The Board of Governors of the St. Joseph County Bar Association made the selections. The Scholarship carries an award of \$1,000.00. The presentations took place at the Annual Meeting of the Bar Association on September 11. Charles Sweeney, of Sweeney, Pfeifer & Morgan, in South Bend, is a 1964 graduate of NDLS.

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The president of the University of St. Thomas, in Minneapolis, has announced a renewal of the University's study regarding the possibility of opening its own law school in downtown Minneapolis. The (Minneapolis) Star Tribune reported that the President, Father Dennis Dease, "said in a news release . . . that St. Thomas will draw on the example of the University of Notre Dame Law School, which he said offers expert teaching within a Catholic intellectual framework."

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Jennifer S. Hendricks of the Harvard Law School has been selected as the Feminist Jurisprudence Essay Contest Winner. She will present her winning paper, "Congressional Enforcement of Women's Equality and Citizenship Under The Fourteenth Amendment," in the Notre Dame Law School Courtroom on November 11, at 4:30 p.m.

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