

10-1-1998

## NDLS Update 10/1998

Notre Dame Law School

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### Recommended Citation

Notre Dame Law School, "NDLS Update 10/1998" (1998). *NDLS Updates*. Paper 31.  
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# NDLS Update

News from the Notre Dame Law School

*Vol. VIII, No. 2*  
*October, 1998*

*TEX DUTILE*  
*EDITOR*

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## NDLS JOINS LCN

With the generous co-operation of the American Bar Association, Notre Dame has become a member of the Lawyer's Communication Network (LCN). As a member, the law school will receive the news and continuing education

programming of the LCN via its world-wide satellite network. These programs will be made available to faculty members for their personal CLE use or, through them, as supplemental classroom material. The law school is also authorized to use the programming for continuing- education offerings that might be developed.

In addition to the actual programs, study materials accompanying the programs are often provided in either electronic or print forms. These materials will be available to Notre Dame faculty upon request prior to the program. Each month the faculty will receive a program guide for the following month.

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### **PRINCETON REVIEW**

### **RATES NDLS TEACHING**

### **FIFTH BEST IN NATION**

The Princeton Review, in its 1999 edition of The Best Law Schools, has ranked the teaching faculty at the Notre Dame Law School the fifth-best in the country. This ranking stemmed from polling students nationwide.

The same volume gives NDLS a top-ten rating with regard to a lack of "cut-throat competitiveness." This ranking too was based on polls of students themselves.

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### **RED MASS**

### **CELEBRATED AT**

### **SACRED HEART**

On October 4 Bishop Daniel R. Jenky, C.S.C., presided at a Red Mass, a Votive Mass of the Holy Spirit. The Dean of the Law School and the St. Thomas More Society co-sponsored the event, which took place at Sacred Heart on campus. A reception followed.

The Red Mass is a traditional way of beginning the judicial term by asking God's guidance upon all members of the legal profession. Dating back to the thirteenth century, the Mass asks the Holy Spirit to imbue the bench and bar with wisdom in implementing justice. The red vestments and gowns worn centuries ago by the priests and the attending justices gave this Mass its name. Today judges, lawyers, and officials of all faiths attend the Red Mass, asking God to bless, strengthen, and enlighten all servants of the law in order better to achieve "the blessings of liberty and justice for ourselves and our posterity."

\* \* \*

### **NDLS FACULTY ASK:**

### **"CAN LAWYERS GET**

### **INTO HEAVEN?"**

A panel discussion, entitled "Can Lawyers Get Into Heaven?: Doing Peace and Justice Work in the Legal Profession," took place September 22 at the Hesburgh Center for International Studies. The panelists: NDLS profs Paolo Carozza, Bill Kelley and Lisa Schiltz. George Lopez, Director of the Undergraduate Concentration in Peace Studies, moderated the session, which was sponsored by ND's Joan B. Kroc Institute for International Peace Studies.

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## TOBACCO WARS CONTINUE

Bob Blakey has good news/bad news from the tobacco-wars front. Bad news: Judge Thad Hartsfield in Texas rejected Bob's federal RICO arguments in one of his Taft-Hartley Act fund cases; it's now on to the Fifth Circuit. Good news: Judge James Gwin in Ohio accepted Bob's federal and state RICO arguments in another of his Taft-Hartley fund cases. (In 1986, Bob drafted Ohio's RICO statute; fortunately, he added to the state statute language that was not in the federal statute; the added language carried the day in the state RICO. Judge Gwin, however, accepted the federal arguments that Judge Hartsfield rejected!) It's now on to summary judgment and, hopefully, trial.

Bob argued *United States v. Lynch* in the Second Circuit on September 10. Bishop George Lynch and Brother Christopher Muscinski were cited for criminal contempt for praying in front of an abortion clinic, allegedly in violation of the court order of Judge John Sprizzo. At trial, Judge Sprizzo had found the two *not* guilty. The Government appealed--that's right, appealed an acquittal! Bob, of course, argued double jeopardy: Once the fact finder finds you not guilty, the prosecution is over. The Government argued, on the other side, that since Judge Sprizzo had found enough other facts in the course of the litigation he should have found Bishop Lynch and Brother Moscinski guilty, and the appeal did not violate double jeopardy. The bench that heard the appeal had hard questions for both the Government and Bob; the outcome is uncertain, and an appeal to the U.S. Supreme Court possible.

\* \* \*

## JUDGE KEARNEY WINS AWARD

Florida Circuit Judge (Broward County) Kathleen Kearney, NDLS '80 and a member of the NDLS Law Advisory Council, received the Award of the Year from the Notre Dame Club of Fort Lauderdale. She received the Award as some four hundred members of the Club gathered for its annual dinner to raise funds, this year for Providence Place, a facility for homeless mothers and their children, run under the auspices of the diocese of Miami. The facility, a former motel, will open soon following refurbishment.

Judge Kearney, an expert with regard to child-abuse issues, has taught judges in twelve states about the problems involved. She noted that at NDLS, while exploring what to do with her legal education, she met a nun who worked with abused children. She joined the nun for a summer of work with the Sisters of Mercy. During her third year here, Judge Kearney did a national survey concerning the termination of parental rights, a study that helped in drafting laws to protect children. Recently members of Congress sought her out for information in drafting the Adoption and Safe Families Act, which was signed into law just last year.

Judge Kearney remembered how Father Hesburgh told all incoming freshmen that during rough times they should pray, "Come Holy Spirit." She added, "Not a day goes by that I don't say that, or remember that I learned that at Notre Dame." Congratulations, Judge, on this well deserved honor.

\* \* \*

## SANDY BROOK PICKED FOR BENCH

Indiana Governor Frank O'Bannon has appointed NDLS adjunct prof Sandy Brook, currently a member of the St. Joseph Superior Court, to the Indiana Court of Appeals. Judge Brook, 49, served on the local bench since 1987.

A South Bend native, Judge Brook earned both his undergraduate and law degrees from Indiana University at Bloomington. He spent thirteen years in private practice and as a deputy St. Joseph County Prosecutor. He has taught trial- advocacy courses at NDLS since 1987. He has lectured and written extensively, especially with regard to the Indiana Rules of Evidence.

Judge Brook serves as Vice Chair of the Governor's Council on Impaired and Dangerous Driving and on the Board of Directors for Madison Center. Congratulations, Sandy!

\* \* \*

## **NEWS FROM THE**

### **LAW LIBRARY**

Warren Rees served as moderator and presenter for a program entitled "Reference as a Career Goal," at the 1998 Annual Meeting of the American Association of Law Libraries in Anaheim, California, July 12.

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## **NEWS FROM**

### **THE CLINICS**

The Clinic employed ten interns this past summer: Greg Stephenson, Chris Huck, Stone Grissom, Margaret McCafferty, Rob Fellrath, Danny Inquilla, Bill Ford, Suzie Wasito, Eileen O'Malley, and Jason Schauer. The students worked hard on the 200+ cases that were opened during the summer.

This Fall 36 students—21 third-year and 15 second-year interns—worked in the Legal Aid Clinic, Immigration Clinic and Mediation Clinic.

Interns Suzie Wasito and Cynthia Morgan are hard at work preparing, with Eileen Doran and Judy Fox, for a custody trial on October 5 in Probate Court. Cynthia and Eileen are also preparing for trial in a contested adoption proceeding. A former intern represents the opposing party.

Eileen Doran is supervising Amy Iannone, Daniel Douglas, Greg Stephenson, Suzie Wasito, Chris Mujica, and Margaret McCaffery in their work as Guardians ad Litem, appointed to represent the interests of children in several custody cases and one criminal matter involving the alleged rape of a minor. This experience allowed the interns to serve the court and to see the justice system through the eyes of children.

Stone Grissom and Sr. Deborah Cerullo helped a client get a fresh start by recognizing the benefits of filing bankruptcy in order to get the client's driver's license returned. The license had been suspended due to a civil judgment against her that she could never pay. The return of her driver's license makes it more possible for her to return to work.

Chris Huck and Sr. Deborah Cerullo are defending a civil action for breach of a car-lease agreement in which the client tried, through the early termination clause, to opt out almost immediately when she realized she couldn't afford it. Told she could not opt out, she attempted for six more months to make the monthly payments but eventually returned the car rather than miss payments. The Clinic raised defenses and counterclaims that include misrepresentation, fraud and violations of the recent federal Consumer Leasing Act. Chris is currently negotiating a settlement and has received an offer substantially below the original demand.

Suzie Wasito, Cynthia Morgan and Chris Mujica are defending an eviction in which national-origin discrimination is alleged, as well as retaliation and other defenses under the lease. The clients and landlord had entered into a HUD conciliation agreement eight months before the eviction notice. The clients allege treatment disparate from that of other tenants who are not Hispanic.

Jason Schauer and Sr. Deborah have been working with local counsel on a Truth in Lending case that originated in the

Clinic last spring. Clients contacted the Clinic because of constant harassment and oppressive conduct by a lender insisting that clients sign a mortgage on their home in order to secure a home-improvement contract that had already been executed and performed. Investigation showed that the contractor was working with the mortgage company and had failed to comply with TILA in many significant ways.

The Notre Dame Legal Aid Clinic, along with the Michigan Migrant Legal Assistance Program and Farmworkers Legal Services, has been representing a group of Mexican immigrants who were in the process of becoming United States citizens. The clients had sought assistance from a woman in Michigan who represented herself to the Mexican-American community as a "notario", which in Mexico is the equivalent of an attorney. She accepted fees from these clients in exchange for completing their paperwork and representing them before the Immigration and Naturalization Service in Detroit. She did not, however, have the requisite legal knowledge for her activities, and the forms were incorrectly submitted or, in a few cases, never submitted at all. As a result, the clients were not granted citizenship and at least one of them faces deportation. Danny Inquilla, an intern in the Clinic working under the supervision of Judy Fox, drafted the Motion for partial Summary Judgment, which was submitted to, and successfully argued in front of, Judge Buhl of the 3<sup>rd</sup> Circuit Court in Paw Paw, Michigan. Judge Buhl awarded the plaintiffs nearly \$20,000 for violations of the Michigan Consumer Protection Act. The victory largely reflected Danny's skillful research and writing. Danny and Judy are currently involved in settlement negotiations with an insurance company in an effort to resolve the remaining claims. If settlement fails, trial will take place in Michigan in late October.

Gregg Stephenson participated in a paternity mediation in which a mother and father discussed the custody and visitation of their son. This case came to mediation after the father filed a petition to modify a custody and visitation order that had stood for almost fifteen years. Despite the potential for a very polarized dispute, the parents reached an agreement on all issues.

Stone Grissom and Sr. Deborah represented the tenants in a dispute mediated by the Notre Dame Mediation Center. The landlord and tenants reached an agreement after considering Stone's argument that the implied warranty of habitability was breached.

Michelle Colman took part in a mediation in which a landlord and tenant made an agreement about terminating tenancy and settling claims concerning outstanding rent. The parties were not far apart on the terms of the agreement from the outset, but found mediation to be an important forum for discussing their breakdown of communication.

Joe Sawyer, Michelle Mack and Mary Kay Walsh recently observed mediations conducted by Magistrate Robin Pierce for civil cases before the U.S. District Court in South Bend.

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## **NEWS FROM THE FACULTY**

Matt Barrett co-authored *Agency Authority in LLC Statutes (Part 2): Hypothetical Situations and Practical Suggestions*, in *Journal of Limited Liability Companies*.

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Barbara Fick was elected to represent the Law School faculty on the University Grievance Committee.

\* \* \*

Alan Gunn co-authored the fourth edition of *Cases, Text and Problems on Federal Income Taxation*. The West Group published the volume.

\* \* \*

Jimmy Gurulé co-authored *The Law of Asset Forfeiture*. Lexis Law Publishing did the honors.

On September 13 Jimmy took part in a panel discussion, the USA Today Roundtable, addressing the Starr Report. Highlights from that discussion appeared in the September 14 edition of USA Today.

\* \* \*

Cathy Kaveny published *Older Women and Health Care*. The piece appeared in the magazine *America*.

\* \* \*

On September 23 Doug Kmiec appeared on Ted Koppel's "Nightline". His topic: "Grounds for Presidential Impeachment."

\* \* \*

On September 15 Linda A. Murphy, mother of the late Professor Ed Murphy, passed away at St. Joseph's Medical Center. She was 93. She is survived by her son, Ronald, of Springfield, Illinois, and by her daughter-in-law, Mary Ann Murphy of Osceola, with whom she lived. She leaves thirteen grandchildren and twenty-nine great-grandchildren. Her funeral Mass was celebrated on September 18 at Queen of Peace Parish in Mishawaka, Indiana.

\* \* \*

On September 25, in New Orleans, Jack Pratt underwent prostate surgery. Dottie Pratt reports that all went well. Please keep the Pratt family in your thoughts and prayers.

\* \* \*

Dinah Shelton was a keynote speaker at the Workshop on Multilateral Agreements Related to Biological Diversity, held in Kushiro, Japan, September 13-19. The Workshop, sponsored by the United Nations Institute for Training and Research, comprised 50 government representatives from 35 countries in the Asia-Pacific region.

Dinah also spoke on public participation and indigenous rights in regard to environmental protection, at a symposium on Environmental Protection and Sustainable Development, held in Tokyo, Japan, on September 12.

\* \* \*

On October 18-23, Eric Smithburn will present lectures for the National College of Juvenile and Family Law of the

National Council of Juvenile and Family Court Judges at the University of Nevada at Reno. Eric designed the program, entitled "Evidence in Juvenile and Family Court." The course involves the latest evidentiary developments affecting juvenile and family courts. The program targets judges with juvenile/family court jurisdiction, commissioners, masters, hearing officers, referees, and other judicial officers.

\* \* \*

Jay Tidmarsh published Complex Litigation and the Adversary System. Foundation Press produced the book, which Jay co-authored with Roger H. Transgrud of George Washington University Law School. Jay thanks all his former students in Complex Civil Litigation, "whose patience and helpful comments proved invaluable in completing the case book."

\* \* \*

On September 17, Bruce Wells spoke to a class on Psychology and the Law, at St. Mary's College. His topic: The Practice of Mediation.

\* \* \*

#### **NEWS FROM**

#### **THE ALUMNI**

Bruce Belzer, NDLS '79, was graduated from the School of Medicine of the University of Washington in June. He will work with the UND Family Practice Center in Bismarck, North Dakota. Dr. Belzer did his undergraduate work at Jamestown College.

\* \* \*

Bill Bligh, NDLS '98, has joined Harris, Kessler & Goldstein, in Chicago, as an associate.

\* \* \*

John Dunn, NDLS '93, and his wife, Nadine, announce the birth, on August 20, of Thomas Michael Dunn. Thomas made his first appearance at the weight of 9 pounds, 7 ounces. He joins siblings Katherine and Mark. Congratulations, all!

\* \* \*

Robert T. Fanning, NDLS '47, died September 18 while vacationing in Bridgehampton, New York. Mr. Fanning, a long-time resident of Oak Park, Illinois, was an active alumnus of Notre Dame, where he also did his undergraduate work. In Oak Park, he owned Fanning Shoes. Following sale of the shoe store, he became a stockbroker and a director of Bear Stearns Inc. Recently, he lived on Lake Shore Drive in Chicago.

A Navy veteran of World War II, he is survived by five sons, a daughter, and five grandchildren. His funeral Mass took place on September 24 at Holy Name Cathedral, in Chicago.



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Thomas "Chip" Lewis III, NDLS '87 and an associate with the law firm of Jones, Obenchain, Ford, Pankow, Lewis & Woods, has been appointed to the board of directors of South Bend Public Transportation Corporation.

\* \* \*

Richard "Dick" Nussbaum II, NDLS '77 and currently city attorney of South Bend, will become general counsel to Indiana Lieutenant-Governor Joe Kernan. Nussbaum began his service as city attorney under Joe Kernan during the latter's service as mayor of South Bend. Nussbaum's ten-plus years as city attorney marked the longest tenure of any city attorney in South Bend's history. Interestingly, Kernan and Nussbaum both played varsity baseball for Notre Dame.

This is an all-NDLS story: As general counsel, Nussbaum replaces Jenny Pitts Manier, NDLS '85, whom governor Frank O'Bannon recently appointed to the St. Joseph Superior Court to replace retiring Judge Jeanne Jourdan, NDLS '75.

\* \* \*

Charles W. Roemer, NDLS '58 and a partner at Roemer & Mintz, in South Bend, will serve on the faculty of a program entitled "Estate Planning for the Professional." Sponsored by the Indiana Continuing Legal Education Forum, the event will take place at the Weston Convention Center, in Elkhart, on October 14, and be repeated at the Grand Wayne Center, in Fort Wayne, on October 15. Mr. Roemer did his undergraduate work too at Notre Dame.

\* \* \*

Mike Shang-jen Chiang, NDLS '95, has joined the Taipei, Taiwan, office of Jones, Day, Reavis & Pogue. His e-mail address: [mchiang@jonesday.com](mailto:mchiang@jonesday.com)

\* \* \*

Anne Spataro, wife of Chris Spataro, NDLS '96, is now undergoing chemotherapy. This treatment follows the removal, earlier this year, of a malignant brain tumor. Their address: 317 W. Franklin Street, Elkhart, Indiana 46515. Our thoughts and prayers are with them.

\* \* \*

Lisa Swem, NDLS '88 and a partner at Thrun, Maatsch & Nordberg, in Lansing, Michigan, will deliver the "lead-off" speech for the National Council of School Attorneys Seminar next April, in San Francisco. The topic: "School Violence, Free Speech, and Safety Concerns." While at NDLS, Ms. Swem served as Student Editor of the Journal of College & University Law. She did her undergraduate work at Centre College of Kentucky and earned a master's degree at Colgate. She is a member of the Michigan bar.

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## MISCELLANY

Patrick J. Barrett, a third-year student at NDLS, co-authored *Director Conflicts: Early Screening Helps Avoid Judicial Scrutiny*, in the September 7 issue of the National Law Journal

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On September 18, David Skeel, Professor of Law at Temple University, presided over a Faculty Colloquium at NDLS. His topic: "Bankruptcy Lawyers and The Shape of American Bankruptcy Law". John Garvey and Darlene Carlson arranged the event, which took place in the Civil Rights Reading Room.

\* \* \*

On October 1, from 5:00 to 7:00 p.m., NDLS hosted a faculty/alumni cocktail reception at the Snite Museum. Directors of the Notre Dame Law Association, meeting at the Law School that week-end, attended the reception. Noted Dean Link: "This was a great opportunity to meet in an informal atmosphere with our alumni and to discuss with them the state of our Law School."

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