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## Notre Dame Lawyer - Spring 2005

Notre Dame Law School

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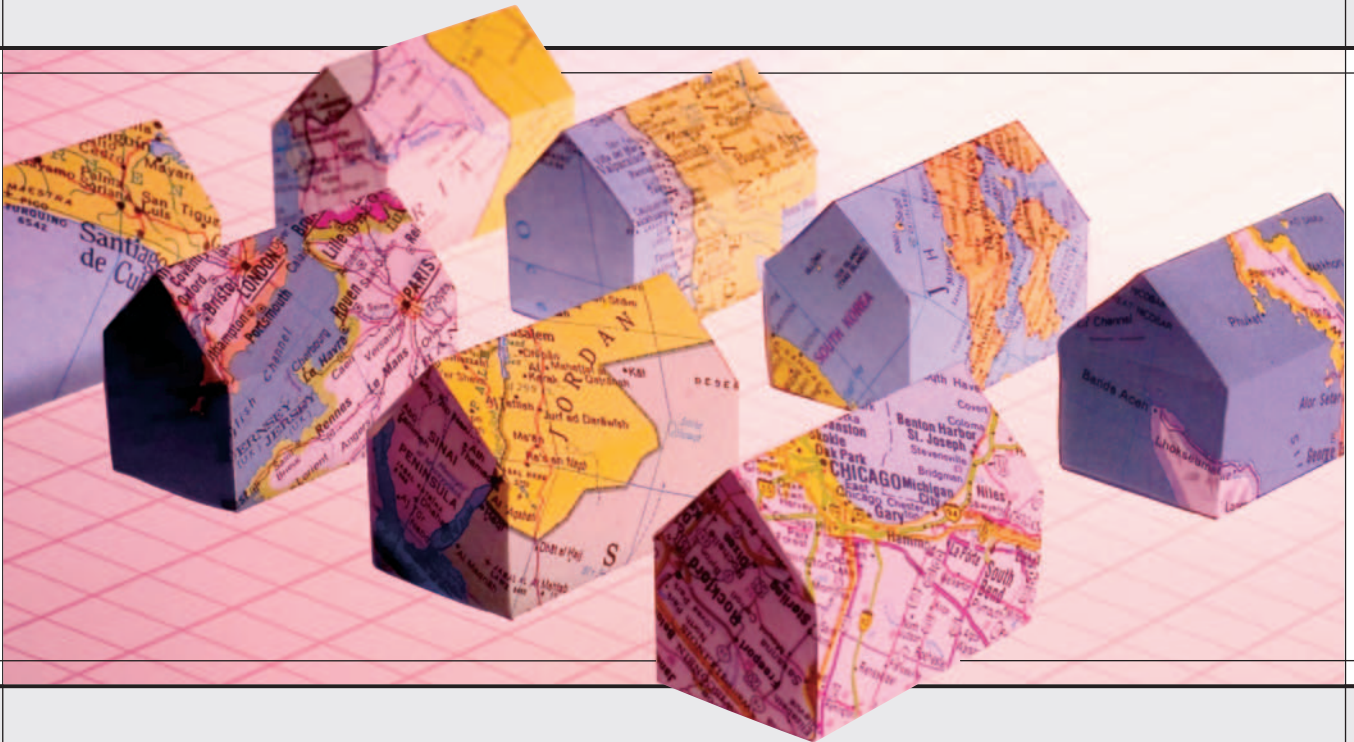
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# LAWYER



**Spring 2005**



UNIVERSITY OF  
NOTRE DAME

The Law School



*Spring 2005 at the Law School is a mixture of things ending and things beginning.*

For the students, time is hurtling itself toward the end of the semester. In the south stairwell the other day, I greeted a third-year law student and asked him if he could see the light at the tunnel's end or if he were at least comforted by an increasing confidence in the light's existence. In the bravado tinged with anxiety that is a hallmark of someone approaching the end of law school, he smiled and told me "fed tax" was blocking his view!

*So this is, in one sense, a time of ending...*

We will say goodbye to the third-year students and look forward to watching what had once been their "future" careers become their "current" occupations.

We will say goodbye to Professor Conrad Kellenberg, who will end his fifty years of teaching at the law school this semester. I have had the honor of knowing him but a short time and yet realize what a profound impact he has had on this building and everyone associated with it—and beyond our walls, too, especially in the area of pro bono advocacy. In typical self-effacing fashion, he has asked that no special honor be accorded him, and absolutely, positively forbade me to write an article about him for this issue. But we all wish him well in his newly unfolding future and look forward to maintaining our connection with him.

*But this is also a time of beginning...*

We will welcome a new class of students in several months. We will hold our best reunion ever this June...look at the inside back cover of this issue to read the events planned especially for NDLS alumni.

And we welcome the springtime here on campus which many of you will remember as a special time all its own. The lake effect snow has stopped, the flowers begin to bloom, and the quadrangle fills, once again, with students.

Thus, the cycle continues. The faculty of the Law School continue to have influence in legal circles beyond our walls as well as in the lives of students within them. Students continue to engage in both academic study and spiritual commitment, often combining the two through community service. And alumni continue to exemplify the "different kind of lawyer" that we are so proud of: one who combines an intellectual, spiritual, and ethical dedication to the rule of law.

I hope you enjoy the pages that follow. This issue reflects the reach of the Law School that stretches far beyond South Bend, Indiana, or even the Midwest.

*Carol*

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# REUNION 2005

Attention all NDLS alumni who graduated in years that end in “0” or “5”: This year’s reunion is for you!

New and improved, Reunion 2005 will include events created especially for Notre Dame Law School alumni.

Please join classmates, members of other reunion classes, and law school faculty to reconnect with the law school!

## Friday JUNE 3

### *Ethics CLE*

Professor *emeritus* Thomas L. Shaffer '61  
9:30 a.m. until 11:30 a.m.  
Law School classroom 120

### *“Practice on Purpose: Make Time and Money Work for You”*

John E. Moore III '82  
1:30 p.m. until 3:30 p.m.  
Law School classroom 120

### *Law School Alumni Mass*

Rev. John H. Pearson, CSC, '68, '71 Th.  
5:00 p.m. until 5:45 p.m.  
Coleman/Morse Chapel

### *Law School Alumni Group Photograph*

6:00 p.m.  
Coleman/Morse Center

### *Law School Reunion Reception*

music by the Pat Heiden Quartet  
6:15 p.m. until 7:15 p.m.  
Hammes Student Lounge  
Coleman/Morse Center  
*cash bar*

### *Law School Reunion Dinner*

music by the Pat Heiden Quartet  
7:15 p.m. until 9:00 p.m.  
Hammes Student Lounge  
Coleman/Morse Center  
Speaker: Dean Patricia O'Hara

### *Post-dinner Party*

9:15 p.m. until 11:00 p.m.  
Hammes Student Lounge  
Coleman/Morse Center  
*cash bar*

## Saturday JUNE 4

### *Law School tours*

9:00 a.m. until noon  
Continental Breakfast—student lounge  
Interactive Presentations: Kresge Law Library

# NOTRE DAME LAWYER



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Four Notre Dame Law School professors—Patricia Bellia, Rick and Nicole Garnett, and Gerard Bradley—wrote amicus briefs on behalf of a variety of constituents for a variety of courts.

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Visiting scholar Judge Madoka Hiruta offers insight into the sweeping changes under way in the Japanese legal system, beginning with a law school curriculum.

# FROM THE DEAN

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At the heart of this rich issue of the Lawyer are two very remarkable people—Con Kellenberg and Bob Rodes. For half a century, Con and Bob have **taught us, guided us, and inspired us.** This fall, Con retires after completing fifty years of service on the faculty. At his request, there will be no formalities to mark that achievement. The request is typical of Con—gracefully determined, elegantly insistent that the focus of attention and action be on others. We honor Con by honoring his request. We will thank him personally and privately; and we will miss him enormously.

Also this fall, Bob Rodes marks the beginning of his fiftieth year of teaching at the Law School. His brief reminiscence in this issue is characteristic of Bob—light in touch, yet surreptitiously insightful. With good humor he remembers being lithe enough to climb into the window of his office; on a more substantive note, he recalls the efforts to bring women into the Law School, and to provide legal services to the poor. We look forward to **continuing to listen to our history** from Bob; we certainly still have much to learn from him.


Along with Con Kellenberg, Alan Gunn retires at the end of this academic year. Although with us for less time than Con and Bob Rodes, Alan has made a lasting contribution to our community. His rigorous scholarship and lively teaching have been **models to which we aspire.** Likewise, the range of his scholarly interests served to point the way for increasingly interdisciplinary work by all faculty.

The remainder of the Magazine reflects the increasingly **diverse focus of activities** at the Law School. A highlight of the past few months was the visit by the Indiana Court of Appeals, which heard argument in our courtroom. We were proud that two of our own graduates sat on the bench. The oral argument was an example of advocacy at its best, with the judges adding to the exemplar with precise and probing questions. At the conclusion of argument, the judges and attorneys responded to questions from students in the audience, in effect conducting an impromptu seminar.

Outside the Law School, our international outreach continues to flourish. The centerpiece of that outreach remains the London Programme, the history of which is summarized here along with stories of graduates whose careers have been shaped by that program. Professor Vincent Rougeau will be in residence at the London Programme next year. In addition to teaching, he will work on completing his book with Oxford Press, a precis of which is included in this issue. His exploration of the challenge that autonomous individualism in American culture poses to Christians who embrace a community-centered approach to personhood promises to be fascinating.

Of similar vintage to the London Programme is our connection with the Supreme Court of Japan. One of this year's judges in residence describes her experiences. With other activities in Europe, Africa, and extending into Asia, we continue to develop an international presence that spans the globe.

I hope that you share my pride in these and many other accomplishments. I look forward to seeing many of you at reunion in June. We are working hard to put a new face on reunion this year with the addition of programs and activities tailored to law alumni. The success of reunion, however, depends ultimately on you. If you have not been to a June reunion, please consider returning this year; if you have, please remind your friends of the rich experience they can anticipate, rekindling relationships with classmates and the Law School. We have great stories from the past, news of the present, and an exciting vision for the future to share. **Come join us!**



Patricia A. O'Hara  
*The Joseph A. Matson Dean and Professor of Law*



## Professor Jay Tidmarsh

*Tidmarsh has been with the law school since 1989 and has served as a Visiting Professor of Law at Harvard Law School and Michigan Law School.*

*He earned his A.B. from Notre Dame in 1979 and his J.D. from Harvard in 1982.*

*From 1982 until 1989, he served as a trial attorney with the Torts Division of the U.S. Department of Justice, where he handled aspects of the Agent Orange and Love Canal litigations as well as other environmental torts, professional malpractice, and injuries caused by governmental contractors. Professor Tidmarsh's areas of academic interest include civil procedure, complex civil litigation, federal courts, civil rights, remedies, and torts. He is the faculty advisor for the Notre Dame Law Review.*

### When you finished your work with both the Agent Orange and the Love Canal cases, did you think we had learned some lessons?

Love Canal was a classic environmental case that sought to prosecute what had been a cavalier creation of a toxic wasteland (Love Canal). The situation showed a significant gap in our then existing environmental statutes, and led to passage of the Superfund statute, which now makes owners responsible for waste sites on their property.

Agent Orange was more complex—more of a cultural case. When the case began in 1979, we as a country still hadn't fully reintegrated Vietnam veterans into society. Using Agent Orange exposure as a focal point, the real victory in the case, in my judgment, was the acceptance of the vets back into the American mainstream. The case reminded us about what the vets sacrificed and how we as a country should never confuse an unpopular cause (e.g., the Vietnam War) with the soldiers who fought in that conflict honorably. I think we see the positive effect of this lesson today in the "Support Our Troops" sentiment.





*...lawyers seem so willing to stereotype their opponents.*

Is there much difference between the environmental catastrophe that is Chernobyl and that which is Love Canal? Chernobyl had a catastrophic impact that was immediate and acute. It is easy for us to understand the tragedy of that kind of impact. The short- and long-term effects of radiation poisoning are well documented and understood.

Unfortunately, we are less likely to appreciate the risks of environmental impact that is more long-term and less clear-cut. We don't yet fully appreciate the potential damages that Agent Orange and a host of other chemicals can have on the environment. Different people respond to the uncertainty of the risk in different ways. Because these chemicals pose a diffuse risk, they create cases that are harder to litigate. However, the acute impact of Chernobyl may better sensitize us to long-term environmental risks.

While you teach civil procedure, what are your thoughts about the current level of civility within the legal profession? There was much concern expressed about civility in the '80s. Courts instituted programs designed to curb what they perceived to be growing incivilities among lawyers and litigants.

I don't hear as many complaints these days. This doesn't mean that lawyers are more civil, only that they don't seem to be getting noticeably less civil. One thing that concerns me is that lawyers seem so willing to stereotype their opponents. The bar has divided itself into plaintiffs' and defendants' groups, with few lawyers working both sides. Each side is willing to believe the worst of the other.

The ease of this stereotyping might be an echo of the ease with which we form other distinctions, such as good versus evil.

*“...the present crisis in malpractice premiums has more to do with the investment and pricing strategies of insurance carriers than with tort suits.”*

**What about the issue of tort reform?** This is a very complex issue.

In recent years, while there was been a 6% rise in the amount of medical malpractice jury awards, there has been a 6.5% rise in health care costs. Those data do not suggest a tort system run amok. A lot of other data point in the same direction.

In the 1990s, insurance companies were able to keep premiums they charged doctors to a minimum because the stock market was bringing unsustainably large returns on the companies' investment dollars. These returns were used to pay jury awards.

However, with the decline of the stock market in the last few years, insurance companies could no longer rely on high returns on their investments to pay damage awards, so they began to have to increase the cost of premiums charged to physicians. So the present crisis in malpractice premiums has more to do with the investment and pricing strategies of insurance carriers than with tort suits.

But, back to the notion of stereotyping, plaintiffs' malpractice lawyers are now being characterized as bad people. As a group, they do important work in our society.

**Is there a way to have sensible tort reform?** I would think that reform should occur, if at all, on the state level. I'm a federalist, at least this way.

One place to look at reform is compensation for non-physical injury, such as emotional injury. Maybe the "fear of cancer" or "increased risk of cancer" claims should be limited, until there is a resulting serious physical harm, at which time it could be litigated.

**What about the efforts to move class action suits from the state courts to the federal?** (One week after our conversation, Congress passed this legislation. The President signed it the next day.)

Most class action cases are heard in state courts and there is the perception that state judges are too generous and lax. But new data show that federal judges tend to award higher settlements per capita than state judges. State and federal judges certify about the same percentage of class actions.

It isn't obvious to me that the new legislation will have its intended effect. We'll see.



So you don't necessarily believe that the current political discussions about these reforms will have positive results? Of the three kinds of legislation currently being discussed for tort reform within our civil justice system—medical malpractice caps on non-economic damages, federalizing most class actions, and asbestos—the effects of all three seem uncertain. I think this is because the causes of these legal problems and the legislative solutions presented to solve them don't match up very well. There have only been short-term political objectives discussed.

For example, the \$140 billion trust fund being talked about for asbestos cases is now no longer seen as a clear-cut solution to massive lawsuits. While the idea might be to compensate victims and remove future litigation from the court system, now there are questions about other cancer-causing fibers and whether or not these would be covered within the trust fund, and about the access of victims to the court system after the trust fund runs out of money.

Have you ever called someone a “tortfeasor”? Many people don't realize that the final football game played in the stadium each season doesn't involve the Notre Dame football team. It is the championship game played in the graduate student league. So the last game in the old stadium wasn't between ND and Rutgers; it was between MBA students and law students. Our team was called the “Tort Feasors.” I think I was an honorary captain or something. Along with about ten other people, I went to the game—the very last game in the old stadium. We won. The team gave me a team T-shirt that I still have somewhere.

And, finally, we've all been so happy to see David's recognition. (David Tidmarsh won the 2004 National Spelling Bee.) We have been proud of his handling of the recognition that he has received, seeing his graciousness and humility come out.

He never thought he would win; he studied because he wanted to do better than he had done in 2003 and because he loves language. In many ways, he's just a kid from a public school in South Bend.

## Indiana Court of Appeals Sits in NDLS



During the fall 2004 semester, the Indiana Court of Appeals sat in the law school's courtroom to hear *Richard SCHULTZ and Gail Schultz v. FORD MOTOR COMPANY*. On February 21, the Court handed down its decision: *Richard SCHULTZ and Gail Schultz v. FORD MOTOR COMPANY*, 2005 WL 399609, 2005 Ind. App. LEXIS 220,—N.E.2d (Feb. 21, 2005).

After hearing arguments, the Justices remained in the courtroom to answer questions from students.



## Notre Dame Coalition to Abolish the Death Penalty Brings Speakers to NDLS

This fall, the Notre Dame Coalition to Abolish the Death Penalty brought to campus two notable members of the death penalty abolition community: Richard Dieter, executive director of the Death Penalty Information Center, and Bud Welch, founding board member of Murder Victims' Families for Human Rights.

On Wednesday, November 4, Mr. Dieter met with the law school community to discuss the current state of capital punishment in America and to speculate on the future of the death penalty. Mr. Dieter noted that two issues—execution of juveniles and execution of the mentally disabled—currently dominate the death penalty debate and may indeed be dispositive for the debate in the future.

On Friday, November 13, Mr. Welch addressed the law school community. Bud, whose daughter Julie died in the bombing of the Murrah Federal Building in Oklahoma City, currently sits on the board of the Oklahoma City Memorial and is a former board member of Murder Victims' Families for Reconciliation. In 1999, Bud was named Abolitionist of the Year by the National Coalition to Abolish the Death Penalty. As he has in forums all over the world, Bud spoke to the students of Notre Dame Law School mostly about Julie—about her extraordinary language skills, her intense independence, and her commitment to peace. And he talked a little bit about himself—about his descent into depression and alcoholism after Julie's death and the journey

of reconciliation and forgiveness that has led him to travel the world speaking out in opposition to capital punishment.

The Coalition continues its work during the spring 2005 semester, co-sponsoring a week of death penalty education events surrounding the Department of Film, Television, and Theater's production of Tim Robbins' stage adaptation of *Dead Man Walking* and a lunch talk by Profs. Rick Garnett and A.J. Bellia on their own experiences in capital defense. Please feel free to contact NDCADP chair Kate Leahy (kleahy@nd.edu) with any questions or comments.

story by Kate Leahy, '06 J.D.

## SBA collects money for tsunami victims

The Notre Dame Law School Student Bar Association rallied students to collect donations for the victims of the late-2004 tsunami. One fundraising effort was a bowling party, which raised \$213.53 toward the SBA's final goal of \$500.

One bowling team featured (back) Brian Morrissey, Adam Butman, Kevin Moot, Jon Schoenwetter, Greg Rauen, and (front) Sophia Park.





## Natural Law Institute Lecturer Challenges Audience to Balance Value and Limits of Scientific Research

The first Natural Law Institute Lecture of the 2004-2005 academic year was presented on October 28 by Susan Haack. Her lecture was titled “Epistemological Legalism: Or, Truth, Justice, and ‘The American Way’.”

A scholar of extraordinary range and accomplishment, Professor Haack is currently the Cooper Senior Scholar in Arts & Sciences at the University of Miami, as well as professor of philosophy and professor of law. She is the author of numerous books, among them: *Philosophy of Logics*; *Deviant Logic*, *Fuzzy Logic: Beyond the Formalism*; and *Manifesto of a Passionate Moderate: Unfashionable Essays*. Her most recent publication is *Defending Science within Reason: Between Scientism and Cynicism*. During her lecture, Professor Haack spoke to the audience of the need to maintain a balanced understanding of the value, and the limitations, of the scientific enterprise.

## Ninth Circuit Court of Appeals Judge O’Scannlain Visits London Law Centre

For the first two weeks of October, on the initiative of Dean O’Hara, the London Program hosted Judge Diarmuid O’Scannlain as a visiting scholar. Judge O’Scannlain is a member of the Court of Appeals for the ninth circuit and, over the years, has been a regular visitor to campus. His visit combined giving classes and talks with being available to all students and faculty for informal discussion about developments in the law on both sides of the Atlantic. Judge O’Scannlain spoke at the Institute of Advanced Legal Studies to London’s wider academic community on the topical and controversial issue of ‘What Role Should Foreign Practice and Precedent Play in the Interpretation of Domestic Law?’ He also found time to accept an invitation to visit New College, Oxford, and to take a tour of areas of London associated with St. Thomas More.

## Coach Weis visits the Law School

On March 14, new Notre Dame football coach Charlie Weis visited the Law School, speaking to a packed crowd in the courtroom. He was greeted by a standing ovation. Introduced by Professor Tex Dutile, Weis spoke of his career and aspirations for the football team, reminding the audience that “You aren’t considered to be a good lawyer if you only win half your cases!”



## Notre Dame Immigration Clinic Helped a House

On a Saturday morning in early September, members of the Notre Dame Immigration Clinic traded in “business casual” for working grubbies and got their hands (and legs and arms and faces) dirty volunteering for La Casa of Goshen’s Help-a-House program. La Casa of Goshen describes itself as a community-based organization that “works in partnership with individuals and communities to create opportunities for economic development, personal growth, and neighborhood improvement.” The Help-A-House project invites community members to volunteer their time to assist in the renovation and maintenance of houses La Casa makes available to low and moderate-income homeowners.

The Immigration Clinic worked on a small ranch-style house that was being prepared for a family that recently immigrated to the United States. Students, clinic staff, and a few additional recruits stripped paint off the front porch, steamed decades-old wallpaper off dining room walls, slapped primer onto entry room walls, pulled up carpet, and pulled down ceiling tiles. They emerged filthy, weary, and with a new appreciation for manual labor. Following their volunteer effort, the clinicians enjoyed a barbeque.

story by Barbara Szweda  
(Associate Professional  
Specialist, Legal Aid Clinic)

## Notre Dame Journal of Law, Ethics & Public Policy and Thomas J. White Center on Law & Government Host Nuclear Terrorism Symposium



On November 9, 2004, the *Notre Dame Journal of Law, Ethics & Public Policy* and the Thomas J. White Center on Law & Government hosted a symposium titled “Re-Thinking the Bomb: Nuclear Weapons in the Age of Terrorism.” The symposium brought together a distinguished panel of experts: Dale Watson, former Executive Assistant Director of the FBI’s Counter-Terrorism Division; Joseph Cirincione, Director of the Non-Proliferation Project with the Carnegie Endowment for International Peace; and Jared Silberman, Associate Counsel for Arms Control and International Law with the U.S. Navy Office of Strategic Systems Programs. Additionally, Notre Dame Law School Professor Jimmy Gurulé, former Under-Secretary for Enforcement in the U.S. Treasury Department, introduced and moderated the panel.

The panel discussed the grave threat of nuclear terrorism in light of the terrorist attacks of September 11, 2001—an urgent topic commanding national and international attention—and the broader issue of our nation’s policy on nuclear weapons production and proliferation. The panel addressed important questions such as: What can be done to prevent a nuclear 9/11? How has the war on terror affected U.S. nuclear non-proliferation policy? Should the U.S. military continue development of “mini-nukes,” “bunker busters,” and other new types of nuclear weapons? The entire panel agreed that the prospect of a nuclear weapon in the hands of terrorists is the foremost threat to national security today.

Mr. Watson stated that the FBI has long feared that Osama bin Laden would acquire nuclear weapons. He further asserted that the al Qaeda terrorist network continues to pursue nuclear weapons and would surely use them. Mr. Watson also affirmed that the United States must continue to “be on the offensive” to prevent a nuclear terrorist attack from ever taking place.

Mr. Cirincione noted that during a recent trip to Germany, he observed that “Germans see terrorists as a problem” but not as a compelling international danger. Specifically, he identified four aspects of the nuclear threat the U.S. faces: nuclear terrorism, the emergence of additional nuclear states, nuclear proliferation, and the collapse of existing nuclear non-proliferation agreements. Mr. Cirincione highlighted his view that the Bush administration has focused on reducing the threat of nuclear terrorism by targeting dangerous regimes rather than controlling the spread of nuclear weapons and materials from Russia and elsewhere.

Mr. Silberman made a presentation displaying some of the ways the U.S. military is developing innovative and effective weapons that do not involve nuclear capabilities. He also applauded the success of President Bush’s Proliferation Security Initiative, involving some ninety-four nations from around the globe.



### Law &... Lecture Series Continues



The spring 2005 semester included three presentations as part of the continuing Law &... lecture series sponsored by the law school and organized by Professors Vincent Rougeau and Cathleen Kaveny. The series features a presentation by a faculty member from a department within the University that is then responded to by a law school professor.

James Sullivan, from the Department of Economics and Econometrics, spoke February 9 on “The Effects of Welfare and Tax Reform: The Material Well-Being of Single Mothers in the 1980s and 1990s”; Michael Kirsch was the respondent.

Alvin Tillery, from the Department of Political Science, spoke March 16 about “Tocqueville as Critical Race Theorist”; Jay Tidmarsh offered a response.

On April 13, Michael Lykoudis, from the School of Architecture, presented “Classical Architecture and Traditional Urbanism: Sustainability Trumps Style”; Nicole Garnett responded.

The series seeks to offer the law school community an opportunity to engage in cross-disciplinary discussions.

### NDLS Co-Sponsors Lecture

Jeffrey Stout, professor of religion at Princeton University, presented a talk on “The Spirit of Democracy” to a capacity crowd in the Law School Courtroom on Thursday, November 4. Professor Stout’s most recent publication is *Democracy and Tradition*.



### Former Congressman Tim Roemer Speaks to Law School Community

On Friday, October 8, 2004, Tim Roemer, former Indiana congressional representative and member of the National Commission on Terrorist Attacks (also known as the “9/11 Commission”) offered his reflections on his Commission membership. A lively discussion with the law school community followed his presentation.



**Amy Barrett** had accepted for publication “Statutory Stare Decisis in the Courts of Appeals” by the *George Washington Law Review*. She also published “Stare Decisis and Due Process” in the *Colorado Law Review*. She gave a presentation on evidence to the judges of the Seventh Circuit at the Seventh Circuit Judicial Conference in October and a presentation on evidence to the St. Joseph County Bar Association.

**Matthew J. Barrett** published “The Theological Case for Progressive Taxation as Applied to Diocesan Taxes or Assessments Under Canon Law in the United States” in *The Jurist*, Volume 63 (2003), Issue 2, pages 312–365. He also published “New Opportunities for Obtaining and Using Litigation Reserves and Disclosures,” 64 *Ohio St. L.J.* 1183–1195 (2003) and “Tax Services as a Trojan Horse in the Auditor Independence Provisions of Sarbanes-Oxley,” 2004 *Mich. St. DCL L. Rev.* 1. Professor Barrett also published the article, “The Case for Progressive Taxation as Applied to Diocesan Taxes or Assessments Under Canon Law in the United States,” in 64 *The Jurist* (2004). Professor Barrett presented “Trojan Horses and the Auditor Independence Provisions in Sarbanes-Oxley” as part of the symposium “In The Wake of Corporate Reform: One Year in the Life of Sarbanes-Oxley—A Critical Review” at Michigan State University-DCL College of Law (September 19, 2003); “Lawyers and Accounting: The Recent Financial Frauds, the Sarbanes-Oxley Act of 2002, and Related Developments,” CLE Program, Notre Dame Law School (October 18, 2003); and “The Failures of Lawyers” as part of the “Ethics Week” panel discussion “Enron: A Multi-Dimensional Examination of an Unethical Enterprise,” Mendoza College of Business (February 16, 2003).

**Joseph P. Bauer** was invited to be a panelist at the Copyright and Licensing Workshop sponsored by the University Libraries. Professor Bauer also published “Reflections on the Manifold Means of Enforcing the Antitrust Laws: Too Much, Too Little or Just Right?” in 16 *Loyola Consumer Law Review* 303–327 (2004). Professor Bauer presented an invited faculty colloquium on “The Scope of Preemption of State Law Claims by the Copyright Act of 1976 and the Federal Copyright Regime” at the University of Florida College of Law and at Emory Law School, and an invited talk “Reflections on the Manifold Means of Enforcing the Antitrust Laws: Too Much, Too Little, or Just Right?” at a conference on “The Future of Private Rights of Action in Antitrust,” Loyola Law School, Chicago. He also was a visiting professor at Emory Law School during the spring semester.



**PROFESSOR BARBARA FICK VISITS THE NABATAEAN RUINS AT PETRA**

**D**uring her visit to Amman, Jordan, to train Jordanian trade union leaders, Professor Barbara Fick visited the Nabataean ruins at Petra, Jordan.

This ancient city was originally a center of Nabataean culture, serving as an important trading center through which merchants from many foreign countries passed. The Nabataeans controlled lucrative trades such as Indian silks, spices, incense, and African ivory, collecting steep duties on these goods. They also collected fees for protecting the traveling merchants from bandits.

In 106 CE, Petra was annexed into the Roman Empire and made part of the Province of Arabia. It thrived for about 300 more years but began to decline once trade routes began to shift; by the 8th century, it was all but abandoned.

In 1812, the Swiss explorer Johann Ludwig Burckhardt discovered the ruins.



**A.J. Bellia** will publish “State Courts and the Making of Federal Common Law,” 153 *U. Pa. L. Rev.* 888 (2005). He also published “Article III and the ‘Cause of Action’” 89 *Iowa Law Review* 777 (2004). Professor Bellia also presented “Article III and the Cause of Action,” at a Rutgers Law School—Camden faculty colloquium, October 27, 2003.

**Patricia Bellia** published *The Law of Electronic Surveillance* (West Group) (Supplements). She also published “Defending Cyberproperty,” 79 *N.Y.U. L. Rev.* Professor Bellia presented “Surveillance Law through Cyberlaw’s Lens,” as part of a panel presentation at a symposium, “The Future of Internet Surveillance Law,” at the George Washington University Law School, Oct. 23, 2004.

**Geoffrey Bennett** published “Criminal Procedure and Sentencing,” *All England Law Reports Annual Review of 2002* (Butterworths, 2003): 142–156. Professor Bennett presented “Wrongful Conviction, Lawyer Incompetence, and English Law” at the Criminal Procedure Forum, Washington and Lee Univ., Lexington, Virginia.

**G. Robert Blakey** worked with the British Home Office on the problem of organized crime in Northern Ireland. He also had “Commentaries on RICO” published by LEXIS 2003 as part of their electronic service that makes the Federal Code available on line.

**Paolo Carozza** published “The Member States,” in *The EU Charter of Fundamental Rights: Politics, Law and Policy* (2004), 35–58 and “L’idea di sussidiarietà,” 22 *Il Nuovo Areopago* 21–37 (No. 1; 2003). He also published “From Conquest to Constitution: Retrieving a Latin American Tradition of the Idea of Human Rights,” 25 *Human Rights Quarterly* 281–313 (2003) and “‘They are our brothers, and Christ gave His life for them’: The Catholic Tradition and the Idea of Human Rights in Latin America,” 6 *Logos: A Journal of Catholic Thought and Culture* 4:81–103 (2003). He also published “La sussidiarietà come principio strutturale dei diritti umani nel diritto internazionale,” in *Le problematiche costituzionali in Europa: il processo costituente europeo* (Lorenza Violini and Dario Velo eds. (2004) and “Demos and Globalization,” in *The Governance of Globalization: Proceedings of the IX Plenary Session of the Pontifical Academy of Social Sciences*. He presented “Legal Education for the *Ius Commune* of Human Rights,” at American Association of Law Schools’ Conference on Educating Lawyers for Transnational Challenges, Hawaii, May 2004; “Religious Pluralism and the Common Good in International Order,” lecture at Università degli Studi di Parma, conference on Diritto e Diversità: Stati, culture e fedeli, May 2004; “The Foundations of International Law and the Universal Common Good,” lecture at Pontifical Gregorian University (Rome Italy) conference on Catholic Thought and World Politics in the 21st Century, April 2004; “Should Foreign and Comparative Law Matter in 8th Amendment Jurisprudence?,” presentation at

conference on International Law and Practice in American Constitutionalism, University of Virginia School of Law, March 2004; “The ‘Monstrous Right of Liberty’: A Historical View of the Development of Catholic Social Teaching on Human Rights,” lecture at St. Thomas University Law School, Minneapolis, Minnesota, January 2004; “Human Rights as a Challenge to Peace?,” paper presentation at a conference on Leo XIII and Peace, sponsored by the Pontifical Council on Justice and Peace and the Pontifical Gregorian University, Rome, November 2003; and “What makes a Catholic Law School Catholic?,” invited presentation at Villanova University School of Law, Pennsylvania, October 2003. Professor Carozza also presented “Human Rights and the Constitutionalization of Europe at a Crossroads,” at Notre Dame’s Kellogg Institute for International Studies, September 2003, and a paper on “International Law in U.S. Domestic Law,” at JEHT Foundation/Center for Civil and Human Rights Conference on International Justice and the United States, Notre Dame, May 2004.

**Lisa Casey** published “Reforming Securities Class Actions from the Bench: Judging Fiduciaries and Fiduciary Judging” 2004 *Brigham Young University Law Review* 1239–1332 (2003). She also presented “Representing Public Companies After the Scandals—What the SEC Wants Lawyers to Know” at the Notre Dame Law School’s Continuing Legal Education Program.

## PROFESSOR GURULÉ BRINGS THE ISSUE OF INTERNATIONAL TERRORISM TO THE NDLS CLASSROOM

**D**uring the spring 2005 semester, Professor Jimmy Gurulé is teaching “The Law of Terrorism,” a first-time offering at NDLS; fifty students are enrolled. He recently spoke about the class, which he believes is one of the first of its kind at a law school:

The Law of Terrorism examines several highly controversial issues that have moved to the forefront of importance in the international community, following the terrorist attacks of 9/11. Among other issues, the course examines the definition of “terrorism.”

It has often been said that “one person’s terrorist remains another’s freedom fighter.” Which are the insurgents fighting in Iraq: “terrorists” or “unlawful combatants”? What are the essential characteristics that distinguish terrorist acts from common crimes of violence: the intent to instill terror in a civilian population? the purpose of influencing government policy? Does the motivation for the terrorist acts, whether for the purpose of advancing a political, religious, or ideological cause, matter?

For decades, the international community has been unable to agree on a common definition of “terrorism.” How can the world community come together to confront such a global threat if it can’t agree on such a basic consideration?

The course examines the preemptive use of force in self-defense. Article 51 of the United Nations Charter authorizes the use of force in self-defense only if an “armed attack” occurs. Most international legal scholars have interpreted Article 51 to prohibit the use of force to prevent an imminent attack, reasoning that the State has not suffered an “armed attack.” Does international law require a State to “take the first hit” when it could effectively





**Rev. John J. Coughlin** published "The Clergy Sexual Abuse Crisis and the Spirit of Canon Law," 44 *Boston College L. Rev.* 977-97 (2003); "Catholic Lawyers and Divorce Cases," 61 *The Jurist* 290-310 (2001); and "Communio and Administrative Justice," 78 *Apollinaris* 715-43 (2002). Father Coughlin also published "John Paul II and the Dignity of the Human Person," 21 *Harv. J.L. & Pub. Policy* 65-79 (2003); "Canon Law and the Human Person," 19 *J. of Law and Religion* (2003); "The Human Being, Catholic Social Thought and the Law," 1 *Villanova J. Law & Catholic Social Thought* (2003); and "Lawyers and Material Cooperation in Evil: Divorce Cases," *Proceedings of the Fellowships of Catholic Scholars* (2003). Father Coughlin presented "Teaching Ethics at Religiously Affiliated Law Schools," Conference of Religiously Affiliated Law Schools held at Notre Dame on March 26, 2004; "John Paul II and Human Nature," Emory Law School Program on Law and Religion in conjunction with the 2004 AALS Convention, in Atlanta, Georgia on January 4, 2004; Respondent at the University of Notre Dame Colloquium on Law and Religion, on November 12, 2003; "The Human Being, Catholic Social Thought, and the Law," Villanova Law School Symposium on Catholic Social Thought and the Law, in Philadelphia, Pennsylvania on October 3, 2003; at The Fellowship of Catholic Scholars Convention: The Catholic Citizen, Lawyers and Cooperation in Evil," in Arlington, Virginia on September 26-28, 2003. He also presented the Commencement address at Saint Gregory the Great College in Nebraska on May 8, 2004.

**Michael Davis** spoke at a panel discussion titled "Freedom without Democracy in Hong Kong" at the Kellogg Institute for International Studies on September 30, 2004.

**Alexander Edgar** was appointed to the Board of Directors of the American Board of Certification for a 3-year term. He was also chosen as a 2005 Indiana Super Lawyer by *Indianapolis Monthly* and *Law & Politics* in the Bankruptcy and Workout practice areas. On December 9, 2004, he presented the Justice Department's bankruptcy "Civil Enforcement Initiative" administered by the U.S. Trustee Program at the St. Joseph County Bar Association Annual Insolvency Section Seminar. Professor Edgar was a panelist at the Advanced Chapter 7 & 13 Roundtable sponsored by the Indiana Continuing Legal Education Forum held at Harrah's East Chicago Casino.

**John Finnis** published "An Oxford Play Festival in February 1582," *Notes and Queries* (2003) 391-4 (with Patrick Martin); "Law and what I truly should decide," *American Journal of Jurisprudence* 48 (2003) 107-129; "Commonwealth and Dependencies," in *Halsbury's Laws of England* vol. 6 (2003 reissue), pages 409-518; "The Thing I Am: Aquinas and Shakespeare on Personal Identity", accepted for publication in *Philosophy and Social Theory* (2005); had accepted for publication "Secularism, Faith, and Public Policy" in *Proceedings of the Fellowship of Catholic Scholars* (forthcoming); Restricting Legalised Abortion is not Intrinsically Unjust," in book of the

Linacre Centre Conference (forthcoming 2004); and "A Vote Decisive for a More Restrictive Law", further paper accepted for Proceedings of the Linacre Centre Conference 2003. Professor Finnis presented "Mental Incapacity Bill: Note for Lord Filkin", paper articulating four anti-euthanasia provisions devised by JMF (for the Bishops' Conference of England and Wales), as amendments to the current Mental Incapacity Bill 2003-4 (UK), forwarded by the Conference to the Ministry for Constitutional Affairs for discussion in conference with the Minister; "The Thing I Am: Personal Identity in Aquinas and Shakespeare", keynote address/lead-paper for Social Philosophy and Policy Center at Bowling Green State University, conference on Personal Identity, and publication in the journal *Social Philosophy & Policy*; "Secularism, Faith, and Public Policy", keynote address at Fellowship of Catholic Scholars annual convention, Washington, D.C. "Secularism, Law and Public Policy", keynote address at James Madison Institute conference at Princeton University; and "Secularism, Faith, and Public Policy", address at Ave Maria Law School.

**Judy Fox** testified in front of the Indiana Utility Regulatory Commission in Indianapolis regarding proposed rules #04-02 to establish new customer service rights and responsibilities. On September 27, 2004, her Legal Aid I class presented a "Lunch & Learn" seminar at the Notre Dame Downtown facilities. The students gave a brief presentation on new consumer laws.

defend itself by acting preemptively? Is the use-of-force regime set out in the U.N. Charter out-of-synch with the way states actually behave? Should states be permitted to act to defend their survival? If so, how should the rules on the use of force be revised?

## How can the world community come together to confront such a global threat if it can't agree on such a basic consideration?

The course further examines what legal rights should be afforded to suspected terrorists. Are terrorists entitled to the protections afforded prisoners of war under the Geneva Convention Relative to the Treatment of Prisoners of War? Can al Qaeda and Taliban prisoners be subjected to aggressive interrogation methods? What level of force rises to the level of "torture," prohibited by U.S. federal law and the International Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment?

Another controversial topic that we are exploring in the course involves the use of military commissions to prosecute suspected terrorists. Does this use violate principles of international law? If the

defendant is a U.S. citizen, does prosecution before a military commission violate his rights under the U.S. Constitution?

We are also discussing the international legal framework developed to combat terrorism, including the International Convention for

the Suppression of Terrorist Bombing, the International Convention for the Suppression of Financing of Terrorism, the Hague Convention for the Suppression of the Unlawful Seizure of Aircraft, and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

Finally, we will analyze the domestic legal response to terrorism, including federal crimes punishing persons who provide "material support" to foreign terrorist organizations, statutes authorizing the blocking of terrorist-related assets, and the tension between aggressive prosecution of terrorists and the protection of highly valued civil liberties.



## ASSOCIATE PROFESSOR VINCENT ROUGEAU HAS BOOK ACCEPTED FOR PUBLICATION

Associate Professor Vincent Rougeau has recently had his book, **Christians in the American Empire: Faith and Citizenship in the New World Order**, accepted for publication by Oxford University Press. What follows is a précis he has written of this publication:

### Americans have long accepted the notion of the United States as an “exceptional” nation.

For a country born out of a revolutionary experiment in 18th century democratic liberalism, the idea of uniqueness comes naturally and is not without some basis in fact. Typically, Americans view exceptionalism as a positive trait, and it is often the source of an overriding sense that the United States is a “better” nation than any other—the most democratic, the freest, the most faith-filled, the strongest...the list goes on. But the word exceptional is Janus-like, and its negative face rarely receives the attention of the positive. Not only does American exceptionalism often quickly degenerate into an unthinking, jingoistic nationalism but, more darkly, it often blinds Americans to the reality that the United States is no better protected from the vicissitudes of the human condition than anywhere else on earth.

In particular, broad acceptance in American culture of notions of freedom that are rooted in extreme versions of individual autonomy have increasingly driven American law away from understandings of the human person that are situated in culture and tradition. These trends have been devastating for American community life in many ways, but American elites, both liberal and conservative, increasingly depend upon and nurture this culture of autonomous individualism in order to maintain their positions of social and economic dominance, and to promote the creation of social and political structures around the world sympathetic to American interests.

The legal developments that grow out of this culture present unique challenges to those Christians who embrace understandings of freedom and the dignity of the human person that are rooted in their faith traditions and involve a community-centered approach to personhood. Christians believe that human dignity is God-given and that this dignity only can be fully realized in community with others. In its increased modern respect for individual autonomy, Christianity has learned important lessons from its encounters with secular liberalism, but for Catholics in particular, any notion of human freedom is only meaningful in a context in which an individual is fully able to exercise her rights and duties within a web of communal relationships. Hence, notions of the individual, the state, politics, and the economy that proceed from understandings of freedom rooted in

personal autonomy separate from community are inherently inconsistent with how Catholics believe they should live in the world. Many other tradition-oriented Christians also share this view.

In this book I will argue that the social, economic and political life of the United States is such that many Christians are faced with some critical choices about the nature of their participation in American society. My basis for this assessment is from the rich tradition of social thought that has developed in Roman Catholicism since the late 19th century. Many other Christians, religious believers of other traditions and even those of no faith tradition at all, find the reasoning of Catholic social teaching compelling, and for Catholics, the social doctrine is a fundamental part of the teachings of their faith. This is particularly notable given the significant body of writing that has been created in recent years by some American Catholics, which has attempted to link Catholic teaching with the “neo-conservative” political movement in the United States and, therefore, to Catholic identification with the Republican party. Given the strongly libertarian and individualistic tendencies of American political and cultural discourse, as well as the status of Catholicism as a religion of marginal influence among American elites throughout the nation’s history, there is no political party in the United States that can make a credible claim to being a Catholic voice in American politics.

This work will help to explain why this is so, not only by developing a clearer understanding of what drives legal and political choices in the United States, but also by suggesting that religious influences on political choices in secular, pluralistic democracies should have certain pragmatic limits. I will argue that, rather than fixate on particular issues in public debate, like same-sex marriage or abortion, it makes more sense for the Christian to look closely at the assumptions and values shaping law and public policy in a particular democracy and to determine whether if, on balance, the polity operates in a way designed to enhance a Christian understanding of human dignity. There will, no doubt, be specific policies that fail, but traditional Christian theology rejects the notion of the civil order ever being a reflection of the celestial one. Better to assess the overall direction of the society as it relates to a Christian vocation in the world and to ask hard questions about what type of community the nation’s political and legal actors are attempting to create. How do our leaders understand what supports a decent and dignified human existence, and how does this vision affect our nation’s relationships to other human communities around the world?

The United States is not a Christian “city on a hill,” nor necessarily should it be. It is a secular nation grounded in shared understandings among the majority of its citizens about privileged roles for personal freedom, democratic governance, and free market liberalism. By recognizing that there will always be important areas in which American civil society does not comport with their faith traditions, Christians who share strong communal and humanist values can turn their attentions to engagement with the world in ways that bring a richer understanding of human dignity and social justice to public discourse. The call to a lived Christian faith, particularly as it is embodied in Catholic social teaching, announces understandings of justice and human dignity that require an embrace of a universal humanistic vision. Thus, a true embrace of Christian humanism requires Americans to become more cosmopolitan. The Christian should be what Anthony Appiah calls a “rooted cosmopolitan,” respectful of local differences, historical circumstances, and traditions, but unwilling to become a servant of a global imperialist project designed to remake the world in a certain image. Unfortunately, it appears that the United States has taken on just this sort of project, and American elites are attempting to privilege their positions worldwide through the relentless promotion of highly individualistic notions of freedom and American-style free-market capitalism.

**Kari Gallagher** was honored by the United States Court of Appeals for the Seventh Circuit for her five years of service to the federal judiciary.

**Nicole Garnett** published "The Public Use Question as a Takings Problem," 71 *George Washington Law Review* 934 (2003) and "Ordering (And Order In) The City," 57 *Stanford Law Review* (forthcoming 2004). She presented papers at Faculty Workshops at the University of Virginia School of Law, July 21, 2003; Georgetown University Law Center, Environmental Law Workshop, September 11, 2003; The College of Law at Arizona State University, Faculty Workshop, September 16, 2003; the University of San Diego School of Law, Faculty Workshop, September 19, 2003; and Northwestern University School of Law, Faculty Workshop, March 9, 2004. Professor Garnett also participated in the roundtable "Property, Race, and Poverty," NYU Law School, Villa la Pietra, Florence, Italy.

**Richard Garnett** published "Christian Witness, Moral Anthropology, and the Death Penalty" *Notre Dame J. Ethics, L. & Pub. Pol'y* 541 (2003) and in the book *Religion and the Death Penalty: A Call for Reckoning* (2004). He also published "The Theology of the Blaine Amendments," 2 *First.Amd. L. Rev.* 45 (2003); "The New Federalism, the Spending Power, and Federal Criminal Law," 89 *Cornell L. Rev.* 1 (2003); and "Regulatory Strings and Religious Freedom: Requiring Private Schools To Promote Public Values," in S. Macedo, et al., eds., *Educating Citizens: International Perspectives on Civic Values and School Choice* (2004). Professor Garnett also published an essay, "Keep it to Yourself" about the Supreme Court's recent religious cases in the August 13th issue of *Commonweal*. He wrote "Citizens, Not Outlaws," *National Review* (Aug. 11, 2003) (reviewing Michael J. Perry, *Under God? Religious Faith and Liberal Democracy* (2003)); "Final Justice," *America* (Oct. 27, 2003) (reviewing S. Banner, *The Death Penalty: An American History* (2002) & F. Zimring, *The Contradictions of American Capital Punishment* (2003)); "Crime Victims' Rights Law Riddled With Pitfalls," *Chicago Sun-Times* (May 3, 2004); "Confine and Conquer: The California Supreme Court and Religious Freedom," *National Review Online* (March 3, 2004); "Let Off With a Warning," *Legal Affairs* (Jan./Feb. 2004); "Conservatives, Federalism, and Consistency," *National Review Online* (Dec. 1, 2003); "Deciding the Future of Choice," *National Review Online* (May 20, 2003); *Sabri v. United States*, \_\_\_ U.S. \_\_\_ (2004), Brief Amicus Curiae of the National Association of Criminal Defense Lawyers in Support of Petitioner; *Locke v. Davey*, \_\_\_ U.S. \_\_\_ (2004), Brief Amici Curiae of the Becket Fund for Religious Liberty, the Catholic League for Religious and Civil Rights, and Historians and Legal Scholars in Support of Respondent (cited at 124 S.Ct. 1307, 1314 n. 7). He spoke on "No More Certain Antithesis? Assimilation, Toleration, and the State's Interest in Religious Doctrine," Symposium, "Integration, Difference, and Citizenship: Celebrating 50 Years of the UCLA Law Review," UCLA School of Law (Jan. 30, 2004); "Religion, Division, and the First

Amendment," Faculty Workshop, University of San Diego School of Law (Sept. 22, 2003); "The Theology of the Blaine Amendments," Faculty Workshop, Arizona State University College of Law (Sept. 17, 2003); Voluntary Associations and the American Experience," Law and Society Association Annual Meeting (June 5, 2003) (panel chair and discussant); and "Property, Poverty and Race," sponsored by the New York Univ. School of Law, Villa La Pietra in Florence, Italy.

**Jimmy Gurulé's** presentation "Bordering on Terror" was published in *Transnational Lawyer* by McGeorge School of Law, volume 17, pages 113-119. His legal treatise *The Law of Asset Forfeiture* has been published in its second edition by LexisNexis. Professor Gurulé addressed a group of journalists at the Fellowships Program for Professional Journalists in Washington, D.C. He also published "The Global Effort to Stop Terrorist Financing," *U.S. Foreign Policy Agenda American Internationalism* (U.S. Dept. Of State) 8, No. 1 (Aug.). Professor Gurulé delivered a presentation entitled "The Prosecutor's Responsibility to Ensure That Justice Shall Be Done," at "The Rule of Law Conference for Iraqi Judges," The Hague. Professor Gurulé gave the invited presentation "The Link Between Investment, Fraud, and Money Laundering" to the International Organization of Securities Commissions' "Conference on the Future of International Capital Markets" in New York, October 28-29. He also addressed the EuroForum, a group of senior corporate executives, in Madrid, Spain, on the extraterritorial provisions of the USA PATRIOT Act, and he was interviewed by Lisa Myers, NBC News, on Dec. 1, 2003, about the U.N. oil-for-food scandal.

**Roger F. Jacobs** served as a consultant at the Osgoode Hall Law School Library, York University. He is a member of the Board of Directors of the Law Library Microform Consortium and a member of the American Association of Law Libraries Centennial Committee.

**Robert L. Jones, Jr.** presented "Indiana Common Law Claims and Defenses" at the conference "Predatory Mortgage Lending in Indiana" and "The Duty of Confidentiality: New Rules, Old Problems" at the Law School's Continuing Legal Education Program.

**M. Cathleen Kaveny** published "What is the Vatican Saying about Women?" in *The Washington Post* on August 15, 2004; "Complicity with Evil," *Criterion* (fall 2003); "What Women Want," *Commonweal*, 7 November 2003 (cover article), 18-23; "Tax Lawyers, Prophets, and Pilgrims," in Helen Watt ed., *Complicity and Conscience* (Linacre Center forthcoming 2004); "Diversity and Deliberation: The Role of Presidential Commissions on Bioethics," *Journal of Religious Ethics* (forthcoming 2004); "Development of Catholic Moral Doctrine: Probing the Subtext," *University of St. Thomas Law Journal* (forthcoming 2004); "Public Bioethics," *University of Virginia Law and Policy Review* (review essay forthcoming 2004); and "Complicity and Moral Memory," University of Chicago Web Forum (invited essay e- published). She served as a member

of the editorial board of the *Journal of Religious Ethics* and was named a member of the editorial board of a book series on the "Catholic Social Tradition," published by Notre Dame Press. Professor Kaveny is a member of the Board of Directors of the Society of Christian Ethics; she is charged with reviewing policies. She also presented "Diversity and Deliberation: The Role of Presidential Commissions on Bioethics," as invited lecturer (along with Gilbert Meilaender and James Childress) at a symposium on medical ethics, at the University of Richmond in March 2004; "Catholic Universities and Culture," invited panelist (along with Avery Cardinal Dulles, S.J. and Rev. J. Bryan Hehir) at a conference at the Catholic University of America, March 2004; "Positive Law and the Common Good," (at the Aquinas Symposium), invited lecture delivered at Saint Mary's College, Notre Dame, Indiana, in February 2004; "Cooperation with Evil: What's (Not) at Stake," invited lecture delivered at a conference on "Cooperation, Complicity, and Conscience," sponsored by the Linacre Centre for Health Care Ethics, and held at the University of Cambridge in July 2003; "Buffy, Jesus, and You," presented to Theology on Tap, sponsored by the University of Notre Dame Campus Ministry in January 2004; and "Wholeness and Hope," presentation before a general audience at a Conference on the Future of the Church jointly sponsored by Saint Mary's College and the Catholic Common Ground Initiative, in January 2004.

**Michael S. Kirsch** published "Alternative Sanctions and the Federal Tax Law: Symbols, Shaming, and Social Norm Management as a Substitute for Effective Tax Policy," 89 *Iowa Law Review* 863 (2004) and "The Congressional Response to Corporate Inversions: The Tension Between Symbols and Substance in the Taxation of Multinational Corporations", 24 *Virginia Tax Rev.* (2005). He is a member of the Board of Trustees at Temple Beth-El and a member of the Board of Directors of the Jewish Federation of St. Joseph Valley. Professor Kirsch was the law school commentator at the "Law &...." Colloquium at the Law School on February 9, 2005.

**Donald P. Kommers** published "An Introduction to American Equal Protection Law" (with Stephanie Niehaus) in Rudolf Wolfrum (ed.), *Gleichheit und Nichtdiscriminierung im nationales und internationales Menschenrechtsschutz* (Berlin: Springer Verlag, 2003): 25-57; "The Government of Germany" (with James McAdams) in Michael Curtis (ed.), *Introduction to Comparative Government*, 5th ed. (New York: Longman, 2003): 185-211. The same section appears in Michael Curtis (ed.), *Western European Governments and Politics*, 2nd ed. (Longman, 2003): 177-252; *American Constitutional Law: Essays, Cases, and Comparative Notes* (with John Finn [Wesleyan] and Gary Jacobsohn [University of Texas, Austin]) (Rowman & Littlefield, February 2004), 1069 pages. He also published a review of *A Bed for the Night: Humanitarianism in Crisis* by David Rieff in *America*, January 16, 2003: 26-27; a review of *A Declaration of Interdependence: Why America Should Join the World* by Will Hutton, in *America*, November 24, 2003: 21-23; and a review of

## PROFESSOR RICHARD GARNETT, BLOGGER...

Web-logs, or “blogs,” have been much in the news in recent months. For example, bloggers are widely thought to have led the way in calling into question the pre-election 60 Minutes story on President Bush’s National Guard service, which prompted Jonathan Klein, a former executive with CBS News, to complain that a blogger is just a guy sitting in his living rooms in his pajamas, writing what he thinks. The increasingly powerful watchdog role being played by bloggers on the left and right prompted pundit Hugh Hewitt to observe, in a recent book, that blogs are a key part of the “information revolution that is changing your world. It seems increasingly that everyone is either blogging themselves, or has an opinion about those who do.”

A blog, in a nutshell, is an online site with serial, time-dated “posts,” that usually feature commentary and links to other sites. There are blogs run by groups of philosophers and by lonely pre-teens, by established authors and underground gadflies, by professors and students, by foodies, film buffs, and family-reunion coordinators, and by activists in Red and Blue states.

About a year ago, a group of a dozen or so Catholic law professors entered the fray with a blog called *Mirror of Justice*, a blog dedicated to the development of Catholic legal theory. The co-authors include scholars and teachers from a number of law schools, including Villanova, St. Thomas, Emory, Boston College, UCLA, and St. Johns. Three members of the Notre Dame’s law faculty also contribute: Vincent Rougeau, Paolo Carozza, and Richard Garnett. The *Mirror of Justice* bloggers offer perspectives from a number of disciplines and across the political spectrum in pursuit of the shared aim of working through the implications of the Catholic Social Thought and Natural Law traditions for contemporary legal discourse and problems. Take a look: [www.mirrorofjustice.com](http://www.mirrorofjustice.com).

story by Professor Richard Garnett

*Strategic Dilemmas and the Evolution of German Foreign Policy Since Unification* by Jeffrey S. Lantis in *Political Science Quarterly* (forthcoming Spring 2004). Professor Kommers also published “Voting and Political Representation,” a new essay prepared for 2nd edition of *American Constitutional Law*, and “International Impact of Court Decisions” in *Oxford Companion to the Supreme Court*. 2nd ed. (Oxford University Press, June 2004), 2 pages. He is the Advisory Editor of Praeger Publishing Company’s new series on comparative constitutional studies (2003–) and a member of the Advisory Board of *International Journal of Constitutional Law* (edited by New York University School of Law and published by Oxford University Press).

John Copeland Nagle published *Property: Cases and Materials* (Aspen Press 2004) and *Questions and Answers on Property* (LEXIS Publishing 2003). He also published “How Not to Count Votes,” *Columbia Law Review* (forthcoming fall 2004); “Biodiversity and Mom,” 30 *Ecology Law Quarterly* 991 (2004); “The Lame Ducks of Marbury,” 20 *Constitutional Commentary* 317 (2004); “Voter’s Intent and Its Discontents,” 19 *Constitutional Commentary* 483 (2003). He has two forthcoming publications: *The Many Faces of Pollution* (University of Chicago Press 2005); and *The Practice and Policy of Environmental Law* (Foundation Press 2005).

Teresa Godwin Phelps gave a faculty colloquium with Judge Richard Goldstone on truth commissions, sponsored by the Fordham Natural Law Colloquium at the Fordham University Law School on December 6, 2004. She had accepted for publication “Telling Stories in a Search for Justice,” a chapter in *Capabilities and Justice*, Kluwer Academic Press. Professor Phelps gave a keynote address at the conference “Justice and Capabilities: Transforming Unjust Structures,” at

## ALAN GUNN, JOHN N. MATTHEWS PROFESSOR OF LAW, ANNOUNCES HIS RETIREMENT

At the end of the 2004–2005 academic year, Professor Alan Gunn will retire from the faculty at NDLS. He has been a member of the faculty since 1989, teaching and writing in the fields of federal income taxation, insurance, and law and economics. He also teaches first-year courses in contracts and torts.

Gunn earned his B.S. from Rensselaer Polytechnic Institute in 1961 and his J.D. from Cornell Law School in 1970, serving as articles editor of the *Cornell Law Review*.

Before beginning his teaching career, Gunn was in private practice in Washington, D.C. from 1970 until 1972. In 1972, he joined the faculty of Washington University in St. Louis, remaining there until

1977, when he joined the faculty at Cornell Law School, where he remained until 1989. From 1984 until 1989, he held the J. duPratt White Chair in Law.

The John N. Matthews Chair in Law at Notre Dame was established in 1967 as a gift of Notre Dame trustee Donald J. Matthews in memory of his father. It is Notre Dame’s oldest endowed professorship.

The late Capt. John N. Matthews was a ship’s master who founded, in 1929, a marine cargo firm in New York, the Universal Terminal & Stevedoring Corporation. Upon his retirement in 1957, he captained the *Vim* in the 1958 America’s Cup trials. Donald Matthews is a principal and senior vice president of Johnson & Higgins, an international insurance-brokerage and employee-benefits consulting firm. A yachtsman like his father, he crewed on the *Wetherly* when it successfully defended the America’s Cup in 1962.



St. Edmund's College, Cambridge University on June 26, and she presented the closing address "Acting Justly" at the second annual "Peace and Justice Symposium" at Valparaiso University. She was appointed to the editorial board of the *Journal of the Association of Legal Writing Directors*. She also presented a workshop, "Lessons from the Amy Biehl Story," at the second annual "Peace and Justice Symposium" at Valparaiso University; "Improving Women's Lives: How Much Can (and Should) the Law Do?" for Ain o Salish Kendra in Dhaka, Bangladesh; and "Genocide, Gender, and the Work of Truth Commissions" at the Muktiyuddho Jadughar (Liberation War Museum). Professor Phelps' daughter and son-in-law, Karen ('87 B.A.) and Jamie Moyer, received the Family Exemplar Award from the Notre Dame Alumni Association during a ceremony at the Notre Dame-Pittsburgh football game on November 13, 2004.

### Honorable Kenneth F. Ripple

was appointed by the Chief Justice of the United States to a three-year term on the Judicial Conference Committee on the Administrative Office of the United States Courts. He was also invited to lecture on "Judicial Process and the Law of Habeas Corpus" and participate in a panel discussion on judicial writing at the Federal Law Clerk Institute at Pepperdine University in Malibu, California. Judge Ripple also lectured on appellate advocacy at Loyola Law School on November 4, 2004.

### Vincent D. Rougeau

published "A Crisis of Caring: A Catholic Critique of American Welfare Reform," 27 *Harv. J. Law & Public Policy* 101, and "Enter the Poor: American Welfare Reform, Solidarity, and the Ethics of Paul Ricoeur," in Nebel, Deneulin, and Sagovsky (eds.) *Capabilities and Ethics*. He gave a paper on U.S. welfare reform law and Catholic social thought at Von Hugel Institute, St. Edmund's College, Cambridge, and another paper on affirmative action at a Villanova University conference on Law and Catholic Social Thought.

### Thomas L. Shaffer

was appointed by President Clyde D. Compton to the Indiana State Bar Association's Legal Ethics and Written Publications committees. Professor Shaffer also presented his paper, "From Hoffman to Field to Brandeis" at the conference "Lawyers, Faith, and Social Justice" at Pepperdine University School of Law on February 4-5, 2005.

### J. Eric Smithburn

published "Expert Testimony in Child Cases in the Frye-Daubert-Kumho World," (National Association of Counsel for Children 2003) and "The Trial Court's Gatekeeper Role Under Frye, Daubert and Kumho: A Special Look at Children's Cases," *Whittier Journal of Child and Family Advocacy*, Vol. 4, Issue 1 (Fall 2004). He was elected to the American Law Institute (ALI) and served on the Legal Education Conclave Action Committee of the Indiana State Bar Association and on the Juvenile Law Attorney Certification National Advisory Board and in 2003-2004. Professor Smithburn presented "Revocation of Probation: Legal Framework and

Constitutional Issues" at National Council of Juvenile and Family Court Judges, Indianapolis, Indiana; "Interstate and International Custody Issues" at Legal Services Program of Northern Indiana, South Bend, Indiana; "Evidence Law in Ohio" to Supreme Court of Ohio Judicial College Annual Judicial Conference, Warren, Ohio. He also presented the keynote address and article, "From the Fryeing Pan into the Fire: Expert Testimony in Children's Cases," National Association of Counsel for Children Annual Conference, New Orleans, Louisiana, and "Custody in Guardianship Proceedings: National Parents Versus Third Parties," Indiana Continuing Legal Education Forum (ICLEF), Indianapolis, Indiana. His article "The Fugitive Disentitlement Doctrine in International Child Abduction Proceedings: An Equitable Arrow in the Judicial Quiver," was published in *Law, Legal Culture and Politics in the Twenty-First Century in Germany*. Professor Smithburn presented a lecture, "Procedural Due Process Issues in Termination of Parental Rights: The Impact of ASFA," to lawyers from Indiana. In October 2004, he presented "Evidence in Juvenile Court: Intersection of Law and the Behavioral Sciences" to judges from across the United States and abroad at a seminar sponsored by the National College of Juvenile and Family Justice in Reno, Nevada. He also lectured on "Law and Ethics of Antenuptial Contracts," in the Notre Dame Law School CLE Fall Semester lecture series and "Probation Conditions: Are They Constitutional?" to the Elkhart County Circuit Court and Juvenile Probation Department. He presented a lecture entitled "Custody Disputes in Guardianship Proceedings: Natural Parents Versus Third Parties," to lawyers and judges from Indiana and other midwestern states. Professor Smithburn is currently on sabbatical leave, working on two new book projects on appellate review of trial court decisions and judicial discretion.

### Jay Tidmarsh

published the casebook *Civil Procedure* (Foundation Press 2004). He also presented a paper entitled "Initiatives for a Complex Litigation Center" on October 2, 2004 at the George Washington Law School. He also served as the inaugural chair of the AALS Civil Procedure Mentoring Committee.

### Julian Velasco

published "Expert Testimony in Child Cases in the Frye-Daubert-Kumho World," (National Association of Counsel for Children 2003) and "Structural Bias and the Need for Substantive Review," 82 *Wash. U.L.Q.* (forthcoming 2004). He also published "Just Do It: An Antedote to the Poison Pill," 52 *Emory Law Journal* 849 (2003) and "Structural Bias and the Need for Substantive Review," 82 *Washington University Law Quarterly* (forthcoming 2004).



## FATHER JAMES E. MCDONALD, FORMER ASSOCIATE DEAN OF NDLS, RETURNS TO UND

Rev. James E. McDonald, C.S.C., rector of Saint George's College in Santiago, Chile, and former Associate Dean for Administration of NDLS, was appointed executive assistant to the president for President-Elect Rev. John I. Jenkins, C.S.C.

As Associate Dean for Administration for NDLS, Father McDonald oversaw the law school's \$30 million-plus operating budget, including its student financial aid resources. He also supervised the admissions office and the administrative personnel.



# The Notre Dame London Law Centre:

Suffolk Street

## A Reexamined Profession

Since 1968, the London Program has been offered for second year Notre Dame Law School students; it is one of the few programs to offer American students the opportunity to study international law abroad on an academic-year basis. Since 1970, the Summer London Law Program has been offered for American law students; this is the oldest American summer law program to be conducted in London. Since 1997, both of these programs have been housed in the London Law Center at 1 Suffolk Street on the northwest corner of Trafalgar Square in central London. What follows is a brief history of the two most recent sites of the London programs.

## Albermarle Street



Late in 1980, the University received a \$4 million gift from the estate of Mrs. Dagmar Concannon, which enabled it to enter into a long-term lease at 7 Albermarle Street in London. Albermarle Street became the home of the London Law Centre and its Concannon Programme of International Law. A year after her death, this bequest was announced.

Mrs. Concannon was the widow of Matthias Concannon, a prominent Chicago lawyer who died in 1953. Mr. Concannon was a founding partner of the Chicago firm Concannon, Dillon, Snook & Morton as well as chief counsel and director of the Kellogg Company and chief counsel and trustee of the Kellogg Foundation of Battle Creek, Michigan. He had also been chief counsel of *The Chicago Times* from 1944 until 1947.

The 7 Albermarle Street site was located in London's Mayfair district and had been built in the early 18th century. Housed in the "legal London," it had been the site of some of the negotiations that led to the Treaty of Paris of 1783; in the early 1800s, it became a fashionable hotel that counted among its prominent guests Louis XVII of France, who resided there for several days in 1814 before returning to Paris to be restored King.

On July 29, 1983, the London Law Centre was dedicated, with an evening reception and dedication dinner that included an address by Warren E. Burger, Chief Justice of the United States. His talk was titled "The Role of the Lawyer Today." During his talk, Justice Burger remarked:

*I think I have a better understanding of the richness of our common law heritage from my visits to England, sitting as a guest judge in the courts and in the Inns of Court...In more than the quarter of a century that I have been on the bench, my visits to courts wherever I traveled have given me a better understanding of how those systems work. Observation of other systems is essential to improving any system of justice.*

*"I think I have a better understanding of the richness of our common law heritage from my visits to England..."*

*Justice Warren Burger*

## Father Hesburgh and Justice Burger

Justice Burger's belief in the value of studying other systems of law is echoed in remarks, by four alumni of the London Law Program, found on the following pages.

As the London Law Program and other University academic programs offered in London expanded, the need for a new site became evident. Through a bequest from Charles K. Fischer, the University of Notre Dame was able to take over the Crown leases for 1 Suffolk Street in June 1997 and then undertake a ten-month renovation of the property.



Just as Albermarle Street had enjoyed a rich and colorful history, so too had Suffolk Street. The first building on this site was constructed in 1823, serving as the club house for the United University Club (UUC) with membership of graduates from the universities of Oxford and Cambridge. Among the 500 members were fifty-one peers, equal amounts baronets and knights, 284 members of the clergy (including the Archbishop of Canterbury), and some 200 politicians.

By 1906, the finances of UUC had become meager, at best, and a new lease for the building was negotiated and the property was entirely rebuilt, including ten bedrooms for members, which brought in an income of nearly 200 pounds a year for the club. World War I, however, severely impacted the membership of the club, as staff and members were called into active service and food shortages became commonplace.

In 1914, the UUC exchanged a lease it held for another property on Suffolk Street for a combined lease on numbers 2, 3, and 4 Suffolk Street. The renovation of the expanded property was completed in 1924. During the next decade, many clubs were





## ND LONDON LAW ALUMNI

As we all found out, the first year of law school does not leave much time for outside pursuits. Developing outlines, grasping the concepts of legal research, and attending classes and study groups can consume the vast majority, if not all, of your time. As a first year, it is difficult to imagine how the next two years will be any different. However, as we soon found out, after first year, you actually do have a bit more time on your hands.

Despite all that South Bend may have to offer, as with any mid-sized city, cultural opportunities are limited, especially once you leave the manicured quads of the Notre Dame campus. Putting aside the usual complaints, law school is the last time most of us will have our mornings and/or afternoons free, possibly until retirement. Driven to find alternatives for the last years of my academic life, I chose to spend the 1996/1997 academic year in London.

The opportunity to spend the full second year in London makes Notre Dame Law School different from any other U.S. law school. The Concannon Program, with its small classes and wide range of extracurricular activities, allowed me to set myself apart and gain unique legal experience. I interned with the in-house legal department of a multinational corporation, attended courses taught by prominent international professors, and met and studied with lawyers from around the world who were participating in the LLM program. I was also lucky enough to work in London during the all-important second-year summer as a summer associate, thanks to Professor Bennett, the Director of the London Program, who introduced me to the hiring partner of a London-based firm with a strong boutique practice.

The non-academic aspects of the London program were equally beneficial. I travelled around England and Scotland and a host of European cities, including Amsterdam, Berlin, Brussels, Copenhagen, Dublin, Geneva, Paris, Prague, Rome, Salzburg, Venice, and Vienna. In addition, while living in London, I attended cutting edge theatre and visual art performances as well as formal events with professional legal associations at the prestigious Inns of Court.

**By the end of my year in London, I noticed positive influences and personal and academic development from the international experience both in myself and the other London participants.**

In addition, the London programme participants ended up with interesting jobs after graduation. Compared to the overall graduating class, we had a disproportionate number of classmates accepting jobs in New York, Los Angeles, and, of course, London, after graduation.

After graduation, I spent a year in New York but was anxious to return to London. My firm had an office in London, and as soon as I was able, I transferred back to this amazing city. I would recommend the London program to any law student looking for a bit more out of law school and, possibly, even life in general.

Anastasia Tonello, '98 J.D.  
Laura Devine Solicitors  
London, U.K.







forced to close or merge; the New University Club, facing dissolution, joined with the UUC, thus expanding membership. Two extra bedrooms, squash courts, and separate quarters for entertaining women visitors were added to meet the growing needs of the club.

During World War II, the Westminster City Council notified the UUC that it was legally obligated to provide air raid shelter to 200 members of the general public. In order to do so, dinners were not served after 7:30 p.m. and a dorm with bunk beds was set up for members. An unfortunate ancillary outcome of the fall of France was a restriction of the sale of burgundies and clarets to odd days of the month.

As a result of neglect during World War II, declining membership, and rising inflation, the building on Suffolk Street fell into great disrepair. In order to preserve itself, the UUC merged with the Oxford & Cambridge Club and moved into headquarters on Pall Mall Street. At this time, Coutts and Company, a prominent banking establishment, assumed the remaining years of the building's lease, taking possession of the property in 1973. The company remained there until 1980.

In 1980, the British School of Osteopathy assumed lease of the property. While the BSO restored to their original size some of the rooms that Coutts had partitioned, it also created many small partitioned spaces to meet the needs of space for clinical examinations, faculty offices, and tutorial spaces. Eventually, the tension between the need to meet health and safety regulations while also maintaining the historic preservation restrictions of the English Heritage Society led the BSO to seek more modern space for itself.

The renovations that Suffolk Street had undergone over the years and through its various owners had left some of it rabbit-warren-like. While vestiges of the building's original grandeur remained, such as ceiling moldings and ornate fireplaces, there were other places of disparate levels and small, almost unusable spaces.

With the funds from the Fischer bequest, a ten-month renovation of the site began and, in July of 1998, the London Law Centre moved from Albermarle Street to Suffolk Street, officially named the Marion Kennedy Fischer Hall. The Notre Dame Law Centre is now housed in a building suited for its needs and meeting all requirements of the American Bar Association, such as a Courtroom and law library.



## ND LONDON LAW ALUMNI



David P. Quint, '75 J.D.  
RP&C International  
London, U.K.

Without question, my career has been influenced by my experience with the Notre Dame London Law School Program. I attended the program in 1973–74 and was fortunate to be exposed to a number of high-quality professors, including Reginald Maudsley (an acknowledged expert on wills and trusts), Keith Uff (a fine teacher who made evidence interesting), and Professor Alexandewitz of the London School of Economics (who taught us about the Treaty of Rome from the standpoint of his own involvement with its drafting). **The experience in London was wonderful and it imbued me with a true love of everything international.**

Upon graduation from NDLS in 1975, I entered the practice of law with a firm based in Cleveland that did a modest amount of international work. Through perseverance, I was assigned to the firm's international projects which included M&A and capital formation transactions. In 1977, that firm merged with a Washington D.C.-based practice that represented the Japanese steel industry. From that point onward, I worked almost exclusively on international projects, often involving international trade legislation (anti-dumping and countervailing duty statutes) as well as international investment transactions.

In 1982, one of the firm's clients, a large, privately-owned oil and gas company, asked me to create an international financing arm for its business. I moved my family to London in 1984 and have lived there continually since. For the most part, my work has involved sourcing international capital, which has included the formation of investment vehicles to accommodate investor needs as to privacy, taxation, and corporate governance. Although I no longer practice law, I have found it to be an invaluable discipline.

In 1992, when the oil and gas company did an IPO in America, I set up my own investment banking firm, which today has offices in London and New York. Our shareholders include Nationwide Insurance and JP Morgan, and we specialize in the management of international real estate funds and the placement of convertible securities for companies engaged in a variety of businesses in the U.S, Europe and Asia.

Last year, our firm purchased a building in St. James's Square which traces its roots to England's most prominent Catholic family, the Dukes of Norfolk. Our building, which was constructed in 1772, housed the Duke's estate manager during the late 1700s and holds a position at the junction of St. James's Square and Pall Mall which has been witness to a number of significant historical events. Nearby are the royal residences of Clarence House and Buckingham Palace. Next door, in Norfolk House, Dwight Eisenhower oversaw the combined allied forces during the Second World War and, a few hundred yards away, Winston Churchill inspired the British people from the Cabinet War Rooms. A friend summarised the London experience best when he said "you live in a museum."

During his remarks at the dedication of the Concannon Programme, Justice Burger expressed a sense of the things needed to be done to restore the legal profession and its members to their intended roles as “healers and peacemakers”:

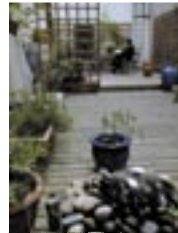
*First, the moral basis of law must be emphasized, for without that foundation the law would be, or it would become, a set of sterile, mechanical rules, devoid of real meaning in terms of human values.*

*Second, and closely related, professional ethics must have far greater attention from the profession. This should begin on the first hour of the first day in the law school.*

*Third, standards of civility and decorum are as imperative at the negotiating table as in the courtroom. This too must begin in the law schools. Civility must be seen as the coolant of the excessive ardor of the adversary system. I regret to say that civility is in short supply in our courtrooms, and its importance is far too little mentioned in law school.*

Notre Dame has now carried on the work of a great university with concern for traditional values for nearly a century and a half. The London branch of its school of law, with that inspiration and sponsorship, can lead the way to a more honorable and more effective profession.

As the voices of alumni of the program will attest, the London Law Program has had a significant effect on both their personal and professional development. Whether they have chosen to practice law in London or in the United States, London alumni practice their profession with an expanded appreciation for what Justice Burger called “the richness of our common law heritage.” In 1983, Justice Burger declared that the London Law Program had “a rare opportunity to encourage a reexamination of the moral basis and the jurisprudential assumptions on which our legal system and our legal education are based.” London Law Programme alumni stand as a testament to the efficacy of this reexamination.



## ND LONDON LAW ALUMNI



Joseph P. Shannon, '88 J.D.  
Dolan & Shannon, P.C.  
Chicago, Illinois

Spending my second year in London in the Concannon Program has had a profound influence on my legal career.

Actually, I applied to Notre Dame Law School because it had a second-year program in London. I strongly believed then, and still do, that a large part of education takes place outside the classroom.

I remember well how excited I was to spend my second year of law school in London and can remember arriving in the city like it was yesterday. My classmate, Todd Nelson, and I stayed in a youth hostel while we searched for housing. I had no money so I also learned how to juggle two jobs, a running career, and studies while in London. The whole experience pushed my survival skills to the limit and helped me to develop a set of skills I'm confident I would not have tapped had I stayed stateside.

You cannot attend school abroad and have it not alter the way you view things. I learned to get along with a diverse group of people, especially as London is one of the most cosmopolitan cities in the world. I joined a running club there, and we traveled throughout Europe, running races. I learned to acknowledge political views that were far left, far right, and in the crowded center. And, I must admit that while living there, I learned to appreciate our country, the Constitution, and our legal system more than ever. **I began to fully appreciate how our country protects and celebrates the rights of each individual. Essentially, I view the world differently from having lived in London.**

As an attorney, it is pivotal to be able to see numerous perspectives. Having been raised in a rural area, my London experience taught me to appreciate living in a big city. There's something to be said for going to the National Gallery during the day, seeing *Les Miserables*, and adjourning to a pub with friends. I believe that I live in Chicago because I spent my second year in London.

But my life is not the only one that changed because of my second year's study in London. My parents saw Ireland for the first time because they came to visit me while I was in London. I spent two weeks driving them through the land of their ancestors.

Today, I still use the skills I learned in London. And I don't limit myself to what I've done before. London affected me profoundly. I would study there again in a minute.



## ND LONDON LAW ALUMNI

Many students are unaware of the London Programme until it is advertised to them as 1Ls. Even as a law school applicant, I had my eye on practicing internationally although I was uncertain of how I could achieve this without years of US practice first. I must admit that the London Programme was one of the unique selling points of NDLS for me, with no other top-tier law school providing such an opportunity.

In 2000, we had one of the largest classes of 2Ls make the exodus to London. A number of LLMs from all over the world joined us, and together we had quite a memorable year.

Upon graduation, my heart won over my head as I decided to forgo an offer in my home state and instead move to London soon after marrying. The two years since then have been a whirlwind, with my requalifying as a Solicitor in England and practicing as a film finance lawyer at Davenport Lyons, a full-service firm specializing in media, technology, and entertainment in London. It's challenging to deal with parties to a transaction who are physically located across the globe but quite rewarding to know that the end result is a theatrically released film. Dealing with US-based clients is particularly enjoyable, especially with the instant rapport an American voice can bring on the end of a telephone.

Many ask how I ended up practicing in London and are often surprised to hear about the London Programme, despite their recognition of Notre Dame itself. Given that it is one of our best-kept secrets, we should ensure that it does not remain that way!



Katrina Stagner, '02 J.D.  
Davenport Lyons  
London, U.K.

I was fortunate to spend the summer of 2004 in Chile with the law firm Aylwin Abogados, thanks to a generous internship developed by Notre Dame Law alumnus Pedro Aylwin (L.L.M. '92). Working at the firm provided me with an incredible opportunity to learn about Latin America's civil law system, as well as a broad range of international law skills, including international trade and business, foreign investment, and intellectual property rights.

My summer also allowed me to learn about the struggle for human rights that has gripped Chile for the past four decades. As a student of human rights here at Notre Dame, it was this final topic that interested me most.

On September 11, 1973, a military junta, led by General Augusto Pinochet, overthrew the democratically-elected government of Salvador Allende.

Among those who survived the dictatorship's abuses and lived to struggle against it was the Aylwin family. The Aylwins introduced me to countless victims of the Pinochet regime, as well as to many lawyers working to protect and defend human rights in Chile. I heard stories of kidnappings, torture, disappearances, and denials of basic civil liberties.

One night over beers in a local Santiago pub, my good friend Carlos Bascuñán Aylwin, grandson of former Chilean President Patricio Aylwin, told me: "When I was in the third grade, my father told me never to enter into political conversations with my classmates. He was afraid the secret police would be listening, and I would be kidnapped." His statement shook me as I realized the highly personal nature of the repression that the Pinochet government had imposed upon Carlos and his family. But his family had not been alone in their suffering: Thousands of others suffered at the hands of Pinochet's repressive regime.

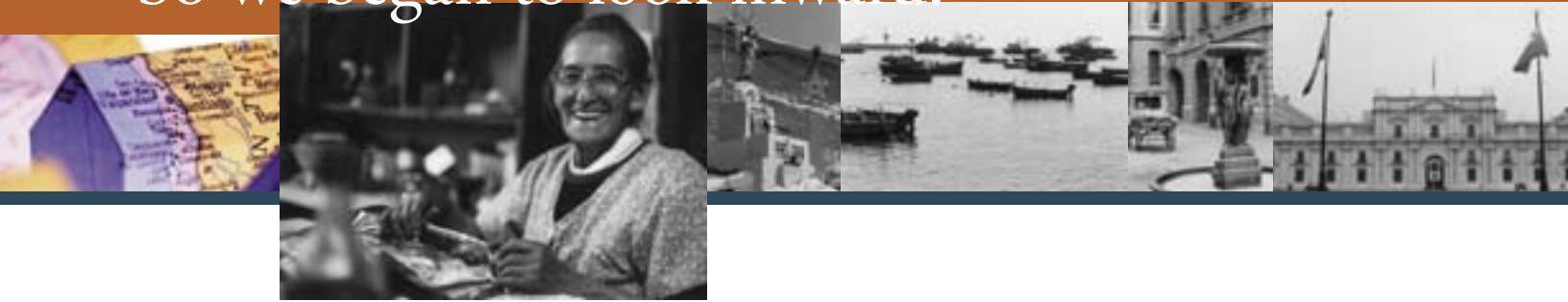
# Chilé

## From Oppression to Freedom



**Story by Jeff Hall, '06 J.D.**

We are bound by the sea to the west, the Andes to the east,  
desert to the north, and Antarctica to the south.  
We had nowhere else to go.  
So we began to look inward.



In defiance of this repression, Chile emerged from the Pinochet dictatorship in 1990, led by Patricio Aylwin as newly elected president. I wondered how it was that a country could retain its resilience after so much suffering.

Later, I met Pedro Aylwin Sr., who was held incommunicado in a desolate detention camp 16,000 feet high in the Andes. He suffered from altitude sickness, malnutrition, and the uncertainty of not knowing whether he would survive.

“Other countries look outward in order to discover the meaning of their existence. But Chile is different,” Tomás Aylwin, a partner at the firm, once told me. “We are bound by the sea to the west, the Andes to the east, desert to the north, and Antarctica to the south. We had nowhere else to go. So we began to look inward.”

When Chile looked inward, it discovered a land of snow-capped volcanoes, crystalline glacier lakes, dense tropical forest, vast desert plains, and endless seashore. During my short time in Chile, I discovered that this magically diverse geography has led Chileans to cultivate some of the best poetry, the best wines, and the best foods I have ever tasted. But this self-examination also led Chileans to cultivate a sense of identity that empowers them to confront the past with perspective and the future with hope.

And, indeed, the future looks bright for Chile. Political stability, a booming economy, low inflation, and an expansion of the arts and social services have made the country strong. It seems that out of the oppression of a dictatorship, Chileans have persevered to live the dream of democracy and peace. I will always be grateful to the Aylwin family for the opportunity to briefly share that dream with them.

# Reflections on Ana Perez-Arrieta, '05 J.D. making a difference

I will never forget the look on the faces of the two Cuban refugees as they stepped out of the terminal at the South Bend airport. Even though it was 11:00 p.m. on a Wednesday night and everyone had to work the next day, about ten members from the Mennonite Church in Elkhart, Indiana, where the refugees were being placed, were waiting to greet them. In addition, there were three workers from the

Refugee Services office in South Bend and two Cuban refugees that had only been living in the U.S. for about three months. I was there to translate for the Refugee Services workers as part of my community service project for Professor Szweda's Immigration Law class. Although the Refugee Services office has several Spanish translators, they called me because my parents are also refugees from Cuba, and I grew up speaking "Cuban Spanish" at home.



While we were waiting for the refugees to arrive, we learned from the Refugee Services workers that the refugees were father and son. The father had been held as a political prisoner in Cuba for seven years for being a human rights activist and for speaking out against Castro's government. Because the Cuban government tries to rid itself of political dissidents, the father was asked to leave Cuba and take his entire family with him. Unfortunately, this "request" by

the government carries a large fee: the Cuban government charges \$500

U.S. dollars per person for processing an exit application and completing a required medical exam. This is an incredible amount of money for the average Cuban worker who receives, at best, \$14 U.S. dollars per month from the state. It was no small miracle that the father had been able to afford to bring his son with him.

After traveling nonstop for two days and then making stops in Cancun, Miami, and Chicago, the father and son finally arrived in South Bend. My impression was that both were completely shocked and overwhelmed by the reception they received at the airport. As the translator and spokesperson for the group, I stepped forward and welcomed them with a smile. After muttering a few incomplete sentences in English and Spanish, the father, a proud and dignified man, introduced himself and his son by name and then explained that he was a biologist and his son a veterinarian.

After I identified the role that each of us had, we all sat down on the airport sofas to help the father and son fill out the necessary immigration and Social Security forms. When the Refugee Services workers handed each of them a twenty-dollar bill, I thought the father was going to cry. He looked as though he had just been handed a precious gem. Sensing the father's reaction, the Refugee Services worker explained that the twenty-dollar bill was not worth as much as it would have been in Cuba.

When I asked if they had any questions, they said yes. The father wanted to know when they could start to work, and the son asked when they could start taking English classes. I was struck by the fact that the only thing the two men wanted to know was how they could become contributing members of their new country, even though they were completely exhausted and had just walked off the plane after traveling for two days.

...he had no choice because he could no longer live under an oppressive regime, nor could he witness further human rights violations.

Before we departed, the father told me that he had something he wanted to tell the entire group, and he wanted me to translate. I asked everyone to gather around, and the father began to speak. He said he expected maybe one person to be at the airport to direct them, but he never imagined that a group would be waiting for their arrival. He expressed his gratitude for the warm reception.

He then spoke about how difficult it had been to leave his native land, but he said he felt like he had no choice because he could no longer live under an oppressive regime, nor could he witness further human rights violations.

At one point during the translation, I choked up because I began to imagine what it must feel like for refugees like my parents and—more immediately, for this father and son—to leave their families behind to start a new life in a foreign country, not knowing the language and having virtually nothing except a strong work ethic. That night, I began to feel a new connection to the father and son and the other Cuban refugees that had been in the U.S. for only a few months; even though I have never been to Cuba, we were all from the same place.

As it turns out, meeting these Cuban refugees and hearing their stories about life in Cuba is one of my most memorable experiences in law school. Before I began my service project, I thought it would involve no more than driving to the airport and serving as a translator for a few hours. In reality, much more happened to me that night. I was reminded that we, as lawyers, can do much more than read, research, and write. If we step outside of our bubble, whether it is on a full-time or pro bono basis, we can change lives. Perhaps that night is memorable to me because I feel like I made a difference.



The 2005–2006 academic year will mark the 50th anniversary of Professor Robert Rodes’s tenure with the Notre Dame Law School. The article that follows is a reminiscence that he offers upon this occasion.

That Rodes has had significant influence upon the Notre Dame law school community during this half-century finds testament in many ways, not the least of which is the sheer number of students with whom Professor Rodes has come in contact, as well as his impressive repertoire of scholarship, including nine books, thirty-plus articles, and countless book reviews and contributions.

In an article written for volume 73 of the 1997–98 Notre Dame Law Review, Professor emeritus Thomas Shaffer said of his colleague:

When I had the chance to leave law practice and become a full-time law teacher, I turned, in the time-honored fashion, for advice from my law teachers. The most memorable and persistent of these—the most cheerful, too, and therefore the most hopeful—was Robert E. Rodes, Jr., then a young (36) transplanted New Yorker, Harvard law graduate, and Boston lawyer....Rodes told me he had come to teaching and to Notre Dame because he wanted a contemplative life—not an obvious vocation for the father of seven, teaching four sections of law classes per semester, faculty advisor for the law review and already a prolific scholar. Thirty-five years later, those who continue to learn from him, as his seventieth birthday has come and gone, would guess that he has done what he wanted to do when he came to Notre Dame in 1956, and that is nowhere more evident than in his unique theological jurisprudence.”

Introduction by Carol Jambor-Smith  
Essay by Professor Robert E. Rodes



That Rodes’s enthusiasm for his chosen life continues is evident in a quote on his Web page: “Chief among the pleasures of teaching here for the better part of a lifetime has been the company. My work has been a blend of law with various kinds of history and theology, and it has never lacked for encouragement, understanding and useful criticism from students and colleagues over the years.”

In 1957, Rodes authored “Law at Notre Dame,” a booklet written for newly-admitted students to the law school. In its introduction, he wrote:

*Whether your subsequent legal career puts you on the bench, in the courtroom as an advocate, or in an office advising clients, you will be playing a part in the accumulation of tradition that will shape and reshape the system for generations to come. You will be at the heart of the institutions that make us great and that made us free.*

Because of his tutelage, countless NDLS graduates display the ethical, moral, and professional principles that form the foundation of a Law School education. Indeed, Professor Robert Rodes has been an integral part of the tradition of preparing the “Different Kind of Lawyer” that is a Notre Dame Law School lawyer.







# Science

**T**he most important thing about the Law School as it was when I came here in 1956 is that Joseph O'Meara was Dean. He was a tax lawyer from Ohio, and Father Hesburgh brought him on board shortly after becoming President. He was a man of total dedication and integrity, and in many ways a mentor to me. He was courtly, and, under a craggy exterior, kind. He was a man of few words, many of them lapidary. When asked how he was, he would say "in my usual ill humor." On things in general, he said, "The world is in a hell of a state...[sententious pause]...and always has been." He was in fact a master of the sententious pause: "Nobody knows the harm that is done by a bad lawyer." A hapless alumnus once chided him for making the Conflicts course compulsory. "In twenty years of practice," he said, "I haven't had a Conflicts case." In his best sepulchral tones (many of his remarks were uttered in sepulchral tones), O'Meara responded, "You only think you haven't." On legal education, he was more than exigent.

"The most important thing a law school can have is a firm tradition of sustained hard work." There was a rumor that he went to the Grotto the night before exams and blew out all the candles. It wasn't true, but he loved it.

His great contributions to the hard work tradition were the compulsory curriculum and the unlabeled examination. His theory on abolishing electives was that students could not know enough about their profession to elect intelligently, so they chose courses that would not cut into their social lives. His theory on exams was that a client didn't come into a lawyer's office with a problem neatly labeled "Torts" or "Contracts" or "Business Associations." So the students came in three evenings in a row, and answered a package of questions from different courses, guessing which of their teachers would grade their answer to this one or that. There was also the dreaded Comprehensive Examination. As I recall, it came a week after the main exams. Each question involved two different courses (again, of course, not labeled) and courses from the two previous semesters as well as the current semester could be used. Your grade on the Comprehensive Examination was half your G.P.A. for the semester. I always felt that thinking up and grading these questions was as complicated a task as answering them, but Bob Blakey, who has done both, insists that taking them was worse.

The students who underwent this rigorous treatment may not have been as bright on paper as their successors today, but I haven't really noticed much difference in that regard. The most important differences between students then and students now involve gender and number. Our first woman graduate was Grace Olivarez in 1970. We had admitted two women a couple of years before Grace, but the isolation proved too much for them, and they dropped out in their first year.





*“I suppose the major change is that both the Law School and the University were a lot smaller than they are now, and rather less hung up on scholarship.”*



Some of us younger faculty members had been working for some time to get Dean O’Meara to admit women, but he had steadily refused. He alluded to the lack of adequate restrooms as an excuse, and we passed a resolution offering to give up the faculty restroom and use the student facilities. I don’t think that was what led the Dean to change his mind.

Our graduating classes were generally just short of forty members. Seventy-some-odd would enter, and half would either quit or flunk out. Blakey’s class (1960) started at 75 and graduated 35. We were pretty inclusive in our admissions and, indeed, were required to admit anyone with a Notre Dame degree who applied. We eventually got up a form letter to discourage Domers with low LSATs and low grades from applying. We told them what percentage of people with their numbers had made it through in the previous few years. We prided ourselves on feeding our best graduates into the major corporate law firms. The traditional American success story of the son of working class parents achieving middle class status and professional distinction through education was still operative for a good many of the Catholic ethnic groups that provided most of our students, and the social forces that brought on the dichotomy between corporate and public interest practice had not yet manifested themselves. Some of our graduates went into government service—notably Blakey, who entered a Justice Department program for honor graduates, fetched up in the midst of Robert Kennedy’s campaign against the Mafia—and never looked back. But legal services for the poor were in a haphazard state with very few full-time lawyers. There was an office downtown where we spent an afternoon from time to time dealing with poor

people’s problems, and the local bar supported one newly admitted lawyer to work for the poor. Oddly enough, none of us realized that this service was inadequate. There was little enough demand for it because most of the poor didn’t know it was available. When Lyndon Johnson’s Anti-Poverty Program funded serious Legal Services offices, Con Kellenberg set one up in South Bend, with offices in all the poor neighborhoods. Later, when everybody realized that the offices existed, it became possible to consolidate them in one place so the program could be more efficiently run. It was the same Anti-Poverty Program that made the service of the poor an aspiration for many of our graduates and an option for some of them.

When I first came, there was a faculty lunch room in the basement of the Morris Inn. It was moved soon after to the Oak Room, upstairs in the South Dining Hall. Faculty from all over the University ate there if they did not brown bag or go home for lunch. So there was a good deal of informal mingling. The Law School contingent ate regularly with philosophers, theologians, mathematicians, and a biologist or two. Anything human gets legislated or litigated over sooner or later, so we tended to catalyze interdisciplinary discussions among our colleagues from other departments. I remember a philosopher saying nobody but the lawyers talked philosophy at lunch.





When you ask somebody what has changed in forty-some-odd years, the first answer has to be the person you are asking. When I first came, and for many years afterward, I had an office in the basement of the building, and I remember when I was thin enough and lithe enough to climb in the window if I forgot my keys. (So, by the way, was whoever stole my typewriter.) Prescinding from changes in me, I suppose the major change is that both the Law School and the University were a lot smaller than they are now, and rather less hung up on scholarship. Then as now there was a maxim, “Publish or perish” (“Publish or parish” in the case of our CSC colleagues), but it was not as inexorable or as hard to satisfy as it seems to be now.

On the whole, then, I think my younger colleagues are busier writing than I was at their age, and less broadly acquainted with people from other disciplines. On the other hand, they are probably more ensconced in the higher reaches of academe than we were in the old days. Once I showed my faculty ID to cash a check, and I was asked if it was a ticket to a football game. I don't think that happens anymore.



# 80 NOTRE DAME LAW REVIEW CELEBRATES ITS TH ANNIVERSARY

Volume 80 of the *Notre Dame Law Review* marks the 80th anniversary of the publication. Founded as the *Notre Dame Lawyer* in 1925 by then-Dean Thomas Konop, the publication was renamed in 1982.

In its first issue, U.S. Supreme Court Justices William Taft and Louis Brandeis both offered greetings; Dean Konop had served as a U.S. Congressman from Wisconsin during Taft's tenure as President of the United States.

In his Preface to Volume 50, Father Theodore Hesburgh, now President emeritus of Notre Dame, wrote, "Anniversaries are significant events because they afford us an opportunity to reflect upon the past and chart our course for the future." In its foreword to the same volume, the Editorial Board wrote:

***We have always sought and continue to demand from our authors—both students and attorneys—scholarship that penetrates the black letter of the hornbooks to treat the weightier concerns of justice and righteousness. Such scholarship has its basis in the simple yet exact phrase of Aquinas defining law as “an ordinance of reason for the common good” and finds its inspiration in the courageous statement of St. Thomas More on the scaffold: “I die the King’s good servant, but God’s first.” It goes beyond an adherence to things as they are to a concern for things as they ought to be.***

The following is the dedication the present *Law Review* board included in Issue 1 of Volume 80, a tribute to Clarence J. Ruddy, co-founder and first Editor in Chief, and the other *Review* members.

## A tribute to Clarence J. Ruddy and the members of Volume One

Nearly eighty years ago, a group of eager and idealistic young men published a law review to emulate the Notre Dame lawyer—a law review that, like graduates of Notre Dame Law School, was “synonymous with respect for law, and jealous of any attacks upon it.”<sup>1</sup> The leader of those young students was Clarence J. Ruddy, co-founder and first Editor in Chief of the *Notre Dame Law Review* (then the *Notre Dame Lawyer*).

On June 21, 2004, a day after his ninety-ninth birthday and just two months before the journal he co-founded celebrated its eightieth anniversary, Clarence passed away. Clarence's death marked the end of an era, as he was the last surviving member of Volume One. Thus, as we commence the Notre Dame Law Review's eightieth volume, we pay tribute to our first Editor in Chief and the members of Volume One.



Reflecting on Clarence's life, both through his writings and the words of his family and acquaintances, it is evident that Clarence held the law and the legal profession in the highest esteem. For Clarence, law was not merely a means to achieve an ideal; law was the ideal. Thus, in selecting a motto for the Notre Dame Lawyer, Clarence and his fellow staff members chose Lord Coke's maxim: “Law is the perfection of human reason.”<sup>2</sup>

Clarence knew that choosing such an idealistic maxim might provoke criticism, prompting him to defend the motto in a foreword to Volume One:

At this day, when so many reflections are being cast upon the law, it may seem a little naïve to choose as the motto for a new magazine “Law is the perfection of human reason.” We may be accused of ignorance of modern law, and may provoke a superior smile from the tolerant and a derisive laugh from the prejudiced; some may even urge us to change our motto. But we will not change it...

...[W]e still cling tenaciously to our motto....We still bestow upon our profession all the veneration that can be bestowed upon an ideal. Our faith is still whole. The law to us is an ideal, a symbol of right and majesty. It connotes peace and security, amity and concord.<sup>3</sup>

As Clarence admitted in a 1994 article, this language may seem “sophomoric and a little pretentious.”<sup>4</sup> Regardless, many students enter law school with a comparable view of the law, only to fall prey to the legal profession's seemingly abundant cynicism. Indeed, what makes Clarence the paradigmatic Notre Dame lawyer is not the ideals he professed as a student, but that he maintained those ideals throughout his legal career.

After graduating from Notre Dame Law School in 1927, Clarence began his legal practice at the firm of Alschuler, Putnam, Johnson, and Ruddy in Aurora, Illinois, earning a mere sixty dollars per month. Clarence later helped establish the firm of Myler,

# INTERESTING FACTS

Founded in **1925**, the Notre Dame Lawyer became the Notre Dame Law Review in **1982**.

Volume 80 stands on a solid foundation of **79** volumes, **371** issues, and over **69,000** pages of top-notch legal scholarship.

In its eighty-volume history, **nearly fifty** U.S. Supreme Court cases and **well over a thousand** state and federal courts have cited materials published in it.

Ruddy & McTavish, where he continued to practice law full-time until he retired in 1985 at the age of eighty. During his fifty-eight years of full-time practice, Clarence served as President of the Kane County Bar Association; Illinois delegate to several Democratic National Conventions; member of the Electoral College that elected President Franklin D. Roosevelt; Illinois Assistant Attorney General; founder of the Aurora Foundation and the local chapter of the Knights of Columbus; and sixty-five-year member of the Loyal Order of Moose, serving as Supreme Governor and General Counsel.<sup>5</sup>

For many, the true measure of success is not necessarily what one contributes during life, but the legacy one leaves behind. In setting a high standard for the *Notre Dame Law Review*, Clarence's legacy continues with every article published, every cite checked, and every student note written. More important, however, is the legacy he left to the Ruddy family. Clarence was a loving father, grandfather, and great-grandfather who passed his love and respect for the legal profession to his children and grandchildren. In fact, two of Clarence's children went on to become lawyers, and four of his grandchildren have elected to pursue a legal education.

As Volume Eighty contemplates the *Notre Dame Law Review's* past and future, we look to what Clarence told a group of Notre Dame Law students in 1948 regarding the *Notre Dame Lawyer's* mission:

*Remember, we were not merely going to publish a law review. We intended to study and report recent cases and legislative trends, of course. But we were going to do so much more. We were going to defend historic concepts, defend the law that we revered—the law, that is, that was built upon rights and duties established by God.*<sup>6</sup>

Volume 1 consisted of **200** pages and a grand total of **10** footnotes. In contrast, Volume 79 consisted of over **2,000** pages and nearly **10,000** footnotes.

Each issue of the Review is “Dedicated to Our Lady, Mirror of Justice.”

Clarence's words remind Volume Eighty and the legal academy that law reviews should not merely serve as a means by which students and professors gain recognition. Rather, journals like the *Notre Dame Law Review* should foster scholarly discourse in an effort to help the legal community approach the perfection embodied in Lord Coke's maxim. We feel confident that in the roughly eighty years since Clarence helped found the *Notre Dame Law Review*, we have remained faithful to this mission.

In 1925, Clarence offered this law review “as the expression of the Notre Dame lawyer.”<sup>7</sup> Appropriately, we now offer Volume Eighty of the *Notre Dame Law Review* to the memory of a man who exemplified what it means to be a Notre Dame lawyer: Clarence J. Ruddy.

In addition to paying tribute to Clarence, we, the members of Volume Eighty, also dedicate this volume to the other members of Volume One. These eight individuals strove toward high ideals through scholarship, establishing the tradition that breathes life into the work we do today.

**Paul M. Butler**, Assistant Business Manager  
**Maurice Coughlin**, Business Manager  
**John A. Dailey**, Editor of Book Reviews  
**Marc A. Fiehrer**, Associate Editor  
**William A. Hurley**, Assistant Business Manager  
**David P. Stanton**, Chairman, Foundation Committee  
**Luther M. Swygert**, Circulation Manager  
**William L. Travis**, Editor of Recent Cases

**Requiescat in Pace.**  
**Volume Eighty**  
**Notre Dame Law Review**

**1** Clarence J. Ruddy, Foreword, 1 NOTRE DAME LAW. 30, 30-31 (1925).

**2** Id. at 30. The motto, “Law is the perfection of human reason,” was abandoned without explanation in Volume Eight (1932), and later replaced by “Dedicated to Our Lady, Mirror of Justice” in Volume Twenty-Six (1950). Although Lord Coke's maxim no longer appears on our masthead, the *Notre Dame Law Review* remains committed to the ideals it embodies.

**3** Id.

**4** Clarence J. Ruddy, On the Shoulders of Giants: Reflections on a Life in the Law, EXPERIENCE, Spring 1994, at 12, 15.

**5** Obituary, CHI. TRIB., June 23, 2004, at C10.

**6** Clarence J. Ruddy, Address to a Notre Dame Law School Graduating Class (1948) (transcript on file with the *Notre Dame Law Review*).

**7** Ruddy, supra note 1, at 31.

# friends INDEED

During the fall 2004 semester, professors Patricia Bellia, Gerard Bradley, Richard Garnett, and Nicole Garnett served as amicus curiae, filing amicus briefs for various courts (a state supreme court, a federal appellate court, and the Supreme Court of the United States) on behalf of various constituencies—a United States senator, a research council, religious schools, and property-law professors.

To author such a brief acknowledges the expertise of each professor, as the term “amicus curiae” refers to “a bystander who, without having interest in the cause, of his own knowledge makes a suggestion on a point of law or of fact for the information of the presiding judge” (emphasis added. Krislov, *The Amicus Curiae Brief*, 72 *Yale Law Review* 694 [1963]).

The central principle to all such briefs is the addition of information that an expert feels, if provided, will further help guide a judge’s decision. Various political entities, including the United States and various state governments, may file briefs; so, too, may lawyers representing interested organizations and lobbyists representing various organizations. At times, a governmental body may file an amicus brief in a private case when there may be a public interest in the case’s outcome.

While the original intention of the brief was to provide the judge with factual information or advice of relevant legal opinions so that he/she could avoid any overt errors in the decision, many believe that, increasingly, the role of “outside, impartial” observer has been somewhat diminished as many amicus briefs are filed on behalf of interested parties, those for whom the outcome of the case may have some relevance. Indeed, some legal experts believe the true role of the amicus has become that of an advocate (cf., for example, *Scalia* 518 U.S. 1[1996]).



From left to right: Associate Professor Richard Garnett, Associate Professor Patricia Bellia, Professor Gerard Bradley, and Associate Professor Nicole Garnett

Along with Peter P. Swire of the Moritz College of Law at Ohio State University, Associate Professor Patricia Bellia co-authored an amicus brief for Senator Patrick Leahy, ranking Democratic Senator on the Senate Judiciary Committee; Bellia served as the Counsel of Record.

The brief, presented to the United States Court of Appeals for the First Circuit on rehearing en banc in *United States v. Councilman* (No. 03-1383), addresses the scope of the Electronic Communications Privacy Act (ECPA). ECPA was passed in 1986 to update the existing surveillance law framework for new technologies, including electronic communications. Senator Leahy was the original sponsor of the Senate version of ECPA and has a long-standing interest in the protection of privacy and the promotion of the Internet.

The Councilman case involves an Internet service provider’s alleged unauthorized acquisition of the contents of electronic communications intended for its subscribers. The United States District Court for the District of Massachusetts held that because the communications were briefly stored in the service provider’s system prior to being delivered to the recipient’s mailboxes, the provider’s conduct did not violate the main federal prohibition on surveillance activities, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by ECPA. Instead, the court concluded that the communications were subject only to the lesser protections of another portion of ECPA, the Stored Communications Act, which exempts conduct undertaken by a service provider. A panel of the First Circuit upheld the District Court’s decision by a vote of 2-1.

The brief on Senator Leahy’s behalf argues that the District Court and First Circuit panel majority misconstrued ECPA’s amendments to Title III. Under the construction of ECPA urged by the defendant and accepted by the District Court and First Circuit panel majority, an electronic communication is unprotected by Title III at any brief point of storage en route to the recipient’s mailbox. Because an electronic communication is stored at various points in the transmission process, whether a communication is protected by Title III would depend on whether, at a particular moment in time, it is between or within the computers transmitting it. Professor Bellia’s brief argues that this approach is flatly inconsistent with the legislative record of ECPA’s passage. The provisions adding electronic communications to Title III received broad, bipartisan support and reflected the view that electronic communications should be protected against prospective acquisition during the entirety of the transmission phase, much as telephone calls are protected. A contrary approach, the brief argues, would render ECPA’s extension of Title III to protect electronic communications a dead letter, because private parties and the government could acquire electronic communications under less protective standards.

Senator Leahy issued a press release to announce the filing of the brief; the link to the release is <http://leahy.senate.gov/press/200411/111504a.html>. A copy of the brief is available at <http://www.cdt.org/wiretap/20041112leahy.pdf>.

**On behalf of the Family Research Council, Inc. and Focus on the Family, Professor Gerard Bradley authored a brief which was presented to the Supreme Court of the United States for case No. 03-1693. The brief was filed by Robert P. George, Professor of Jurisprudence at Princeton University. The case appeals the United States Court of Appeals for the Sixth Circuit's decision to disallow the inclusion of the Ten Commandments within a display of documents at the Kentucky Supreme Court.**

Bradley's brief maintains that the constitutional and legal traditions of the United States have underpinnings found in the "ethical monotheism of the Bible," a monotheism that is most clearly articulated by the Ten Commandments. Therefore, including a display of the Ten Commandments is not an endorsement of a particular religion but rather an acknowledgement of the "theistic world view that informs this country's fundamental beliefs," such as human rights and limited government.

The brief argues that the Sixth Circuit incorrectly interpreted the display as having a "predominantly" religious purpose that, in effect, endorses religion. Bradley and George posit that this interpretation depended upon the Court's conclusion that there was no connection between the one display and the others, thus demonstrating the absence of either an "analytical or historical connection with the other documents." That such a connection did not exist, according to the Sixth Circuit, resulted in the "endorsement" of religion.

Contrary to the Court's conclusion, the brief argues that the central thesis of the displays is the presence of a transcendent, intelligent God upon whom humans depend for continuing care. Such a dependence finds echo in many documents important to the history of the United States, such as the Preamble and the Mayflower Compact, in which thanks, prayer, and homage are accorded to God. Numerous judicial citations were used in support of the idea that both American culture and politics depend upon the Bible in a unique way that is not echoed in reliance on other religious texts such as the Koran.

To justify its argument, the brief outlines four mistakes made by the Court:

1. The Circuit's conclusion that the display of the Ten Commandments served as an endorsement of a religious purpose and thus failed to have a connection to the other displays;
2. The Circuit's unfairly burdensome insistence that Kentucky authorities needed to demonstrate a connection between the one display and the others;
3. The Court's unreasonable weight accorded to the courthouse's description of the Ten Commandments as the "moral background of the Declaration of Independence," thus presupposing that Thomas Jefferson was necessarily inspired by the Ten Commandments, or at least by the Bible, to write the Declaration; and
4. The Circuit's contention that while the nine texts within the display are united by a common principle, they are each unique representations of that principle.

**Along with Stephen C. Emmanuel of Ausley & McMullen (Tallahassee FL) and Thomas C. Berg of the University of St. Thomas School of Law, Associate Professor Richard Garnett co-authored a brief in a Supreme Court of Florida case, *Bush et al. v. Holmes*, involving the state's Opportunity Scholarship Program. On behalf of a diverse group of religious schools and societies, including the Florida Catholic Conference, the American Center for Law and Justice, and the Christian Legal Society, the brief was filed in the appeal of a Florida appellate court's ruling requiring the exclusion of religion schools from the state-funded scholarship program.**

Professor Garnett's amicus brief contends that this discriminatory exclusion of religious schools and religiously motivated choices conflicts with the First Amendment, under which the government must remain neutral toward religion. The denial of scholarship funds to otherwise eligible children and families constitutes a discriminatory disability imposed on families who select religious schools.

The brief also maintains that the U.S. Supreme Court's recent decision in *Locke v. Davey* does not subvert the Constitution's requirement of neutrality toward religion. In that ruling, the Court permitted the State of Washington to deny public funds to a college's student training for the ministry program; the Court did not, however, approve the wholesale exclusion of religious schools from a general educational-assistance program. Finally, the brief shows that the Florida constitutional provision on which the lower court relied—a so-called "Blaine Amendment"—owes more to 19th century anti-Catholicism than to the best American traditions of religious freedom, and should therefore not be interpreted today to require discrimination on the basis of religion.

**With Professor David Callies of the University of Hawaii School of Law, Associate Professor Nicole Garnett authored a brief on behalf of over a dozen property-law professors in *Kelo v. New London*, which is being considered by the U.S. Supreme Court.**

In the case, the Court is considering the scope of the "public use" provision of the Fifth Amendment's Takings Clause, which states "nor shall private property be taken for public use without just compensation." It is the first time in twenty years that the Clause has been considered by the Court.

The City of New London is seeking to use eminent domain to acquire private homes and businesses for a redevelopment project, arguing that the development will advance an important public policy goal: economic development. It proposes to condemn the plaintiff's property and transfer it to a private developer, who will then replace the viable businesses and non-blighted homes with a redevelopment plan that includes a hotel, office space, and high-end condominiums.

In the case, the plaintiffs argued that economic development takings are necessarily unconstitutional as economic development is never a "public use." The City argued that economic development is always a "public use" and that the courts should always defer to legislative determinations of what projects are in the public interest.

In their brief, the professors set forth a middle ground, rejecting the categorical approach of the plaintiff and, instead, arguing that courts should ensure that the exercise of eminent domain is in fact reasonably necessary to advance the government's policy goals. This approach preserves the legislature's policy prerogatives as well as ensures that eminent domain is only used by government under constitutionally-appropriate circumstances.



Judge Madoka Hiruta of the Miyazaki District Court in Tokyo, Japan, is completing her year-long studies at the Law School as part of the Supreme Court of Japan's Overseas Training and Research Program for Young Judges. She is one of approximately thirty judges participating in this annual program. Of these thirty young judges, seventeen traveled to law schools throughout the United States. However, the relationship between the Law School and the Supreme Court of Japan is one of the oldest, with members of the Japanese judiciary having studied at Notre Dame since at least 1967.

# Judicial reform in A march into the future

The Japanese judicial system is currently undergoing extensive reform. With the goal of creating a justice system that is more responsive to the needs of Japan, reforms fall into three categories. One category seeks to create a justice system that is more easily accessed by the public, introducing such innovations as a system for easing the financial burden of court proceedings and ensuring speedier trials. Another category of reform introduces a new legal training system that is designed to expand the number of lawyers in the country. A third category integrates members of the general public into criminal proceedings through the *saiban-in* system. Because she believes that judges must both serve justice and better society, Judge Hiruta supports these reforms.

As a young girl, Judge Hiruta lived for several years in Scarsdale, New York. Early on, she dreamed of a career that would allow her to connect Japan and the United States, and a career in international law seemed the answer. However, as she matured, the importance of improving justice and society became most important to her. Having returned to Japan for high school and college, she more self-consciously considered the three different legal career paths available to her: the role of lawyer, prosecutor, or judge. She did not relish the client-centered aspects of life as a lawyer, which would often require her to act at the will of her clients. Because prosecutors in Japan deal solely with criminals, she felt that such a career choice would be too restrictive. Eventually, she began to deem a future as a judge the path that would best allow her to seek justice.





Judge Hiruta has been greatly impressed by current law students' dedication to community service and by their interest in exploring the relationship between their religious beliefs and legal thinking.

In her lifetime, Judge Hiruta has seen her country undergo radical, often rapid changes. Since 1991, Japan has suffered from an economic slump that has included deflation and a recessionary economy; this economic depression has spurred many changes. Strong governmental control and regulation as well as cultural centralization, once seen as national strengths, now are viewed as weaknesses. The economic slump has fostered governmental administrative and structural reforms that have resulted in a review and remedy system, rather than an oversight system, further promoting the government's decentralization. As the public's call for legal, social, and economic reform has become more insistent, there has been renewed attention to the country's traditional judicial system.

Prior to 2004, Japan had very few lawyers as a result of its weak legal education system. In the absence of a law school curriculum, those interested in the legal profession could enroll in a baccalaureate pre-law curriculum as well as in a preparatory school that focused on tutoring students to pass the country's bar examination.

# Japan

However, only 2-3% of those taking the country's bar examination passed it, leaving Japan with one of the smallest number of legal professionals per capita among industrialized nations

Since the public's demands for legal services are becoming more complex and insistent, the need to substantially increase the number of legal professionals has become critical. An effective post-bar, national legal apprenticeship program is already in place; however, such a program does nothing to ameliorate the country's low bar passage rate. In 2004 a system of process-based training was introduced nationally, establishing a law school curriculum for the first time that will supplement the apprenticeship curriculum, which will be abbreviated over the next three years. Now practitioners are educated in legal theory and practical skills before they take the bar exam and serve the mandatory post-law school legal apprenticeship. While slightly more than 1200 passed the bar exam in 2002, 1500 are projected to pass the 2004 exam and 3000 the 2010 exam.

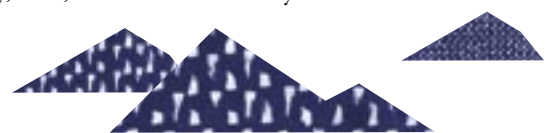
As the social and culture mores of the country have become more diverse and, thus, more complex, so, too, have the demands on the judicial system. Clearly, the increased number of lawyers in the country will leave the system better able to meet the legal needs of the general population, but the judicial reform movement is incorporating additional changes to increase this responsiveness. Court staff and prosecution staff are being increased; customary court costs have been decreased. Civil proceedings have been streamlined, including measures to promote timely hearings, less complex collection of evidence, and reinforcement of Alternative Dispute Resolution. Even the Summary Courts, which handle small claims, have increased the maximum amount of a small claim.

Reform is also taking place in criminal proceedings. Historically, in criminal proceedings, a judge in Japan serves as judge for both law and facts; there was no involvement of lay people in the proceedings such as in the United State's jury system. Within four years, a system of *saiban-in* will be introduced in certain serious criminal cases, allowing the inclusion of randomly selected members of the public (the "saiban-in") in deliberations and decisions for both fact-finding and sentencing. This will be one of the most drastic changes introduced to the Japanese judicial system. Such lay participation will, it is hoped, deepen the understanding and support of the judicial system among Japan's citizens, thus facilitating a more responsive court system.

Recently, the Japanese Supreme Court sent twenty senior judges to various countries to investigate the jury system as part of the judicial reform movement. Ten of the jurists visited the United States, two coming to South Bend: Judge Masaki Nishia, who has twenty-three years experience as a judge, and Judge Toshihiko Sonohara, who has fifteen years' experience as a judge. Judge Hiruta was responsible for arranging their schedules and guaranteeing their access to local members of the judiciary and legal profession as well as access to the faculty of the Law School. Judge Hiruta reports that one of the judges was so impressed with what he learned that he returned to Japan determined to modify immediately some of his courtroom practices.

Judge Hiruta's husband Shinichiro Hiruta, an attorney and former judge, accompanied her to Notre Dame so that they could both share the invaluable experience together. While Notre Dame is far removed from Japan, Judge Hiruta and her husband have felt very connected to the law school community. They have been greatly impressed by current law students' dedication to community service and by their interest in exploring the relationship between their religious beliefs and legal thinking. Indeed, Judge Hiruta says that she has felt the strength of this connection through many conversations with students. She has found students to be friendly, well-mannered, kind, and caring, and she admires the close ties that exist between the faculty and students.

When she learned that she would study at the Law School, Judge Hiruta said that she was immediately pleased, especially as she had heard good things about the relationship between NDLS and the Supreme Court of Japan. She is happy to report that the things she had heard are very true: The Law School truly connects community, faith, and reason in its study of law.



# ADMISSIONS NEWS

Alumni of the Law School continue to offer significant time and support to the Law School's admissions efforts. This past fall, more than 200 alumni made time in their schedules to take part in one or more programs coordinated by the Law School Admissions Office. Prospective applicants to the Law School met alumni at Law Days, Law Forums, Admissions Information Receptions, as well as during Online Chat sessions. The personal stories our alumni share at these events have helped prospective students develop a fuller understanding of the Law School's academic programs, career opportunities, culture, and educational mission.

The Admissions Office would like to thank the following volunteers for taking time out of their own busy professional and personal lives to assist with our enrollment efforts.

If you would like to participate in future student recruitment efforts, please contact Janet McGinn, '84 J.D., in the Admissions Office, at (574) 631-9019 or at [jmccginn@nd.edu](mailto:jmccginn@nd.edu).

Sincerely,

Janet McGinn  
Alumni-Admissions Coordinator

Heather Moriconi  
Assistant Director of Admissions

Charles Roboski  
Director of Admissions and Financial Aid

## Law Days and Law Forums

**Albert Allan, '92 J.D.**, Davidson College  
**Kevin Barton, '02 J.D.**, Portland State University  
**Jacquelyn Bayley, '02 J.D.**, University of Michigan  
**Robert Boldt, '95 J.D.**, Los Angeles Forum  
**Nicole Borda, '02 J.D.**, Penn State University  
**JonMarc Buffa, '01 J.D.**, George Washington University  
**Kristina Campbell, '02 J.D.**, Arizona State University  
**Edward Caspar, '01 J.D.**, George Washington University  
**Emily Chang, '01 J.D.**, Arizona State University  
**Elizabeth Cheung, '01 J.D.**, Barnard College/  
Columbia University  
**Sharon Christie, '86 J.D.**, Johns Hopkins University  
**Cathy Chromulak, '84 J.D.**, University of Pittsburgh  
**Joseph Collins, '92 J.D.**, University California—  
Los Angeles  
**Cynthia Constantino, '89 J.D.**, Rochester Area Law Fair  
**Chad Cooper, '96 J.D.**, Dayton Metro Law Fair  
**Julia Dayton, '99 B.A., '02 J.D.**, University of Minnesota  
**Patrick Donahue, '72 J.D.**, University of Nebraska  
**Matthew Doring, '97 J.D.**, Boston Forum  
**John Dyro, '01 J.D.**, University of Pittsburgh  
**Franklin Eck, '89 J.D.**, Denison University  
**Karen Edmonson Bowen, '00 J.D.**, San Francisco Forum  
**Dennis Ehling, '93 J.D.**, Pepperdine University  
**Patrick Emmerling, '93 J.D.**, University of Buffalo  
at SUNY  
**Erin Farrell J.D.'00**, Boston University/Boston College

**Mark Farrell, '02 J.D.**, Atlanta Forum  
**John Fisher, '91 J.D.**, University of Albany  
**Gregory Garber, '77 J.D.**, University of Oklahoma  
**Susan Gelwick, '94 J.D.**, Boston Forum  
**Richard Goehler, '82 J.D.**, University of Miami, Ohio  
**Colleen Grogan, '00 J.D.**, Atlanta Forum  
**Michael Grossman, '78 J.D.**, Centre College  
**G. Jay Habas, '85 J.D.**, Gannon University  
**Burke Harr, '98 J.D.**, University of Nebraska  
**Elizabeth Haley, '02 J.D.**, New York Forum  
**Edward Heath, '99 J.D.**, Yale University  
**Laura Hollis, '86 J.D.**, University of Illinois  
**Rachelle Hong, '02 J.D.**, Portland State University  
**Bernard Jones, '04 J.D.**, Ohio State University  
**Kenlyn J. Kolleen, '97 J.D.**, University of Colorado  
**Andrea Larkin, '80 B.A., '83 J.D.**, Michigan  
State University  
**Jennifer Lawson, '96 J.D.**, Los Angeles Forum  
**Susan Link, '86 J.D.**, University of Minnesota  
**Larry Liu, '04 J.D.**, Los Angeles Forum and  
University of California Los Angeles  
**James Lynch, '84 J.D.**, New York Forum  
**Pamela Macer, '03 J.D.**, University of Kansas  
**Jean MacInnes, '02 J.D.**, New York Forum  
and Cornell University  
**Kevin Martinez, '90 J.D.**, New Mexico State University  
and University of New Mexico  
**Alicia Matsushima, '97 J.D.**, Texas A&M University  
and Rice University  
**Colleen McDonald, '02 J.D.**, Fort Worth/Dallas Forum  
**Myra McKenzie, '02 J.D.**, Ohio State University  
**Michael Mendola, '92 J.D.**, Canisius College/  
Niagara University  
**Shawn Monterastelli, '02 J.D.**, Saint Louis University  
**Scott Moran, '97 J.D.**, University of Georgia  
**Christopher Mugica, '00 J.D.**, University of Texas  
**James Murray, '04 J.D.**, San Francisco Forum  
**Frances Nicastro, '01 J.D.**, New York Forum  
**Sara Oberlin Thomas, '01 J.D.**, Vanderbilt University  
**Mark Pasko, '01 J.D.**, Princeton University  
**Katherine Pauls, '01 J.D.**, Miami Law Fair  
**Kevin Peinkofer, '00 J.D.**, University of Buffalo  
**Adam Price, '00 J.D.**, University of Texas  
**Rupal Raval, '03 J.D.**, Chicago Forum  
**Stephanie Renner Gilford, '01 J.D.**, Centre College  
**Christine Rice, '98 J.D.**, Michigan State University  
James Madison College  
**Beth Riga, '02 J.D.**, Indiana University Bloomington  
**David Rivera, '99 J.D.**, University of California  
San Diego  
**Matthew Schechter, '96 J.D.**, San Francisco Forum  
**Jean Seidler, '99 J.D.**, University of Washington  
**Mary Ellen Sensenbrenner, '73 J.D.**,  
University of Wisconsin  
**Frank Shaw, '76 J.D.**, Brigham Young University  
**James Shea, '95 J.D.**, Trinity College  
**Thomas Shumate, '98 J.D.**, Vanderbilt University  
**Eileen Smith, '92 B.A., '96 J.D.**, University of Virginia  
**Gregg Stephenson, '00 J.D.**, University of Utah

**Joseph Tirone**, '92 J.D., Johns Hopkins University  
**Jeremy Trahan**, '96 J.D., Cincinnati Metro Law Fair  
**Carolyn Trenda**, '99 B.A., '02 J.D., Chicago Forum  
**Christopher Turk**, '97 J.D., University of Scranton  
**Ryan Van Dan Elzen**, '02 J.D., University of Wisconsin  
**Thomas VanGilder**, '04 J.D., University of California—San Diego  
**Thomas Warth**, '90 J.D., Rochester Area Law Fair  
**Kurt Weaver**, '87 J.D., University of North Carolina at Chapel Hill  
**Natalie Wight**, '03 J.D., San Francisco Forum  
**Ha Kung Wong**, '99 J.D., PRLDEF Law Day  
**Elizabeth Wons Kappenman**, '98 B.A., '02 J.D., University of Minnesota  
**Bryan Yeazel**, '02 J.D., The College of William & Mary  
**Mario Zepponi**, '88 M.B.A., '88 J.D., Stanford University and University of California Berkeley

### Alumni-Admissions Receptions

**William Anaya**, '97 J.D., Washington D.C.  
**James Basile**, '86 B.A., '89 J.D., San Francisco—Host  
**Ryan Bennett**, '00 J.D., Chicago  
**Emily Bienko**, '93 B.A., '97 J.D., Atlanta  
**John Blakey**, '88 B.A., '92 J.D., Chicago  
**Ryan Blaney**, '99 B.A., '01 M.Ed., '04 J.D., New York City  
**Robert Boldt**, '95 J.D., Los Angeles  
**Deborah Boye**, '80 J.D., Chicago  
**Matthew Bozzelli**, '99 B.B.A., '02 J.D., Atlanta  
**Adam Brezine**, '97 J.D., San Francisco  
**Jonathan Bridges**, '00 J.D., Dallas  
**Daniel Bubar**, '04 J.D., Chicago  
**Sarah Buescher**, '94 J.D., Philadelphia  
**JonMarc Buffa**, '01 J.D., Washington D.C.  
**Ophelia Camiña**, '82 J.D., Dallas—Host  
**Paola Canales**, '04 J.D., Miami  
**Ellen Carpenter**, '79 J.D., Boston  
**James Carr**, '87 J.D., New York City—Host  
**Edward Caspar**, '97 B.A., '01 J.D., Washington D.C.  
**Christopher Castro**, '00 J.D., Dallas  
**Michelle Castro**, '00 J.D., Dallas  
**Angela Colmenero**, '04 J.D., Dallas  
**Robert Curley L.L.B.**, '59 J.D., Chicago  
**Rebecca D'arcy**, '04 J.D., Washington D.C.  
**Adrian Delmont**, '03 J.D., New York City  
**James Ehrhard**, '00 J.D., Boston  
**Michael Fantozzi**, '88 J.D., Boston—Host  
**Kelly Folks**, '00 B.A., '03 J.D., New York City  
**Tomas Gamba**, '76 J.D., Miami  
**Idolina Garcia**, '95 J.D., Dallas  
**Gregory Garcia**, '04 J.D., Los Angeles  
**Robert Goethals**, '94 J.D., New York City  
**Paul Hanley**, '02 J.D., Philadelphia  
**Elizabeth Hanlon**, '95 B.B.A., '00 J.D., Atlanta  
**Christine Harding**, '01 J.D., New York City  
**Steven Hearne**, '98 J.D., Washington D.C.

**Michael Hilliard**, '72 J.D., Dallas  
**Maria Hrvatin**, '00 B.A., '03 J.D., Philadelphia  
**Amy Iannone**, '99 J.D., New York City  
**Michelle Inouye Schultz**, '97 J.D., Los Angeles  
**Thomas W. Jennings**, '80 M.B.A., '80 J.D., Philadelphia  
**Richard Jordan**, '69 J.D., Philadelphia  
**Christopher Keegan**, '02 J.D., San Francisco  
**John Kreis**, '70 B.A., '73 J.D., Los Angeles  
**Bridget Lankford**, '01 J.D., Philadelphia  
**Laura Leslie**, '03 J.D., San Francisco  
**Larry Liu**, '94 J.D., Los Angeles  
**Brendan Lowrey**, '03 J.D., Dallas  
**Kathleen Lundy**, '01 J.D., Boston  
**James Lynch**, '83 J.D., New York City  
**Jean MacInnes**, '02 J.D., New York City  
**John Macleod**, '63 B.B.A., '69 J.D., Washington D.C.—Host  
**Wayne Malecha**, '86 J.D., Dallas  
**Mark Martinez**, '04 J.D., Miami  
**Michael McCauley**, '96 J.D., Los Angeles  
**Stephen McClain**, '96 J.D., Los Angeles—Host  
**Dan McDevitt**, '90 B.A., '93 J.D., '94 L.L.M., Atlanta  
**Mark McLaughlin**, '75 B.A., '78 J.D., Chicago—Host  
**Heather McShain**, '96 B.S., '99 J.D., New York City  
**Marytza Mendizabal**, '01 J.D., Los Angeles  
**James Murray**, '04 J.D., San Francisco  
**Gearoid Moore**, '98 M.B.A., '03 J.D., New York City  
**Arthur O'Reilly**, '02 J.D., Washington D.C.  
**Katherine Pauls**, '01 J.D., Miami  
**Edward Ristaino**, '85 J.D., Miami—Host  
**David Ristaino**, '88 J.D., Miami  
**Cynthia Robinson**, '93 J.D., Boston  
**Matthew Schechter**, '96 J.D., San Francisco  
**Carolyn Short**, '77 B.A., '80 J.D., Philadelphia—Host  
**Martin Shrier**, '90 B.A., '95 J.D., Miami  
**John Skinner**, '95 J.D., New York City  
**Claire Storino**, '97 B.A., '00 J.D., Chicago  
**John Storino**, '97 B.A., '00 J.D., Chicago  
**Colin Tooze**, '02 J.D., Washington D.C.  
**Carolyn Trenda**, '99 B.A., '02 J.D., Chicago  
**Benjamin Tschann**, '04 J.D., Los Angeles  
**Christopher Turk**, '97 J.D., Philadelphia  
**Emmanuel Ubinas**, '02 J.D., Dallas  
**Francisco Valenzuela**, '03 J.D., Miami  
**Quinn Vandenberg**, '04 J.D., Boston  
**Catherine Wharton**, '04 J.D., Los Angeles  
**Natalie Wight**, '03 J.D., San Francisco  
**Brendan Wilson**, '04 J.D., Washington D.C.  
**Gerald Woods**, '75 M.B.A., '75 J.D., Atlanta—Host  
**Courtney Woolridge**, '01 J.D., Washington D.C.

### Online Chat Sessions

**Marcus Ellison**, '01 J.D., Midwest and Great Lakes Regions  
**Elizabeth Hanlon**, '95 B.B.A., '00 J.D., South and Southeast Regions  
**Christine Harding**, '01 J.D., Northeast and New England Regions

**Matthew Hoyt**, '00 J.D., Midwest and Great Lakes Regions  
**Paul Jones**, '90 J.D., Northwest and West Regions  
**Matthew Kowalsky**, '95 B.A., '02 J.D., Northeast and New England Regions  
**James Lynch**, '83 J.D., Northeast and New England Regions  
**Anthony Patti**, '90 J.D., Midwest and Great Lakes Regions  
**Lisa Patterson**, '96 J.D., Northeast and New England Regions  
**Raymond Ripple**, '01 J.D., Northeast and New England Regions  
**Lindsay Sestile**, '02 J.D., Midwest and Great Lakes Regions  
**Raymond Tittmann**, '97 J.D., Northwest and West Regions  
**Carolyn Trenda**, '99 B.A., '02 J.D., Midwest and Great Lakes Regions  
**William Walsh**, '95 J.D., South and Southeast Regions

### Presentations

**Stephen Boettinger**, '90 B.A., '99 J.D., Marquette University  
**Martin Foos**, '92 B.A., '95 J.D., University of Dayton  
**Timothy Gerend**, '96 J.D., Marquette University  
**Amy Reichelt**, '03 J.D., Marquette University  
**Paul Mattingly**, '75 J.D., University of Dayton  
**Elizabeth Mattingly**, '75 J.D., University of Dayton  
**Sheila O'Brien**, '77 B.A., '80 J.D., LSAC Chicago Law Forum Panel  
**Ryan VanDenElzen**, '02 J.D., Marquette University  
**Katrina Wahl**, '02 M.A., '03 J.D., University of Dayton

### Alumni Liaison Program

**Robert Greene**, '69 J.D., Canisius College  
**Mario Zepponi**, '88 M.B.A., '88 J.D., University of California Berkeley  
**Steven Richard**, '89 J.D., Providence College  
**Timothy Egan**, '97 J.D., College of the Holy Cross  
**Kathleen Lundy**, '01 J.D., College of the Holy Cross

### Other Alumni Assistance

**Mary Blazek**, '04 J.D.  
**Karen Manley**, '01 J.D.  
**Carolyn Trenda**, '99 B.A., '02 J.D.

## 1930s

**Thomas P. Foy, '38 B.S., '39 J.D.**, received an honorary doctorate of human letters degree from Western New Mexico University.

## 1950s

**Charles Roemer, '53 B.A., '58 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

## 1960s

**Justice Joseph P. Albright, '60 B.B.A., '62 J.D.**, became the Chief Justice of the Supreme Court of Appeals of West Virginia on January 1, 2005.

**Edmund J. Adams, '63 J.D.**, has been chosen to serve as chairman of the Ohio Board of Regents for 2005. He was appointed to the board in 1999 and served as vice chairman of the board for 2004 and 2005. He is Of Counsel to Frost Brown Todd LLC and concentrates his legal practice in the area of general corporate representation, including corporate reorganizations and bankruptcies, mergers and acquisitions, secured transactions and other general corporate matters.

**Stephen A. Seall, '66 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Clifford A. Roe, Jr., '67 J.D.**, has been re-elected to another three-year term as Managing Partner of Dinsmore & Shohl in Cincinnati, Ohio. Roe joined the firm in 1967 and has been a partner since 1974.

**Peter King, '68 J.D.**, of New York, was re-elected to his eighth term in Congress.

**Brian J. Lake, '68 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Professor Thomas M. Ward, '68 J.D.**, published a new 2004 edition of his West Publishing Company textbook *Intellectual Property in Commerce*.

**Michael C. Runde, '69 J.D.**, was re-elected Chair of the Wisconsin Chapter of the American Immigration Lawyers Association. He is a shareholder of Hochstatter, McCarthy & Rivas, S.C., Milwaukee, where he concentrates on employment based immigration law.

## 1970s

**Nelson J. Vogel, '71 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Alfred J. Lechner, Jr., '72 J.D.**, joined Tyco as its vice president and chief counsel for litigation on January 31, 2005.

**Edward W. Colbert, Jr., '73 J.D.**, is the Deputy Secretary of the Commission; Commodity Futures Trading Commission.

**Peter Visclosky, '73 J.D.**, was elected to a tenth term in Congress, representing District 1 in Indiana.

**Terrence J. McGanne, '72, '75 J.D.**, was sworn in as judge for the Circuit Court for Montgomery County, Maryland on July 16, 2004.

**John T. Sperla, '75 J.D.**, was named to the Management Committee for the calendar year 2005 at Mika Meyers Becket & Jones PLC in Grand Rapids, Michigan.

**Timothy Howard, '76 J.D.**, was selected by the Leading Lawyers Network as a "pillar of the Illinois legal profession." Mr. Howard is an attorney with Howard & Howard in Bloomfield Hills, Michigan, where he concentrates his practice in commercial transactions and litigation and bankruptcy law. The leading Lawyers Network is a division of the Law Bulletin Publishing Company, a print and electronic organization that conducts surveys of lawyers to determine the top five percent of attorneys in the state of Illinois based upon reputation and experience. Those chosen are considered "pillars of the Illinois Legal Profession".

**Dale S. Recinella, '76 J.D.**, published *The Biblical Truth about the Death Penalty*.

**John Gaal, '74 B.A., '77 J.D.**, was among the 68 Fellows elected to the College of Labor and Employment Lawyers by its Board of Governors at an induction ceremony in Atlanta on August 8, 2004. John is a member of the law firm of Bond, Schoeneck & King in Syracuse, New York.

**Patrick A. Salvi, '78 J.D.**, Law School Advisory Council member and managing partner of the Chicago law firm of Salvi, Schostok & Pritchard P.C., reached his 100th multi-million dollar settlement and verdict totaling over \$300 million on behalf of his clients.

**Dean A. Calland, '79 J.D.**, of Babst, Calland, Clements and Zomnir, P.C. in Pittsburgh, Pennsylvania, was selected as one of *The Best Lawyers in America* 2005–2006.

**M. Ellen Carpenter, '79 J.D.**, was elected President of the Boston Bar Association. She is a partner at the Boston law firm of Roach & Carpenter, P.C.

## 1980s

**Steven C. Barclay, '80 J.D.**, has joined Jennings, Strouss & Salmon, P.L.C. in Phoenix, Arizona.

**David J. Dreyer, '80 J.D.**, was appointed to the Rotary Foundation of Indianapolis' Board of Directors. Dreyer serves on the Marion Superior Court.

**Carolyn P. (Short) Torsella, '77 B.A., '80 J.D.**, resigned her partnership at Reed Smith's Philadelphia office to become General Counsel for the U.S. Senate Judiciary Committee at the invitation of the Committee's chairman, Senator Arlen Specter, R-PA.

**Timothy J. Abeska, '82 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Robert B. Clemens, '82 J.D.**, has been named to the 2005–2006 edition of *The Best Lawyers in America*. Clemens is a partner at Bose McKinney & Evans LLP in Indianapolis, Indiana. He was also recertified as a civil trial advocate by the National Board of Trial Advocacy.

**Gerald F. Lutkus, '74 B.A., '82 J.D.**, is listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Pamela Mills, '82 J.D.**, is a partner with Duane Morris LLP in Chicago, Illinois. She is part of the firm's Corporate Practice.

**The Honorable Marianne L. Vorhees, '83 J.D.**, of the Delaware Circuit Court in Muncie, Indiana, was the first recipient of the Civility Award for her service to the Litigation Section of the Indiana State Bar Association.

**Nancy Ickler, '84 J.D.**, was listed in the 2005–2006 edition of *The Best Lawyers in America*.

**Kym Worthy, '84 J.D.**, was appointed by the 63-member bench of the Wayne County Circuit Court to become the Wayne County (Detroit) prosecutor.

**David Barry, '86 J.D.**, is listed in the 11th edition of "The Best Lawyers in America 2005–2006". He is recognized for his work in business litigation and criminal defense. He is an attorney at Pierce Atwood LLP in Portland, Maine.

**Anna Moore Carulas, '86 J.D.**, partner in the Cleveland office of Roetzel & Andress, is one of the "Top 50 Women" lawyers on the 2005 "Ohio Super Lawyers" list from *Law and Politics* magazine and *Cincinnati Magazine*.

**Mark S. Miller, '86 J.D.**, an attorney at Fulbright & Jaworski L.L.P. in Houston, was named a Texas Super Lawyer by *Texas Monthly* magazine.

**Paul J. Peralta, '79 B.A., '86 J.D.**, moved from South Bend, Indiana, to Charlotte, North Carolina, and joined the firm of Moore & Van Allen.

**Jeff Jankowski, '84 B.A., '87 J.D.**, helped coach South Bend's East Side Little League (the team included his daughter) to the Junior League World Series championship in Kirkland, Washington, in August 2004. The team returned to South Bend as undefeated World Champions.

**Timothy McLean, '88 J.D.**, is an attorney with Clingen Callow and McLean LLC.

**Kathleen Marie Burke, '86 B.A., '89 J.D.**, was elected Judge of the Circuit Court of Cook County.

## 1990s

**Thomas F. Warth, '90 J.D.**, has joined the Rochester, New York, law firm of Hiscock & Barclay.

**Michael S. Kelly, '91 J.D.**, has been named General Counsel for Alfa Leisure, Inc., a Southern California-based manufacturer of recreational vehicles and motor homes.

**Garth Meintjes, '91 LL.M.**, participated in an International Justice Project Meeting in New York in October 2004, sponsored by the Law School's Center for Civil and Human Rights.

**Patricia McKinnon, '94 J.D.**, an attorney with Baker Pittman & Page in Indianapolis, received a presidential citation from the Indiana State Bar Association for her service and dedication.

**Wendy Andersen, '95 J.D.**, owns and runs Shine Yoga Center.

**Karin Guenther, '95 J.D.**, has left Tonkon Torp to take a job with the Community Development Law Center, which advises nonprofits in the business of building and administering affordable housing.

**James D. Smith, '95 J.D.**, has been elected partner in the law firm of Bryan Cave LLP. James is in the class actions and commercial litigation groups in Bryan Cave's Phoenix office.

**Kristen M. Fletcher, '96 J.D.**, has been elected President-Elect of The Coastal Society, a non-profit organization established in 1975 to provide an interdisciplinary forum for information exchange on coastal issues.

**John C. Smarrella, '96 J.D.**, was elected partner at Barnes & Thornburg in South Bend, Indiana. He works in the firm's Business, Tax & Real Estate Department.

**James R. Sweeney II, '96 J.D.**, was elected partner at Barnes & Thornburg in Indianapolis, Indiana. He works in the firm's Intellectual Property Department where he litigates and prosecutes patents, trademarks and copyrights.

**Jeremy L. Trahan, '96 J.D.**, has been elected partner at Thompson Hine LLP in Dayton, Ohio. He is a member of the Corporate Transactions & Securities and eBusiness & Emerging Technologies groups.

**Bradley J. Wiskirchen, '96 J.D.**, is the Chief Executive Officer of Keynetics, Inc. and its wholly owned subsidiaries.

**Geoff Cockrell, '97 J.D.**, has been elected partner at Wildman, Harrold, Allen & Dixon LLP where he practices in the areas of corporate, securities and tax, commercial real estate and SBIC/venture capital.

**Masanori Hirata, '97 J.D.**, is the Democratic Party of Japan's candidate to fill the vacancy of a House of Representatives seat in Fukuoka Prefecture.

**Ireneo Bong Miquiabas, '94 B.A., '97 J.D.**, has returned to the University as Director of International Student Services and Activities.

**John Morrow, '96 J.D.**, has been elected as a shareholder in the Seattle office of Heller Ehrman. He joined the firm's Seattle office in 2003 and is a member of Heller Ehrman Venture Law Group.

**Ali M. Qazilbash, '97 LL.M.**, is teaching "Human Rights in an Age of Terror: the View from South Asia" through the University's Department of East Asian Languages and Literature.

**Christopher M. Turk, '97 J.D.**, joined VF Corporation's subsidiary, The H.D. Lee Company, Inc., in Wilmington, Delaware as counsel.

**Mark C. Cawley, '98 J.D.**, is an attorney at Saul Ewing in Philadelphia. He is engaged to Laura Merianos.

**Too Keller, '98 J.D.**, was elected partner to Bose McKinney & Evans LLP's Litigation Group in Indianapolis, Indiana. He practices in the area of business and commercial litigation.

**Elizabeth A. Krichmar, '99 J.D.**, is an associate at Preston Gates & Ellis LLP's Orange County, California office, where she works in the firm's commercial litigation practice.

**Peter Morgan, '99 LL.M.**, participated in an International Justice Project Meeting in New York in October 2004 sponsored by the Law School's Center for Civil and Human Rights.

**James Mullen, '99 J.D.**, joined the San Diego office of Gray Cary Ware & Freidenrich as an associate.

**Kristopher I. Tefft, '99 J.D.**, was profiled in the July/August 2004 issue of *Washington Business* magazine.

**Tracy Warren, '99 J.D.**, is an associate at Wilson Petty Kosmo & Turner LLP in San Diego, California. She joined the firm's Employment Law Group where her practice includes immigration law; procuring employment-based visas; and offering immigration counsel in high tech, medical, television, collegiate, and sports related fields.

## BIRTHS

Wayne A. Hill, Jr., '91 J.D., and his wife, Dominique welcomed a son, James Philip, to the world on July 8, 2004. They live in Fairport, New York with their two other children, Heidi and Drew. Wayne is in his seventh year at the Monroe County Public Defender's Office.

John L. Machado, '92 J.D., and his wife, Nancy, welcomed their second child, Nicholas James, on August 1, 2004. Nicholas joins his two-year-old sister, Katherine. John continues his criminal and civil litigation practice as a solo practitioner in the Washington, D.C. area.

Conor Dugan, '03 J.D., and his wife, Laurel, welcomed their first child, Gianna Maria Dugan. They live in Silver Spring, Maryland.

Vita Onwuasoanya, '04, LL.M., and her husband, Steve, announced the birth of Ikedichi on December 16, 2004, in New York, New York.

## MARRIAGES

Daniel Overbey, '98 J.D., married Kristine in the Northwoods of Wisconsin.

Stephanie A. Gumm, '99 J.D., married Jeffrey L. Hale on January 10, 2004.

Kate E. Huetteman, '01, '04 J.D., married Paul D. Mueller, '00 M.A., '04 Ph.D., on June 12, 2004 at St. Paul on the Lake in Grosse Pointe Farms, Michigan. Andrew T. Blum, '95, '98 J.D., was a groomsman and Sairah G. Saeed, '04 J.D., was a bridesmaid. In attendance were Mark J. Adey, '88 J.D., Peter M. Flanagan, '04 J.D., and Claire S. McKenna, '04 J.D.

Jack Hanssen, '02 J.D., married Rebecca McIlvaine on June 26, 2004. Ian Redmond, '04 J.D., attended as a groomsman. They live in Falls Church, Virginia. Jack is practicing real estate law at Moyes & Levay, P.L.L.C. in Leesburg, Virginia.

Elizabeth Anderson, '03 J.D., married Bruce Spinney on August 14, 2004.

Conor Dugan, '03 J.D., married Laurel Marie Sink on November 22, 2003. Conor works at the U.S. Department of Justice in the Civil Rights Division, Appellate Section.

# 2000s

**Michael E. Chaplin, '00 J.D.**, moved to White & Case in Los Angeles, California.

**Akram Faizer, '00 J.D.**, joined the business litigation department of the Buffalo, New York law firm of Hodgson Russ LLP.

**Erin Farrell-Milosavljevic, '00 J.D.**, and her family moved from New York City to Northampton, Massachusetts, where she works for an immigration law firm in town that specializes in academic and corporate immigration.

**Matthew Hoefling, '00 J.D.**, left the U.S. Attorney's Office to become an associate at Helms, Mulliss & Wicker in Charlotte, North Carolina, on January 3, 2005.

**Helena Olea, '00 LL.M.**, participated in an International Justice Project Meeting in New York in October 2004 sponsored by the Law School's Center for Civil and Human Rights.

**Joseph P. Reid, '00 J.D.** has moved from Gray Cary to Fish & Richardson in San Diego, California.

**Kevin F. Connolly, '01 J.D.**, is an associate with White & Case LLP, in the firm's Capital Markets group. He is married to Rebecca Wall, also an associate at White & Case in the banking department. They live in London, England, with their son, Finnegan James.

**Kelley McGeehan, '01 J.D.**, moved back to San Diego, California, after spending three years at the Cook County State's Attorney's Office in Illinois.

**Kristina Michelle Campbell, '02 J.D.**, moved to Phoenix to work as a Staff Attorney for Community Legal Services. She passed the Arizona bar and continues to work as an advocate for farm workers in the area of federal labor and employment litigation.

**B. Patrick Costello, Jr., '90 B.A., '02 J.D.**, has been appointed assistant U.S. Attorney in the Misdemeanor Section.

**Arthur O'Reilly, '02 J.D.**, accepted a 2005–2006 clerkship with Judge Emilio Garza of the Fifth Circuit Court of Appeals.

**William G. Whitman, '98 B.A., '02 J.D.**, has joined the Memphis, Tennessee, office of Bass, Berry & Sims as an associate, concentrating his practice in the areas of commercial litigation and product liability defense.

**Jacqueline R. Gottfried, '03 J.D.**, has joined the Cincinnati office of Ulmer & Berne LLP as an associate in the firm's Product Liability Group, where she works on the pharmaceutical team.

**Kathryn Meacham, '03 J.D.**, joined the Washington, D.C. office of Akin Gump

Strauss Hauer & Feld, working in the litigation department.

**Nelson O. Ropke, '03 J.D.**, has joined the Detroit office of Miller, Canfield, Paddock and Stone, P.L.C. as an associate in the Financial Institutions and Transactions Group.

**Rebecca D'Arcy, '04 J.D.**, accepted a clerkship with Judge John Rainey of the United States District Court for the Southern District of Texas for 2005–2007. She is engaged to Arthur O'Reilly, '02 J.D. and they are planning a September 2005 wedding in Grosse Point, Michigan.

**Anne M. Davet, '04 J.D.**, is an associate at Baker Hostetler LLP in Cleveland, Ohio.

**Jeremy N. Gayed, '04 J.D.**, is an associate with McAndrews, Held & Malloy, Ltd. in Chicago, Illinois.

**Maria Jose Gueembe, '04 LL.M.**, interned at Fiscalia Especial para Movimientos Sociales y Politico del Pasado, Mexico, September–November, 2004.

**Dr. Vineeta Gupta, '04 LL.M.**, spoke on October 15, 2004 at the University of Houston on "Grass-Roots Health care in the Indian Context," in an event sponsored by the Association for India's Development. On December 2, 2004, Dr. Gupta participated in protests against policies undermining the fight against AIDS in women at the World Bank Headquarters in Washington, D.C. The protests marked the 2004 World AIDS Day. Dr. Gupta also interned at the Center for Economic Justice in Washington, D.C., June–August, 2004.

**Leonardo Hidaka, '04 LL.M.**, is interning at the Inter-American Commission on Human Rights, Washington, D.C., July 2004–June 2005.

**Joseph Isanga, '04 LL.M.**, interned at the Maryknoll Office for Global Concerns in Washington, D.C., June–August, 2004.

**Oksana Klymovych, '04 LL.M.**, interned at ABA CEELI in Washington, D.C., June–August, 2004.

**Kathryn L. Koenig, '04 J.D.**, is an associate at Plunkett & Cooney, P.C. in Bloomfield Hills, MI, where she focuses her practice in the areas of labor and employment law and commercial litigation.

**Neza Kogovsek, '04 LL.M.**, spoke on November 8, 2004, at the Notre Dame Law School on "International Tribunal for Yugoslavia at Crossroads," an event sponsored by the CCHR and the International Human Rights Society. Neza also interned at Human Rights First and Human Rights Watch in New York, June–October, 2004.

**Catherine Lockard, '04 J.D.**, is a lawyer with Bryan Cave LLP in Phoenix, Arizona, working in the firm's labor and employment client service group.

**Maria del Pilar Mayoral, '04 LL.M.**, interned at Human Rights Watch, July–September, 2004.

**Paul W. McAndrews, '04 J.D.**, is an associate with McAndrews, Held & Malloy, Ltd. in Chicago, Illinois, where he focuses on intellectual property litigation.

**Vita Onwuasoanya, '04 LL.M.**, interned at the International Center for Transitional Justice, New York, June–December, 2004.

**Marianne Schulze, '04 LL.M.**, interned at the Crimes of War Project in New York, June–August, 2004.

**Yordan Sirakov, '04 LL.M.**, interned at the Research Training Triangle in Washington, D.C., June–August, 2004.

**Yehenneh Walilegne, '04 LL.M.**, interned at the International Labor Organization in Geneva, Switzerland, July–September, 2004.

## IN MEMORIAM

Professor Emeritus Charles Crutchfield passed away on July 18, 2004 in San Antonio, Texas at the age of 85. Professor Crutchfield was an active member of the Law School faculty from 1974 to 1985, during which time he taught Family Law, Public Interest Law, Appellate Advocacy, and Street Law.

Justice Arthur B. Curran, '50 J.D., passed away in July 2004.

Timothy Patrick Galvin, '59 B.S., '62 J.D., passed away on July 21, 2004 at Northwestern Memorial Hospital in Chicago, Illinois.

Thomas R. Elmer, '69 J.D., passed away on December 30, 2004, at 59, after a three-and-a-half year battle with pancreatic cancer.

Thomas A. Kronk, '70 B.A., '73 J.D., passed away on November 1, 2004.

Jo Ellen O'Connor, '82 J.D., passed away on January 16, 2005.

Chad Anthony Trulli, '99 J.D., lost his wife, Renee Marie, on February 3, 2005, at the age of 34. She is survived by Chad, their infant son, Henry Renee, her parents, brothers, and sister.

Meaghan Elizabeth Murphy, '00 J.D., died on October 19, 2003 of an inoperable brain tumor, surrounded by her parents, sisters, and beloved law school friends.



## NOTRE DAME LAW ASSOCIATION

# Thomas More Award conferred upon Hesburgh



During its fall 2004 meeting, the Notre Dame Law Association Board of Directors conferred upon President-Emeritus Theodore Hesburgh, the Thomas More Award, which is given to Notre Dame Lawyers who have distinguished themselves as outstanding lawyers, jurists, or public servants, while exhibiting uncompromising integrity and loyalty to conscience.



The award is named for St. Thomas More, who has been the model for Catholic lawyers for centuries. Thomas More was chancellor of England during the reign of Henry VIII and followed the principle "Do what is right, cost what it may."

Awardees would be Notre Dame lawyers who are or have been practicing lawyers, judges, or in public service, including lawyers working in local, state or national government positions or serving as elected representatives.



The board also elected Judge David Dreyer, '80 J.D. as President-Elect and welcomed new members: Ann Merchlewitz, '83 J.D. who represents Region 4 (Minnesota, North Dakota, South Dakota, and Wisconsin), Martha Boesen, '91 J.D. who represents Region 5 (Iowa, Kansas, Missouri, Nebraska), Tim McLean, '88 J.D. who represents Region 6 (Illinois except Cook County, Northwest Indiana), Dan McDevitt, '90 B.B.A., '93 J.D., '94 L.L.M. who represents Region 15/17 (Florida, Georgia, North Carolina, South Carolina, Puerto Rico) and Peter Witty, '89 BS, '97 J.D. who is the at-large representative. Ellen Carpenter, '79 J.D. was re-elected to represent Region 11 (Maine, Massachusetts, New Hampshire, Northern Connecticut, Rhode Island, Vermont).

# The heart you choose

Story by Adèle Auxier, '07 J.D.



The reaction from the Notre Dame community, of which I was a novice member, was immediate. Professor Bauer announced the situation to my section and asked my classmates to pray for me. That night, around seventeen students showed up at my apartment, bringing encouragement and prayers.

“PICK YOUR HEART.” The bright plastic letters on the refrigerator spelled out, crossword-style, the only sentence I could come up with using a cheap 26-letter set. “Hmmm... that’s interesting,” commented my roommate’s sister. “What does it mean?” I wasn’t sure myself. A month into my first year of law school at Notre Dame, I didn’t feel like a “different kind of lawyer”; the heart I was building seemed pretty selfish. “God,” I prayed, “Give me your heart. Mine’s not making it.” I had no idea how right I was.



**What God Knew** (acrylic and mixed media on baltic birch) painted by Doris Hutton Auxier, Chair and Professor of Art, Trinity Western University, British Columbia, in honor of her daughter, Adele.

After working on and around Ottawa’s Parliament Hill for three intense years after college, I had savored the chance to return to an academic life at NDLS. I was intrigued by the law school’s mission and looked forward to sharpening my intellect through class debates and after-hours discussion.

However, soon into the first semester, my casebooks seemed especially heavy and my study hours felt, at times, unbearably long. When climbing the stairs to the library began leaving me breathless, I thought I was feeling another symptom of the stressful first year of law school studies.

Soon after practice midterms, I started blacking out on a regular basis. One night on the way home from the library, a friend saw me nearly pass out on the sidewalk; he soon convinced me that I needed to see a doctor.

When I met with Dr. Leary at the Notre Dame Health Center, he expressed enough concern to send me off-campus for an electrocardiogram. I went, but I only worried that I would be late for Torts. Later that day, my concern with being punctual was lessened: I learned I had a baseball-sized benign tumor in my heart that would require surgery within the week.

My parents live in British Columbia, so their trip back to Notre Dame for my surgery was especially difficult. Graduate rector Pat Russell arranged for my parents to stay on campus for as long as necessary. Over the next few days, students and their spouses drove me to doctors’ appointments in South Bend and Chicago. One student bought a tape recorder and started taping all the lectures for me. Others came together to put on a birthday party the night before I went into the hospital. Knowing that my parents would need a place to stay during my surgery and recuperation in Chicago, Professor Phelps offered them the use of her condo in Chicago.

Even my surgeon, respected cardiac specialist Dr. Pat McCarthy, was a Domer. He rearranged his schedule to perform the delicate open-heart operation as soon as possible. When I came out of the ICU after surgery, my room was filled with flowers and cards sent from Notre Dame, all testifying to the love and care that come from this community. I was more determined than ever to get back to NDLS and finish the semester with my classmates.

My recovery was projected to take six to eight weeks, bringing me past finals and into the new year. My goal of finishing my first semester on time would be impossible without the law school’s support. Once again, the NDLS community helped me, this time in the form of Director of Student Services Peter Horvath. When I told him I wanted to finish, he worked with professors to postpone my exams and arranged for all my classes to be videotaped.

Over Christmas break, I stayed in South Bend and wrote my last exam on January 7th. When I finished, I called my parents and cried with gratitude to them and to God. The next day, Dean O’Hara and the law school administrators sent congratulations and a bouquet.

NDLS is a remarkable place. When I was most vulnerable, the law school community held me up. When I decided to come back, the law school stood behind me. When I finished, the community celebrated with me. At every step, the people of NDLS acted from their passion to do justice and to love mercy. To me, ND, you showed the heart of God.





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