

LAWYER



Major Gift Funds Law School Expansion

Fall 2005



UNIVERSITY OF
NOTRE DAME

The Law School

AB INITIO



Fall 2005 at the Law School

Within the pages that follow, you will learn of a wonderful gift from a generous benefactor that will move the Law School closer to its new building; you will meet new faculty who have joined the faculty you already know; you will rejoice in the promotions of five faculty members familiar to many of you; and you will see the faces of newly-graduated students as well as happy returning alumni!

All of this news comes at an exciting time for the University, as well. There is a new president, Reverend John Jenkins, Notre Dame's seventeenth. There is a new football coach, Charlie Weis. The Dome is newly-gilded and brighter than ever and the Notre Dame Avenue entrance to campus is almost unrecognizable, so impressive is its renovation.

Yet, in the midst of these changes stands the tradition that is the Law School and the University. As always, a strong entering class has joined students who now are seasoned 2Ls and 3Ls. A remarkable group of lawyers from around the world have begun study on advanced legal degrees in the Center for Civil and Human Rights. The display case outside my office has been updated to showcase the newest scholarship produced by our faculty—scholarship that joins the rich tradition of faculty research produced in years past.

As I walk by the classrooms, I either see or hear the interaction of teacher and student and know that the richness of the education that is unfolding finds echo in the more than 130 years that such interactions have been taking place, preparing the “different kind of lawyer” that is a Notre Dame lawyer.

Enjoy the pages that follow.

Yours in Notre Dame,

Carol

Carol Jambor-Smith
Director of External Relations

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NOTRE DAME LAWYER



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FROM THE DEAN

This issue of our magazine is filled with great news about the Law School. The most dramatic development is a \$21 million dollar gift from Frank Eck, a 1944 graduate of Notre Dame, toward the renovation and expansion of the Law School. When added to the \$26 million in cash and commitments already received, this gift places us within approximately \$10 million of our goal. With that amount committed to the building project, we are now in a position to hire architects and to begin the interior design phase for the renovation and addition. After four years of fund-raising for this project, we can now actually envision the day when a new building stands complete—located just south of our existing facility on the site of the old post office with a commanding archway that connects the two buildings. This new structure will almost double our usable space in a single, integrated, neo-Gothic building. Our current facility will be renovated to house the Law Library, while the connecting arch and new building, Eck Hall, will house faculty and administrative offices, classrooms, and student space.

As necessary as our building project is to the realization of our aspirations for the Law School, no building could ever be sufficient to that end. The heart and soul of any educational institution are the faculty and students. As retirements and other transitions reduced our faculty numbers recently, we set out last year to fill several vacancies on our faculty. I am delighted to report that our efforts in this regard have been wonderfully successful. A significant number of stellar individuals will join our community of teachers and scholars this fall. Some—Mary Ellen O’Connell, the newly-appointed Robert and Marion Short Chair, and Douglass Cassel, the new Director of our Center for Civil and Human Rights and a Lilly Endowment Professor—are already widely recognized academics in their field. Together with current faculty members, Mary Ellen and Doug will strengthen our curriculum and scholarship in the area of international law. Others—Alejandro Camacho, Lloyd Mayer, and Carter Snead—are new to tenure-track responsibilities but already have impressive publications to their credit. Michael Jenuwine will add an exciting mental health dimension to our Legal Aid Clinic with his J.D./ Ph.D. in psychology and many publications in this area. Vincent Johnson, Jennifer Mason, and Franklin Snyder will enrich our community by their presence as visiting faculty.

As important as it is to attract new faculty to our community, it is equally important to recognize at appropriate times those who are already in our midst for the excellence of their teaching, scholarship, and service. At the end of last academic year, the University granted tenure to four of our junior colleagues with special designation as Lilly Endowment Associate Professors. As happens ever more frequently these days, the four colleagues who received tenure are two married couples: Nicole and Rick Garnett, and Tricia and A.J. Bellia. Each of them has been singularly effective as classroom teachers, and each has produced an impressive corpus of scholarship during their time with us. In addition, the University named John Nagle to the John N. Matthews Chair. Currently serving as Associate Dean for Faculty Development, John’s teaching success, scholarly productivity, and generous service have been truly remarkable over the course of the seven years that he has been on our faculty. We take pride as well in Paolo Carozza’s election to the Inter-American Commission on Human Rights, and in Bill Kelley’s leave of absence to serve as Deputy White House Counsel.

In the wake of all this good news, we begin the 2005-2006 academic year filled with optimism and unbridled enthusiasm. Our fund-raising efforts will focus on bringing in the final \$10 million needed to complete the building project. Our faculty building committee will soon be at work on square-footage, adjacencies, and the configuration of our renovated and expanded space. Our new colleagues will meet Notre Dame law students for the first time, and our returning faculty, including our recently promoted colleagues, will continue their superb teaching and valuable scholarship.

Recent events—be it a vacancy on the Supreme Court at home or terrorist attacks abroad—remind us of the crucial role that law, lawyers, and legal scholarship play in the modern world. As this issue of our magazine demonstrates, Notre Dame Law School is, today, more ready than ever to make our distinctive contribution as a leadership law school in the Catholic intellectual tradition to the education of students who aspire to be change agents in the institutions in which they will serve.



Patricia A. O'Hara

Patricia A. O'Hara

The Joseph A. Matson Dean and Professor of Law



Meeting the Future: People and Place

The 2005-2006 academic year begins with a unique combination of good news for the Notre Dame Law School. The campaign currently underway for renovation and expansion of the Law School received a magnificent gift from an alumnus, bringing the campaign closer to completion and allowing interior design to begin.

A premier law school, however, is the product of more than just its space. Even more than its historic setting, anchoring the southern end of the campus and within sight of the University's fabled Golden Dome and Basilica, the Law School's reputation as a premier place of legal study and scholarship has been created through the research, teaching, and service of its faculty and students.

The academic year also begins with the promotions of five outstanding members of the faculty, one to a chaired professorship and four to tenure. That these scholars and teachers have chosen the Law School as their professional home only serves to advance the academic reputation of the Law School. Moreover, several new members join the current faculty, each of whom brings an area of research interest and expertise that will enrich the breadth of scholarship that is the hallmark of the Law School.

All these developments combine to make the beginning of the 2005-2006 academic year a particularly exciting time at the Law School. If your travels bring you back to campus this fall—for recruiting, for a football game, for a presentation to our students, or for some other purpose—we look forward to welcoming you.





\$21 million gift from Frank Eck to

On July 1, 2005, Alumnus Frank E. Eck made a \$21 million gift to the University for the construction of a second building for Notre Dame Law School, as well as a multipurpose facility in a neo-Gothic archway that will link the new structure to the existing building.



fund Law School expansion

The gift is the fifth largest in Notre Dame's history, the largest ever to the Law School, and one of the largest in the history of American legal education.

Eck Hall will stand on the site of the former post office. It will be connected to the south side of the current Law School building by Eck Commons, a facility that will feature arches over an east-west walkway.

"The generosity of Frank Eck and his family to Notre Dame is legendary, and we once again are tremendously appreciative," said Rev. John I. Jenkins, C.S.C., in accepting the gift on his first day as the University's president. "The addition to the Law School and the renovations to the current facility will enhance the education of our students as superbly qualified professionals attuned to Gospel values and the demands of justice, as well as enable our outstanding faculty to continue and even strengthen their excellent and distinctive scholarly work."

John Affleck-Graves, executive vice president of the University, noted: "When added to the approximately \$26 million in cash and commitments already received toward the Law School renovation and expansion, this gift is a giant step forward in reaching our total goal of \$57.3 million and allows us to retain architects and begin the interior design phase of the project."

"The new Law School building will be a powerful testament to our continuing efforts to be a premier law school, faithful to our roots in the Catholic intellectual tradition," said Patricia O'Hara, Matson Dean of the Law School. "The dramatic arch connecting the new building to our existing facility will bridge our illustrious past with an even more promising future. The new building will resolve our current classroom and faculty office space difficulties, as well as address our needs for the future."

O'Hara added: "As Father Jenkins said, Frank Eck has always risen to the challenge of supporting his alma mater. On behalf of the Law School faculty and students, I, too, want to thank him and his family for this extraordinary gift."

Eck's previous benefactions to Notre Dame have endowed a library collection in chemical engineering and underwritten construction of the Eck Tennis Pavilion in 1987, Frank Eck Baseball Stadium in 1994, and the Eck Center, which includes the Hammes Notre Dame Bookstore, visitors' center and Alumni Association headquarters, in 1999. His gifts to the University total more than \$35 million.

A 1944 graduate of Notre Dame, Eck is chairman of Advanced Drainage Systems (ADS) of Columbus, Ohio. His undergraduate degree is in chemical engineering, and he has served on the College of Engineering Advisory Council since 1984. His father, Vincent J. Eck, graduated from Notre Dame in 1915 with a degree in architecture, and his son, Frank Jr., earned a degree from Notre Dame Law School in 1989 and currently serves on the Law School Advisory Council.

After serving in the U.S. Navy in the latter stages of World War II, Eck attended Harvard Business School and

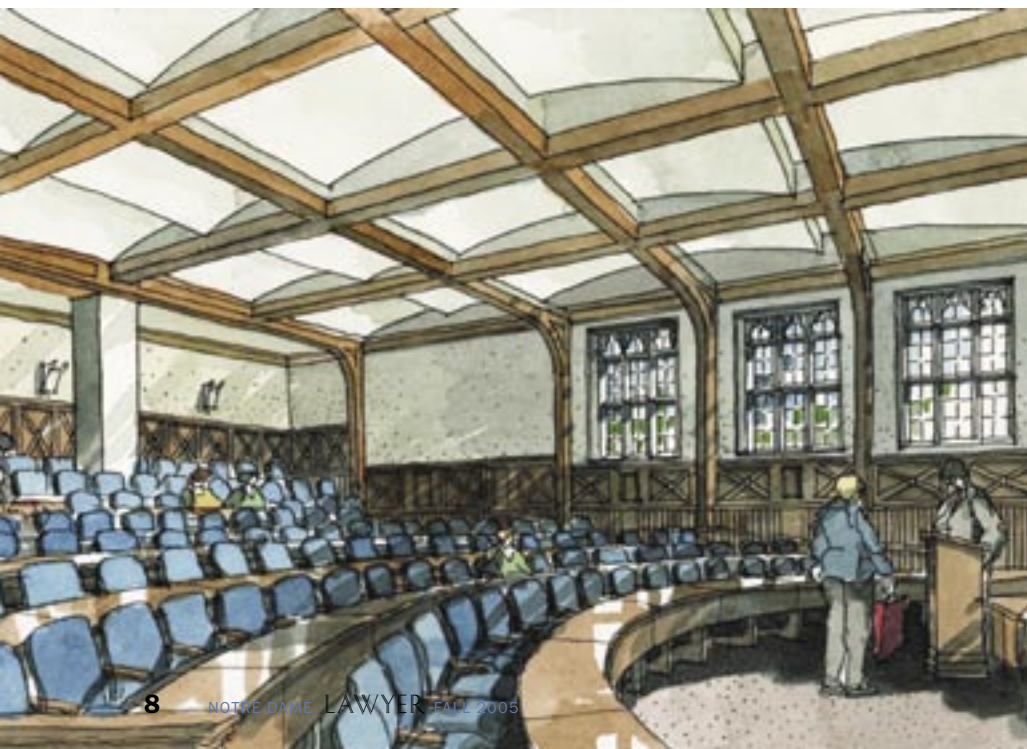
earned a master's of business administration degree in 1949. He worked for more than 20 years in the petrochemical industry, then joined ADS in 1973 as vice president for sales and marketing. He soon was appointed president of the firm and has taken it from a small regional manufacturer serving the agriculture market to the world's largest producer of plastic drainage pipe used primarily in the civil engineering industry.

A longtime supporter of the Irish football, baseball, and tennis programs, Eck was made an honorary member of the Notre Dame Monogram Club in 1988.

"In his book, *The Old Way of Seeing*, the architect Jonathan Hale writes compellingly about the inspiration that we can glean from space and architecture: If a building makes us light up, it is not because we see order; any row of file cabinets is ordered. What we recognize and love is the same kind of pattern we see in every face, the pattern of our own life form. Architecture is the play of patterns derived from nature and ourselves. The generosity of donors like Mr. Eck resounds within all Notre Dame Law students. For me the new project is not about grandiosity or law school rankings or even pure aesthetics. It goes without saying that space and light change the way we approach our work. Even without a new building, Notre Dame Law School is continuously reinventing itself, rebuilding while staying true to its roots. But there is also more. The construction of the new building and archway recognizes that we have been inspired to learn the law, to love the law, to express it as our very life form, and to dedicate all of ourselves to it in our brief time at Notre Dame, but especially beyond.

Very soon, all future Notre Dame law students, alumni, and indeed those only tangentially connected to the school will recognize the choice that we have made to be advocates of a higher order, and we will mirror in our careers that particular design that Notre Dame Law School has reflected in us."

—Jeff Robinson (JD '06)





“In addition to the more immediate benefits of library development, classroom space, technology, and so forth, the new law school building will give us the opportunity to deepen our awareness of belonging to a cohesive community of education. The beauty and unity of the new structure will, I think, only enhance our sense of the building being a space for us to pursue scholarship, learning, teaching and service in the most comprehensive way possible.”

—Professor Paolo Carozza

“Mr. Eck’s fabulous gift will better enable Notre Dame Law School to train holistic lawyers—mind, heart and soul—for years to come, while fostering the strong sense of community that has long stood as a hallmark of a Notre Dame legal education. In connecting the new and modern classroom building and administrative suites with a renovated and expanded library, the Eck Commons will allow faculty, staff, and students to get to know each other, to share their passions, and to experience the community and spirit that make Notre Dame unique.”

—Professor Matt Barrett (JD '85)



Voices of

At the completion of the 2004-2005 academic year, five current faculty members received promotions: a senior professor to a named chair and four junior faculty to tenure with special designation by the University as Lilly Endowment Associate Professors.

Such ascension is cause for celebration among members of the Law School community, as it recognizes the serious legal scholarship, excellent teaching, and service to the Law School, the University, the academy, and the profession of these five. They add to their chosen areas of expertise, certainly, but also to the tradition of outstanding legal scholarship that has been a hallmark of Notre Dame Law School.

John Nagle, associate dean for faculty research and professor of law, has been named to the John N. Matthews Chaired Professorship. He assumed the chair upon the retirement of Alan Gunn. The John N. Matthews Chair in Law 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.

An excellent teacher, Professor Nagle is well-respected by both students and colleagues. He enjoys a national reputation as a scholar in several different subject matter areas, including environmental law, election law, and statutory interpretation.

Active in both the AALS and the ABA, Professor Nagle is a frequent presenter at conferences and colloquia. He was a Fulbright Distinguished Lecturer at Tsinghua University Law School in Beijing, China, in 2002.

Prior to joining the Notre Dame faculty, Professor Nagle was an associate professor at the Seton Hall University School of Law from 1994 through 1998. Before teaching at Seton Hall, he worked in the United States Department of Justice, first as an attorney in the Office of Legal Counsel from 1988 until 1991, where he advised other executive branch agencies on a variety of constitutional and statutory issues, and later as a trial attorney from 1991 until 1994, conducting environmental litigation. Upon graduation from law school, Professor Nagle served as a law clerk to Judge Deanell Reece Tacha of the United States Court of Appeals for the Tenth Circuit. From 1981 until 1984, both during his undergraduate studies and during law school, he was a scientific assistant in the Energy and Environmental Systems Division of Argonne National

Laboratory. He received a B.A. with high distinction from Indiana University in 1982 and a J.D. cum laude from the University of Michigan in 1986.

“Notre Dame is playing an increasingly important role in the scholarly discussions within the legal academy. The work of my colleagues is well known to leading academics throughout the United States, indeed the world, as evidenced by the frequent opportunities they receive to present talks, publish books and articles, and participate in significant conferences. The chair which I am now privileged to hold is already helping me to prepare several books on environmental law, including a research project that will take me to the Aleutian Islands. I am also planning to write a book about the relationship between Christianity and environmental law, a project which is uniquely suited to the resources and aspirations of Notre Dame Law School.”

His scholarship includes:

Books

The Practice and Policy of Environmental Law (forthcoming Foundation Press 2006) (with J.B. Ruhl and James Salzman).

The Law of Property: Cases and Materials for the Twenty-first Century (Aspen Press 2004) (with James C. Smith, Edward J. Larson, and John A. Kidwell).

Questions and Answers on Property (LEXIS Publishing 2003).

The Law of Biodiversity and Ecosystem Management (Foundation Press 2002) (with J.B. Ruhl).

Recent Publications

How Not to Count Votes, 104 COLUMBIA LAW REVIEW 1732 (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).

Choosing the Judges Who Choose the President, 30 CAPITAL UNIVERSITY LAW REVIEW 499 (2002).

Voluntary Campaign Finance Reform, 85 MINNESOTA LAW REVIEW 1809 (2001).

Continuity



JOHN NAGLE, ASSOCIATE DEAN FOR FACULTY RESEARCH AND PROFESSOR OF LAW, HAS BEEN NAMED TO THE JOHN N. MATTHEWS CHAIRED PROFESSORSHIP.

Moral Nuisances, 50 EMORY LAW JOURNAL 265 (2001).

Corruption, Pollution, and Politics, 109 YALE LAW JOURNAL 293 (2000).

The Worst Statutory Interpretation Case in History, 94 NORTHWESTERN LAW REVIEW 1445 (2000).

The Recusal Alternative to Campaign Finance Reform, 37 HARVARD JOURNAL ON LEGISLATION 69 (2000).

The Commerce Clause Meets the Delhi Sands Flower-Loving Fly, 97 MICHIGAN LAW REVIEW 174 (1998).

Endangered Species Wannabees, 47 SETON HALL REVIEW 235 (1998).

Playing Noah, 82 MINNESOTA LAW REVIEW 1171 (1998).

Book Chapter

Christianity and Environmental Law, in Angela Carmela, Robert Cochran, and Michael McConnell, ***Christian Perspectives on the Law*** (Yale University Press 2001).



“In many ways, law stands as the interface between other academic disciplines and the real problems and aspirations of persons living in society. The commitments of our faculty and students reflect the seriousness with which we regard this responsibility. Drawing upon the richness of the Catholic intellectual tradition and an ongoing and rigorous dialogue with other academic disciplines, the Notre Dame Law School truly stands today as the great law school of our nation’s great Catholic university.”

Anthony J. Bellia, Jr. was promoted to tenure and named a Lilly Endowment Associate Professor. He teaches and researches in the areas of federal courts, federalism, and contracts.

A.J., as he is known within the Law School, joined the faculty in 2000. His selection as Professor of the Year by the graduating class of 2003 is testament to the high regard his students accord him. He quickly became active within the Law School and has been a member of a variety of committees, including the curriculum committee and the loan forgiveness committee, as well as a faculty advisor for both the Married Law Students Association and the *Journal of Legislation*. Professor Bellia has also been a member of the Academic and Faculty Affairs Committee of the Board of Trustees for the University since 2002.

Before joining the Law School, Professor Bellia practiced law as an associate with Miller, Cassidy, Larroca & Lewin in Washington, D.C., litigating First Amendment, death penalty, contract, and employment cases in state and federal courts. He also clerked for Justice Antonin Scalia of the Supreme Court of the United States, Judge Diarmuid F. O’Scannlain of the United States Court of Appeals for the Ninth Circuit, and Judge William M. Skretny of the United States District Court for the Western District of New York.

Professor Bellia earned his B.A. *summa cum laude* from Canisius College in 1991, where he was named the outstanding graduate in economics and political science, as well as a Harry S. Truman Scholar. He earned his J.D. *summa cum laude* in 1994 from the Notre Dame Law School, where he received the Dean Joseph O’Meara Award for outstanding academic achievement. While a student at the Notre Dame Law School, Professor Bellia also received the prestigious Judge Roger T. Kiley Fellowship and served as editor-in-chief of the *Notre Dame Law Review*.

Recent Publications

Congressional Power and State Court Jurisdiction, 94 GEORGETOWN LAW JOURNAL (forthcoming).

State Courts and the Making of Federal Common Law, 153 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 825 (2005).

Article III and the Cause of Action, 89 IOWA LAW REVIEW 777 (2004).

Promises, Trust, and Contract Law, 47 AMERICAN JOURNAL OF JURISPRUDENCE 25 (2002).

Contracting with Electronic Agents, 50 EMORY LAW JOURNAL 1047 (2001).

Federal Regulation of State Court Procedures, 110 YALE LAW JOURNAL 947 (2001).



“Nationally and internationally, the Law School is extremely well positioned to confront the challenges new technologies pose for law and society. I am grateful for the unique opportunities Notre Dame provides for interdisciplinary collaboration in studying and shaping policy outcomes in this important area.”

Patricia L. Bellia was promoted to tenure and named a Lilly Endowment Associate Professor. She teaches and researches in the areas of Internet law, electronic surveillance law, and constitutional law.

Before joining the faculty in 2000, Professor Bellia worked for three years as an attorney-advisor in the Office of Legal Counsel of the United States Department of Justice, advising members of the Justice Department and other executive branches on statutory and constitutional matters, including separation-of-powers and high-tech crime issues.

Prior to her work in the Office of Legal Counsel, she clerked for Judge José A. Cabranes of the United States Court of Appeals for the Second Circuit. She then went on to clerk for Justice Sandra Day O’Connor of the Supreme Court of the United States. Upon learning of Justice O’Connor’s resignation from the Court, Professor Bellia wrote, “Justice O’Connor was an inspiration to me and to countless other young women across the country and around the world, for she showed us by her example that there were no limits on what we could achieve... (she demonstrated) an animating spirit of intense devotion to duty, a desire to fulfill whatever duties life presents or that we make for ourselves as responsibly as possible. By her example, Justice O’Connor enabled us to find deeper inspiration in all women animated by that same spirit.”

Professor Bellia earned her A.B. *summa cum laude* from Harvard University in 1991, where she was elected to membership in Phi Beta Kappa. She earned her J.D. from the Yale Law School in 1995, where she served as editor-in-chief of the *Yale Law Journal* and executive editor of the *Yale Journal of International Law*, as well as a student director of the Immigration Legal Services Clinic.

In addition to her teaching and research, Professor Bellia has served the Law School community in many ways, including as a member of the Advanced Legal Writing, Building, and Strategic Planning Committees, as well as faculty advisor to the Law School’s Social Justice Forum. In 2001, she was appointed to the University Committee on Women Faculty and Students; she was elected to the Committee in 2004.

Recent Publications

The “Lone Wolf” Amendment and the Future of Foreign Intelligence Surveillance Law, 25 VILLANOVA LAW REVIEW (forthcoming 2005) (invited contribution).

Spyware and the Limits of Surveillance Law, 20 BERKELEY TECHNOLOGY LAW JOURNAL (forthcoming 2005) (invited contribution).

Defending Cyberproperty, 79 NEW YORK UNIVERSITY LAW REVIEW 2164 (2004).

Surveillance Law Through Cyberlaw’s Lens, 72 GEORGE WASHINGTON LAW REVIEW 1375 (2004).

Executive Power in Youngstown’s Shadows, 19 CONSTITUTIONAL COMMENTARY 87 (2002).

Chasing Bits Across Borders, UNIVERSITY OF CHICAGO LEGAL FORUM 35 (2001).



“Notre Dame has a unique mission. We seek to be a great university that preserves, and remains faithful to, our Catholic identity. This mission is a challenging but critically important one, and we at the Law School play an instrumental role in fulfilling it. For better or worse, many of the most important questions in our nation become, at some point, legal questions. I feel privileged to be a part of a community of scholars that seeks to engage those questions both rigorously and completely, by fostering a debate that is both catholic (small c) and Catholic (large C).”

Nicole Stelle Garnett was promoted to tenure and named a Lilly Endowment Associate Professor. Her primary research interests include property and land use law and education reform.

In June 2004, President Bush appointed Professor Garnett to serve on the National Prison Rape Reduction Commission. She was instrumental in arranging for the Commission’s initial public hearing to be held on the Notre Dame campus during the spring 2005 semester, an event that coincided with the *Journal of Legislation* symposium, Prison Reform and The Prison Rape Elimination Act.

Professor Garnett served as a law clerk for the Honorable Morris S. Arnold of the United States Court of Appeals for the Eighth Circuit (1995-1996) and for Justice Clarence Thomas of the United States Supreme Court (1998-1999). She also worked for two years (1996-98) as a staff attorney at the Institute for Justice, a non-profit public-interest law firm in Washington, D.C. Professor Garnett joined the Law School faculty in 1999. Since 2001, she has also served as a Fellow of Notre Dame’s Institute for Educational Initiatives. She was a Visiting Scholar at Northwestern University School of Law for the spring semester 2004. She has served on various committees for the Law School, including the Admissions Committee, the ABA Self-Study Report committee, and the Faculty Workshop Series committee and has been faculty sponsor for the St. Thomas More Society and the Federalist Society.

In addition to her involvement with the Law School community, Professor Garnett serves on the board of editors for *Cato Supreme Court Review* and as a member of the Congress for the New Urbanism. She was an Officer with the American Association of Law School’s Constitutional Law Section for the 2002-2003 term.

She received her B.A. from Stanford in 1992, where she graduated with honors and distinction in political science and was elected to membership in Phi Beta Kappa. She received her J.D. in 1995 from Yale Law School, where she was an Olin Fellow for Law, Economics and Public Policy and served on the *Yale Journal on Regulation*.

Recent Publications

Unsubsidizing Suburbia (book review), 90 MINNESOTA LAW REVIEW (forthcoming 2005).

Relocating Disorder, 91 VIRGINIA LAW REVIEW (forthcoming 2005).

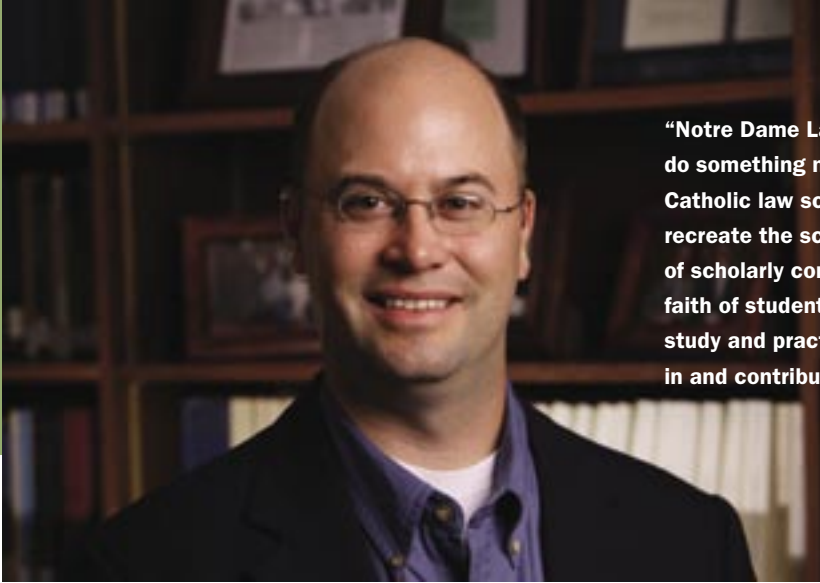
Ordering (And Order In) the City, 57 STANFORD LAW REVIEW 1 (2004).

The Public Use Question as a Takings Problem, 71 GEORGE WASHINGTON LAW REVIEW 934 (2003).

Essay: Trouble Preserving Paradise? 87 CORNELL LAW REVIEW 158 (2001).

On Castles and Commerce: Zoning Law and the Home Business Dilemma, 42 WILLIAM & MARY LAW REVIEW 1191 (2001).

The Road from Welfare to Work: Informal Transportation and the Urban Poor, 38 HARVARD JOURNAL ON LEGISLATION 174 (2001).



“Notre Dame Law School is an experiment; we are trying to do something new and different. Our mission—to be a great Catholic law school—is not nostalgic; we are not trying to recreate the school of the past, but to put together a new kind of scholarly community, one where religious traditions, and the faith of students and faculty, informs and is integrated with the study and practice of law. For me, the opportunity to participate in and contribute to this experiment is exciting.”

Richard W. Garnett was promoted to tenure and named a Lilly Endowment Associate Professor of Law. He teaches courses on criminal law, criminal procedure, First Amendment law, and the death penalty. His areas of research interest and expertise include school choice, church/state relations, religion in the public square, free speech and expressive association, free exercise of religion, federalism and criminal law, and the death penalty.

Frequently called upon by local, regional, and national media for analysis of and commentary on current legal issues, Professor Garnett has written more than 25 published op-ed pieces. In June of 2004, he gave legislative testimony to the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights on the topic “Beyond the Pledge of Allegiance: Hostility to Religious Expression in the Public Square.” Additionally, he has coauthored a number of amicus briefs for cases before the United States Supreme Court.

Professor Garnett clerked for Chief Judge Richard S. Arnold of the United States Court of Appeals for the Eighth Circuit in 1995 and then for Chief Justice William H. Rehnquist in 1996. Subsequently, he practiced law for two years at the Washington, D.C., law firm of Miller, Cassidy, Larroca & Lewin, specializing in criminal defense, religious liberty, and education reform matters.

Professor Garnett joined the Notre Dame Law School faculty in 1999. During the spring 2004 semester, he served as a visiting scholar at Northwestern University School of Law. He received his B.A. in philosophy *summa cum laude* from Duke University in 1990, and his J.D. from Yale Law School in 1995. He served as senior editor of the *Yale Law Journal* and as editor of the *Yale Journal of Law & the Humanities*.

Professor Garnett is very active in the Law School community, serving on many committees, including the Faculty Colloquium Committee, the Clerkships Committee, the Curriculum Committee, and the Admissions Committee;

he is a Fellow in the University’s Institute on Educational Initiatives and has served on dissertation committees for the University’s political science and philosophy departments.

Recent Publications

Less Is More: Chief Justice Rehnquist, the Freedom of Speech, and Democracy. In C. Bradley, ed., *THE REHNQUIST LEGACY* (Cambridge) (forthcoming 2005).

Changing Minds: Proselytism, Freedom, and the First Amendment. *ST. THOMAS LAW JOURNAL* (forthcoming 2005).

Assimilation, Toleration, and the State’s Interest in Religious Doctrine, 51 *U.C.L.A. LAW REVIEW* 1645 (2004).

American Conversations With(in) Catholicism, 102 *MICHIGAN LAW REVIEW* 1191 (2004).

The Theology of the Blaine Amendments, 2 *FIRST AMENDMENT LAW REVIEW* 45 (2003).

The New Federalism, the Spending Power, and Federal Criminal Law, 89 *CORNELL LAW REVIEW* 1 (2003).

Christian Witness, Moral Anthropology, and the Death Penalty, 17 *NOTRE DAME JOURNAL OF LAW, ETHICS & PUBLIC POLICY* 541 (2003).

The Right Questions About School Choice: Education, Religious Freedom, and the Common Good, 23 *CARDOZO LAW REVIEW* 1281 (2002).

Sectarian Reflections on Lawyers’ Ethics and Death-Row Volunteers, 77 *NOTRE DAME LAW REVIEW* 795 (2002).

Common Schools and the Common Good: Reflections on the School-Choice Debate, 75 *ST. JOHN’S LAW REVIEW* 219 (2001).

A Quiet Faith? Taxes, Politics, and the Privatization of Religion, 42 *BOSTON COLLEGE LAW REVIEW* 771 (2001).

The Story of Henry Adams’s Soul: Education and the Expression of Associations, 85 *MINNESOTA LAW REVIEW* 1841 (2001).

Brown’s Promise, Blaine’s Legacy, 17 *CONSTITUTIONAL COMMENTARY* 651 (2000).

New Voices

MARY ELLEN O'CONNELL

The Robert and Marion Short Chaired Professor of Law

MARY ELLEN O'CONNELL joins the faculty as the Robert and Marion Short Professor of Law. The Robert and Marion Short Chair in Law was a gift from the late Robert E. Short and his wife, Marion, of Minneapolis, Minnesota. Professor O'Connell comes to us from the Moritz College of Law of Ohio State University, where she was the William B. Saxbe Designated Professor of Law. She earned her B.A. in History, with highest honors, from Northwestern University in 1980. She was awarded a Marshall Scholarship for study in Britain. She received an MSc. in International Relations from the London School of Economics in 1981, and an LL.B., with first class honors, from Cambridge University in 1982. She earned her J.D. from Columbia University in 1985, where she was a Stone Scholar and book review editor for the *Columbia Journal of Transnational Law*. After graduation, she practiced with Covington & Burling in Washington, D.C. She then taught at Indiana University School of Law, Bloomington; at The Bologna Center of The Johns Hopkins University, Paul H. Nitze School of Advanced International Studies, Bologna, Italy; and the George C. Marshall European Center for Security Studies, Garmisch-Partenkirchen, Germany.

The author of two casebooks, five edited collections, and more than thirty articles and book chapters, Professor O'Connell has been active in the Academic Council on the United Nations System, the American Society of International Law, the German Society of International Law, the International Institute for Humanitarian Law, the International Law Association, and the Council on Foreign Relations.

She teaches contracts as well as a number of courses in the area of international law.



Professor O'Connell's primary research focuses on international legal regulation of the use of force and conflict and dispute resolution, especially peaceful resolution of disputes prior to an escalation to armed conflict.

In conjunction with research on these issues, she continues to examine the processes by which international law is made, applied, and enforced and is particularly interested in the enforcement of international law and the question of whether it is time for a classical revival in international law.

"As a member of the Notre Dame faculty, I can not only have a more substantial impact on the core principle of peace through law, I can help develop future leaders in whose hands that principle will rest. And I can do that while working in a collegial community that inspires and motivates its members to even greater achievement."

Recent Publications

International Law and the Use of Force, Cases and Materials (Foundation Press 2005).

International Dispute Resolution, Cases and Materials (Carolina Academic Press, forthcoming 2005).

Enhancing the Status of Non-State Actors Through a Global War on Terror, 43 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 435 (2005).

To Kill or Capture Suspects in the Global War on Terror, 35 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 325 (2003).

Lawful Self-Defense to Terrorism, 63 UNIVERSITY OF PITTSBURGH LAW REVIEW 889 (2002).

DOUGLASS CASSEL

*Director of the Notre Dame Center for Civil and Human Rights
and Lilly Endowment Professor of Law*

DOUGLASS CASSEL joins the faculty as Director of the Notre Dame Center for Civil and Human Rights. He has also been named by the University as a Lilly Endowment Professor.

Professor Cassel comes from the Center for International Human Rights at Northwestern University School of Law, where he had been clinical professor and director since 1998. Specializing in international human rights and international criminal law, he was the Executive Director of the International Human Rights Law Institute at DePaul University College of Law and of its Jeanne and Joseph Sullivan Program for Human Rights in the Americas from 1990 until 1998. He has also been a consultant to the United Nations, the Organization of American States, the United States Department of State, and the Ford Foundation. He lectures worldwide and his articles are published internationally in English and Spanish. His commentaries on human rights are published in the *Chicago Tribune* and broadcast weekly on National Public Radio in Chicago.

In 2000, Professor Cassel was elected to the board for the Justice Studies Center for the Americas, Santiago, Chile, serving most recently as its President. Since 2000, he has been the President of the Due Process of Law Foundation in Washington, D.C. He is a member of the Executive Council of the American Society of International Law, and a consultant to Transitional Justice.

Professor Cassel earned a B.A. *cum laude* from Yale in 1969 and a J.D. *cum laude* from Harvard Law School in 1972. After serving as a Lieutenant in the Judge Advocate General's Corps for the United States Navy for two years, he worked for Business and Professional People for the Public Interest, first as a staff counsel and then as general counsel, until 1991.

From 1992 until 1993, he served as Legal Adviser to the United Nations Commission on the Truth for El Salvador, advising the commission, supervising its investigations, and acting as principle editor of its report.



His research interests cover a wide range of issues in international human rights, international criminal law, and international humanitarian law. Currently, he is involved with efforts to strengthen the Inter-American system for protection of human rights and to ensure respect for human rights in counter-terrorism programs.

“At the Center for Civil and Human Rights, I hope to encourage Notre Dame LL.M. and J.D. students to work together to study human rights problems and to pursue practical and principled solutions.”

Recent Publications

Equal Labor Rights for Undocumented Migrant Workers, in HUMAN RIGHTS AND REFUGEES, INTERNALLY DISPLACED PERSONS AND MIGRANT WORKERS: ESSAYS IN HONOR OF JOAN FITZPATRICK AND ARTHUR HELTON, Anne Bayefsky ed. (Martinus Nijhoff forthcoming 2005).

The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights, in REPARATIONS FOR GROSS VIOLATIONS OF HUMAN RIGHTS (S. Vandegiste and Stephan Parmentier eds.) (Intersentia forthcoming 2005).

The Globalization of Human Rights: Consciousness, Law and Reality, 2 NORTHWESTERN UNIVERSITY JOURNAL OF INTERNATIONAL HUMAN RIGHTS 6 (2004).

International Human Rights and the United States Response to 11 September, in C. Fijnaut, J. Wouters and F. Naert (eds.), LEGAL INSTRUMENTS IN THE FIGHT AGAINST INTERNATIONAL TERRORISM. A TRANSATLANTIC DIALOGUE, Martinus Nijhoff Publishers, Leiden/Boston (2004), pp. 251-297.

The United States Supreme Court Rulings on Detention of “Enemy Combatants”—Partial Vindication of the Rule of Law, 6 INTERNATIONAL LAW FORUM 122-25 (2004).



ALEJANDRO CAMACHO joins the faculty as an associate professor of law. In 1995, he earned a bachelor's degree in Political Science and a bachelor's degree in Criminology, Law, and Society, both *summa cum laude*, from the University of California, Irvine. In 1998, he received his J.D. *cum laude* from Harvard Law School, where he was submissions editor and article editor for the *Harvard Environmental Law Review*. He earned an LL.M. from Georgetown University Law Center in January 2005. Following graduation from law school, he was an associate in the environment, land, and resources department of Latham & Watkins, in Los Angeles, California. In 2003, he entered the academy as a Fellow and Adjunct Professor of Law at Georgetown University Law Center. He will teach courses in Environmental Law and Property.

His primary research interests center around environmental, land use, and local government law, largely derived from and informed by his study and practice in these fields for the past decade. He is fascinated with the interdisciplinary study of complex ecological systems characteristic of environmental and land use analysis. In both land use and environmental regulation, he is interested in evaluating and improving on existing alternatives to command-and-control regulation and intrigued with the application of these alternatives in the different local government and administrative regulatory settings.

"I am excited to be a part of what has been such a welcoming law school community. I look forward to contributing to this engaging and supportive environment, and hope to help in the endeavor of further cultivating a vibrant culture of scholarship and intellectual inquiry for students and faculty alike."

Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions, Installment One, 24 STANFORD ENVIRONMENTAL LAW JOURNAL 3 (2005).

New Source Review Reform: Federal Clean Air Act at a Crossroads (with Robert M. Sussman et al.) 23 No. 24 ANDREWS HAZARDOUS WASTE LITIGATION REPORT 10 (2003).

Case Study 4: Riverside County Habitat Conservation Plan, and Case Study 6: San Marcos Creek Special Area Management Plan, in MITIGATION BANKING: THEORY AND PRACTICE (Lindell L. Marsh et al. eds.) (Island Press, 1996).

LLOYD MAYER joins the faculty as an associate professor of law. He earned his A.B., with distinction, from Stanford in 1989 and his J.D. from Yale in 1994. While at Yale, he served as business editor of the *Yale Law and Policy Review* and as an editor of the *Yale Journal on Regulation*. Following graduation from Yale, he clerked for the Honorable Lowell A. Reed, Jr., United States District Court for the Eastern District of Pennsylvania. He then joined Caplin & Drysdale in Washington, D.C., first as an associate and later as a member, where he concentrated on tax issues, particularly for nonprofit organizations. He will teach courses in federal income taxation, entity taxation, and taxation of non-profit organizations.

Professor Mayer's current research interests lie in the areas of political activity by tax-exempt organizations and the shifting boundaries of tax exemption for charitable organizations. He is currently working on an article relating to non-charitable organizations and political activity.

"The opportunity to research and teach both at the highest level and informed by my Christian faith is truly exciting."

Do Twentieth Century Tax Rules Fit Twenty-First Century Reality?: Non-Charitable Section 501(c) Organizations and Political Activity (in progress).

Private Foundations (book chapter) in FOUNDATION GUIDE TO PUBLIC POLICY AND CIVIC ENGAGEMENT (in progress: to be published by the Amherst H. Wilder Foundation in 2005). With David Arons.

Political Activities of Tax-Exempt Organizations: Useful Guidance Revenue Ruling 2004-6, 100 JOURNAL OF TAXATION 181 (2004).



CARTER SNEAD joins the faculty as an associate professor of law. In 1996, he received his B.A. from St. John’s College and his J.D. *magna cum laude* from Georgetown University in 1999, where he was a member of the Order of the Coif and associate editor for *American Criminal Law Review*. Following law school, he clerked for the Honorable Paul J. Kelly, Jr., United States Court of Appeals for the Tenth Circuit. He then practiced with Wilmer, Cutler and Pickering and with Ropes and Gray, both in Washington, D.C. In late 2002, he accepted the position of General Counsel for the President’s Council on Bioethics. Since 2004, he has also served as the chief negotiator and head of the United States delegation to UNESCO for the proposed Universal Declaration on Bioethics and Human Rights. He will teach Torts and Criminal Procedure.

His research focuses primarily on the intersection of law, science, and medicine. Indeed, he is currently working on an article exploring the impact of recent advances in cognitive neuroscience on capital sentencing.

“I believe the Notre Dame Law School to be a community of learning that pursues (and achieves) the highest standard of excellence in teaching, scholarship, and service, in a truly collegial environment. Notre Dame is a very special place; my wife and I have only just arrived and we already feel like part of the family!”

The Pedagogical Significance of the Bush Stem Cell Policy: A Window into Bioethical Regulation in the United States, 5 YALE JOURNAL OF HEALTH POLICY, LAW & ETHICS 491 (2005) (invited submission).

Preparing the Groundwork for a Responsible Debate on Stem Cell Research and Cloning, 39 NEW ENGLAND LAW REVIEW 479 (2005) (Symposium Keynote Address).

Federal Criminal Conspiracy, 35 AMERICAN CRIMINAL LAW REVIEW 739 (1998) (Co-Author).

Dynamic Complementarity: Terri’s Law and Separation of Powers Principles in the End-of-Life Context, 57 FLORIDA LAW REVIEW 53 (December 2004).

MICHAEL JENUWINE joins the faculty as an associate professional specialist in law. He comes to us from the faculty of the law school of Indiana University, Bloomington, where he has been Clinical Associate Professor of Law and Director of the Mental Health and Disability Law Clinic. He earned his B.S. from the University of Michigan in 1988. He earned an M.A. from the University of Chicago in 1990. In 2000, he earned a Ph.D. in Psychology from the University of Chicago and a J.D. *cum laude* from Loyola University Chicago, where he was a student editor for the *Children’s Legal Rights Journal*. Before joining the faculty of Indiana University, he was a postdoctoral fellow at the National Association of State Mental Health Program Directors Research Institute through the National Institute of Mental Health. He will teach in the Legal Aid Clinic.

Dr. Jenuwine’s current research and teaching interests focus on family law, child advocacy, mental health law, and interdisciplinary legal practice. He is working on research studying juvenile waiver of right to counsel in delinquency cases in Indiana, developing an empirical study of jurors’ ability to discern a “no doubt” standard in death penalty cases, and on research studying the effect of legislative responses to the clergy sex abuse scandal.

“I am excited to join the Notre Dame Law School faculty for many reasons. I am impressed with its emphasis on social justice and commitment to service by both faculty and students. In addition to becoming a member of a law school faculty of such high caliber, I am also excited to be joining many talented colleagues in the Clinic who work with students to bridge the worlds of theory and practice, while providing legal services to disenfranchised populations in the community.”

Racial Differences in the Mental Health Needs and Service Utilization of Youth in the Juvenile Justice System (with Purva Rawal, Jill Romansky, and John S. Lyons), 31 JOURNAL OF BEHAVIORAL HEALTH SERVICES & RESEARCH 242 (2004).

Community Supervision of Sex Offenders—Integrating Probation and Clinical Treatment (with Ronald Simmons and Edward Swies), 67 FEDERAL PROBATION 20 (2003).

Using Therapeutic Jurisprudence to Bridge the Juvenile Justice and Mental Health Systems (with Gene Griffin), 71 UNIVERSITY OF CINCINNATI LAW REVIEW 65 (2002).

We also welcome the following visiting faculty:

JENNIFER MASON will be a visiting assistant professor for the 2005-2006 academic year. In 1994, she received her undergraduate degree *summa cum laude* from Notre Dame with a major in Government and a minor in Theology. Upon graduation, she served as a Holy Cross Associate for one year. In 1998, she received her J.D. *summa cum laude*, graduating first in her class, from New York University School of Law, where she was managing editor of the law review.

Following law school, Professor Mason clerked for Judge Alex Kozinski on the Ninth Circuit and then for United States Supreme Court Justice Sandra Day O'Connor. Upon learning of Justice O'Connor's resignation, Professor Mason wrote, "I had the great privilege of serving as a law clerk to Justice Sandra Day O'Connor. A wise judge and a gracious mentor, Justice O'Connor exemplifies the best in public service. A trailblazer for women lawyers, a breast cancer survivor, and a wife, mother and grandmother, Justice O'Connor also is a model of courage and devotion."

She has just completed a public service fellowship with Holland and Knight in Washington, D.C.

Professor Mason will teach a civil rights class in the fall and a seminar in the spring that is still to be determined.

VINCENT R. JOHNSON will visit the Law School for the fall 2005 term, teaching Torts and Legal Malpractice.

Professor Johnson is associate dean for Academic and Student Affairs and professor of law at St. Mary's Law School in San Antonio, Texas. He earned his B.A. from St. Vincent College (Pennsylvania) in 1975, his J.D. from Notre Dame in 1978, and his LL.M. from Yale Law School in 1979. He clerked on the New York Court of Appeals and the United States Court of Appeals for the Seventh Circuit. He has taught in China and Russia and was a Fulbright Scholar at the University of Bucharest in Romania for the 2004-2005 academic year.

FRANKLIN G. SNYDER will visit the Law School for the fall 2005 term, teaching International Commercial Transactions as well as a Corporate Governance seminar.

Professor Snyder is professor of law at Texas Wesleyan University School of Law in Fort Worth, Texas. He earned his B.A. from California State University in 1977; his J.D. from the University of Missouri School of Law in 1983, where he was editor-in-chief of the Law Review; and his LL.M. from Temple University School of Law in 1999.

He clerked on the United States Court of Appeals for the D.C. Circuit before practicing with Latham & Watkins in Washington, D.C.

Professor Carozza Elected Member of the Inter-American Commission on Human Rights

Associate Professor Paolo Carozza has been selected to be one of the seven members of the Inter-American Commission on Human Rights. He was nominated by the United States government to serve on the Commission and elected by the member states of the Organization of American States (OAS) at its 35th General Assembly of the OAS, held in Florida in June of this year.

The Inter-American Commission on Human Rights, headquartered in Washington, D.C., is an autonomous body of the OAS responsible for promoting and protecting human rights in all of the states of the Western hemisphere. The commission receives, investigates, and reports on individual petitions alleging violations of the American Declaration of the Rights and Duties of Man (1948) or the American Convention on Human Rights (1969). It also monitors the general human rights conditions in each member state of the OAS, reporting on particular situations of concern when appropriate. Members of the commission are elected for a term of four years, during which they serve as independent experts rather than as representatives of any particular country.

Professor Carozza earned an A.B. and a J.D. from Harvard University, where he was also a Ford Foundation Fellow in Public International Law. Upon graduation from law school, Professor Carozza clerked for the Supreme Court of the Federated States of Micronesia and worked as an associate at the Washington, D.C., law firm of Arnold & Porter.

Professor Carozza has also taught as a visiting professor at the Catholic University of the Sacred Heart (Milan, Italy) and at the University of Trent, Italy, as a researcher at the Instituto de Estudios Internacionales at the University of Chile, and as a lecturer in law at Harvard Law School.

Professor Carozza joined the Law School and Center for Civil and Human Rights faculties in 1996. He is also a fellow of the Kellogg Institute for International Studies, the Kroc Institute for International Peace Studies, and the Nanovic Institute for European Studies, all of which are based at the University of Notre Dame. During the fall 2004 semester, Carozza was a Fulbright Lecturer at the University of Milan (Italy).



Professor William Kelley Named Deputy Counsel to President Bush

Associate Professor William Kelley's Constitutional Law class congratulated him with warm applause last February when he put to rest the rumors that had been swirling for weeks around the Law School and even around the Internet and announced that he had been asked to serve as Deputy Counsel to the President. Professor Kelley agreed, and so has temporarily vacated his office overlooking the University's South Quad for

an office in the West Wing, right above that of Chief of Staff Andrew Card.

Professor Kelley, an expert in constitutional and administrative law, has extensive prior experience in government. After graduating from Harvard Law School, he served as a law clerk to Judge Kenneth Starr of the U.S. Court of Appeals for the D.C. Circuit and then to Chief Justice Warren Burger and Justice Antonin Scalia. Before coming to Notre Dame, Professor Kelley was for several years an assistant to the Solicitor General in the Department of Justice.

The Office of Counsel to the President is part of the

White House Office, which is, in turn, part of the Executive Office of the President. Not to be confused with either the President's personal attorney or the Attorney General, the Counsel advises the President on all legal issues concerning the President and the White House. As Deputy Counsel, Professor Kelley's portfolio is as diverse and challenging as any lawyer's in government: his responsibilities—to name just a few—include advising the Counsel and the President on decisions to sign or veto legislation, ethical and conflicts questions, executive appointments and judicial selection, Presidential pardons, and lawsuits against the President in his official capacity. In particular, Professor Kelley advised the Counsel and the President about potential nominees to succeed Justice Sandra Day O'Connor and was closely involved in the interviews and research leading up to the nomination of Judge John Roberts.

“The law school is honored that the President has placed his trust in Bill Kelley.”

—Associate Dean John Nagle

Professor Joseph Bauer emphasized that Professor Kelley is “precisely the kind of person I would want in that position. He's not only extremely bright and conscientious, but he is also willing to listen respectfully to people with whom he disagrees.” And Associate Dean John Nagle spoke for all of Professor Kelley's colleagues and students when he said “the law school is honored that the President has placed his trust in Bill Kelley. Several of us on the faculty who have had experience working in the Department of Justice are keenly aware of the difficulty and importance of the questions that are presented to the Counsel. It is an extraordinary responsibility to be asked to help answer those questions, and it says much about Professor Kelley's wisdom, judgment, and legal skills that he now serves in that position.”



G. Robert Blakey

G. Robert (Bob) Blakey is the William and Dorothy O'Neill Professor of Law; he has served on the NDLS faculty for more than 20 years. He is the nation's foremost authority on the Racketeer Influenced and Corrupt Organizations Act (RICO). He also has had extensive legislative drafting experience, having worked on the drafting of the Crime Control Act of 1973, Title III of the Omnibus Safe Streets and Crime Control Act of 1968, and, most significantly, the Organized Crime Control Act of 1970, of which RICO was Title IX. He has also assisted various states with the drafting of state-level RICO-type legislation and wiretapping statutes.

Professor Blakey earned his B.A. cum laude and his J.D. from Notre Dame in 1957 and 1960, respectively. He is a member of Phi Beta Kappa and the Order of the Coif.

So, the mob is pretty much dead. Why worry about RICO anymore?

Actually, RICO is one reason why the mob's power has so dramatically diminished. Before RICO, estimates put "made" members of the mob at 3000-5000; today, those estimates come in at less than 1500. Of course, other factors, such as socio-economic conditions and deaths from natural—and other—causes, have also contributed to the decrease in membership.

Originally, twenty-two cities in the United States were centers of mob activity, including Boston, Cleveland, Detroit, Pittsburgh, Philadelphia, Chicago, and New York City. Now, only Chicago and New York City reflect much mob activity. For example, originally, five major mob families operated in NYC, many of which had direct links to unions. Today, only two such families remain with any serious influence, the Genovese and Gambino families, but even their influence is diminishing, including in the unions.

Unfortunately, we now are also experiencing the rise of other ethnically-based gangs, such as those from Russia, China, Mexico, Jamaica, and Colombia. As with the mob, investigating or infiltrating these gangs is always difficult, as the FBI (or other agencies) has to have agents that can relate to or pass as members of the particular ethnic group, a process that is only now taking place at the same time that combating ethnically-based terrorism from the Middle East is also becoming one of the FBI's major priorities. The Bureau finds itself constantly changing in light of changes in our society.

How did RICO accomplish such a victory?

In several ways. RICO is the product of different pieces of different puzzles put together in a new way. In effect, it requires reinventing law enforcement mechanisms to be used for a different model; it is a new theory of investigation, trial, and sanction.

RICO offers a substantive tool, affecting trial—joinder of offenders and offenses and the admissibility of evidence—and sanction—imprisonment and forfeiture, designed to achieve more than mere deterrence or rehabilitation. Its repertoire includes the use of isolation through long sentences and the loss of profit from crime by seizing assets. And it applies to all types of "organized crime," from traditional Mafia families on Mulberry Street, to politicians in government, to white-collar swindlers on Wall Street; yet, it is only one tool among many. There must also be procedural tools of a legal character (wiretapping, immunity, etc.), trained personnel, and an organizational structure that can oversee both investigations and prosecutions.

I was fortunate to work with two people in 1967 on the President's Crime Commission who helped me shape the concepts reflected in RICO: Tom Shelling and Don Cressey. Tom was a Harvard economist who encouraged me to "think" about economic processes as I already did about criminal activity and its investigation and prosecution. Don was an organizational theorist from Santa Barbara who encouraged me to "think" about organizations as I already did about the mob and how to curtail its influence in the United States.

I suppose you could say that from these separate pieces, that is, legal theory (my contribution), economic analysis (Tom's contribution), and organizational theory (Don's contribution), we arrived at a new paradigm. Instead of looking at individual criminals or individual crimes at particular times and places, I began to think about patterns of offenses (violence, the provision of illegal goods and services, corruption in unions and government, and systemic fraud) and the criminal organizations behind the individual offenders and offenses, rather than simply about individual criminals committing particular crimes at discrete times and places of their criminal activity. RICO focuses, therefore, on the patterns of crimes—on courses of criminal activity over extended times and multiple places. In effect, rather than focusing on a particular rider of a particular horse on a merry-go-round, RICO seeks to dismantle the merry-go-round itself—riders, horses, and all.

Why the need for state-level RICO legislation?

Well, the short answer is that federal-level agencies, such as the FBI, now “get” the need to fight organized crimes from an organizational perspective. State law enforcement and prosecutorial groups have not done so as easily, and they still have a long way to go.

In order for RICO to work at a state level, various attorneys general, local prosecutors, state police agencies, and local police departments must undergo reorganization and retraining to work cooperatively in light of new challenges. Sadly, local district attorneys today too often distrust the state attorneys general, and vice versa. Sometimes, great cooperation becomes a fact, but then personnel change, so the flame of cooperation goes out and requires reigniting, so to speak. It turns out that the original cooperation was personal, not institutional. Unfortunately, law enforcement is not as organized as the criminals.

Are today's gangs different from yesterday's?

Absolutely. As strange as it may seem, our “domestic” gangs—e.g., the mob—were much more “lawful.” What I mean is that the mob recognized the legitimacy of the law enforcement system itself, that is, agents, prosecutors and courts; mobsters saw themselves as part of our social and economic system, though obviously an illegal part. They did not want to destroy the system; they wanted to profit from it. The mob’s ethos applauded the capitalist system, of which law enforcement was a part. Killing agents, prosecutors, or judges, for example, was simply not on its radar screen.

With the new international gangs, the Russians in particular, but certainly



terrorist organizations, those limitations, especially on violence, are not present. For example, terrorism is about violence used to, well, terrorize people. Contrary to popular impression, terrorism has discrete goals that it has expressly articulated; for example, getting the West—with its atheism, secularism, and materialism—to leave the Middle East. Some argue (but I don't) that combating terrorism may well require not "illegal" but rather "extra legal" methods, including the CIA's apparent approach of "rendition," not "extradition," of individuals out of foreign countries and then secreting these individuals for interrogation and intelligence purposes in other countries, not for trial in courts of law in this country.

The mob lived in our society, in many ways, as a parasite that depended upon its host for its subsistence; the last thing a parasite wants to do is kill its host. Terrorist groups are far more like pathogens that are, in fact, intent on destroying their hosts. Fighting them may well involve capturing them and holding them for military trials by military judges, not for judicial trials in civil courts. Do we really want to subject the usual judge and jury to the physical dangers of holding terrorist trials in our typical federal courthouses in the midst of major metropolitan areas? Think of Madrid or London. Let the military judges hold the trials on military bases, or, if necessary, on carriers at sea. We are currently holding up to 500 people captured in Afghanistan for military prosecution at GITMO. On July 15, 2005, the D.C. circuit court ruled that these kinds of military prosecutions may go forward under the present conditions and currently mandated constitutional notions of due process.

Frankly, I don't cotton up to the idea of trying these people in our domestic, civil courts, not only because of the physical danger such trials pose for us, but also because of the danger to normal rules and procedures that these terrorists trials will pose. I am concerned that result-oriented judges will bend the law to get the "bad guys," and we will then be stuck with those changes in other kinds of cases.

Is the form of the mob, a governmental regulatory agency, if you will, of the underworld, still relevant?

Maybe, maybe not. In fact, I'm now thinking more about terrorism than mob or white-collar crime activity. Mobs were the traditional challenges to our common law system of investigating and prosecuting the common law felonies, subject to the civil liberties found in our Bill of Rights that were fashioned to circumscribe the Stewart monarchy.

Today, we face a new challenge. In the United States, we are trying to combat terrorist organizations that are in opposition to the very foundation of our modern civilization, that is, our plural and secular way of life, although we are obviously less secular than other western countries. In the United States, because of its founding by religious dissenters from Europe and its commitment to religious freedom (a commitment that has been extended to Catholics, Jews, and now Muslims), we are a more religious society than most European countries, which are, if religious at all, more "new age" than Judeo-Christian in orientation.

So, in fact, our culture reflects an older set of values that is not shared by members of terrorist organizations. Indeed, terrorists seek to supplant our way of life with a medieval system of economics, social status (think of the role of women in our modern society, for example), and a theocracy. As we did to combat organized crime or white-collar crime, we need to develop a new paradigmatic way of thought in order to combat this new kind of challenge. We must survive this challenge, and do so without a fundamental alteration of our civil liberties. I am not sure that we will make it.



And finally, do you watch “The Sopranos”?

Well, no, I didn’t, and intentionally so, but my daughter gave me a set of DVDs of the first season as a gift for Father’s Day, and I felt that I had to watch at least parts of it in case she asked me about it.

I have to say that I thought the “Godfather” epic romanticized, in a highly stylized way, mob activity in the United States. It did so in the form of a critique of capitalism as we know it, characterized as it is by the pursuit of power, money, fame, and social status by ruthless entrepreneurs who ignore the rules that are supposed to circumscribe our lowest natures. The writing and acting were great; the cinematography was beautiful. Indeed, I know “real” mob figures who loved to watch the “Godfather” movies because they loved the image the films created of them. The “Godfather” morphed an American war hero into a crime boss; why wouldn’t a mobster like to watch that? But it was a false image. If you want to see a film about the mob that is more accurate, see Scorsese’s “Good Fellas.”

“The Sopranos,” on the other hand, is much more crude and vulgar. Instead of a critique of capitalism, it offers psychological commentary on dysfunctional, fictive mob and blood families. The acting and the plot are great. In particular, the plot, like a soap opera, draws a viewer into the troubled world of a mob boss and his two unenviable families. I am not too sure that Tony’s teenagers do not give him more grief than his mob associates. And, I’m now addicted to watching it.

Nonetheless, the derogatory ethnic stereotypes perpetuated by both series deeply trouble me. Similar movies could not be—and rightly so—produced about African-Americans or Jews. Why Italian-Americans? In fact, they have given to our society far more than gangsters and pizza; take, for example sports (Joe DiMaggio), politics (Mario Cuomo), or physics (Enrico Fermi).

As the rise of the Russian mob demonstrates, organized crime is not ethnic-specific. Such stereotypes, too, hinder the advancement of Italian-Americans in the highest echelons of our society in law or finance. I wish we could get beyond these stereotypes. I am tired to death of hearing snide remarks or jokes about Italian gangsters. They ought to be beyond the pale in the United States.

Corporate Inversions and the Definition of an “American” Corporation

[adapted from Michael S. Kirsch, *The Congressional Response to Corporate Expatriations: The Tension Between Symbols and Substance in the Taxation of Multinational Corporations*, 24 VIRGINIA TAX REVIEW 475 (2005)]

In the past few years, several well-known U.S.-based multinational corporations engaged in restructurings known as “inversions.” Congress’s response to this phenomenon raises significant questions regarding the proper definition of an “American” corporation in an increasingly globalized economy.

Pursuant to an inversion, a corporate group changes the parent corporation’s place of incorporation from a U.S. state, such as Delaware, to a foreign country, such as Bermuda or the Cayman Islands. The transaction generally does not involve any change in the physical location of the corporate group’s management headquarters, manufacturing operations, or other activities. It merely reflects a change in the country in which the parent corporation’s articles of incorporation are filed. Although the change in place of incorporation appears to be a mere formality, it can have significant tax consequences. Under the Internal Revenue Code, the distinction between a “domestic” corporation and a “foreign” corporation depends on the place of incorporation. Because domestic corporations are subject to more comprehensive taxation than are foreign corporations, particularly with respect to foreign income earned through subsidiaries, U.S.-based multinationals pursued inversions in order to lower their tax bills. Indeed, several large corporations bragged to their shareholders that an inversion would save more than \$50 million per year in U.S. taxes.

The prospect of large multinational corporations reincorporating abroad to escape U.S. tax liability attracted significant media attention. Not surprisingly, it also became a hot political topic. In 2002, Congress enacted legislation that purported to punish inverting corporations by preventing them from entering into certain federal government contracts. However, that legislation, even after a 2003 amendment, contained exceptions that largely eviscerated its applicability. In this regard, the legislation was prototypical symbolic legislation, enabling its Congressional supporters to assure the public that Congress was “doing something” to stop a perceived problem (corporate inversions), yet doing so in a manner that did not actually impose instrumental costs on the purported target (the politically powerful group of inverted corporations).

In response to continued concerns about corporate inversions, Congress ultimately enacted an instrumentally effective tax provision in late 2004. That provision treats the post-inversion foreign-incorporated parent as a domestic corporation for tax purposes if both (i) certain ownership continuity exists between the pre-inversion and post-inversion shareholders, and (ii) no member of the corporate group has substantial

business activities in the foreign country in which the post-inversion corporate parent is incorporated. As a result, the tax code now has a two-tiered definition for determining whether a corporation is domestic or foreign. The traditional place-of-incorporation rule continues to apply to the large majority of corporations, while some foreign-incorporated entities resulting from inversions are treated as domestic if they run afoul of the ownership continuity and no substantial business activity tests.

The normative justifications offered for this two-tiered approach cast significant doubt on the continuing viability of the general place-of-incorporation rule. In particular, the very reasons given for the special rule for inverted corporations imply that the place-of-incorporation rule should be reconsidered and, perhaps, abandoned. According to the Senate Finance Committee report, the reason for enacting a special test for inverted corporations is that these transactions, by merely changing the place of the parent’s incorporation, generally result in “little or no” substantive non-tax consequences. Similar statements by supporters of the 2004 legislation suggest that an inversion transaction is a mere paperwork formality involving the filing of a sheet of paper (the articles of incorporation) in a foreign filing cabinet, and should therefore be disregarded for tax purposes. This lack of confidence in the tax code’s place-of-incorporation test is furthered by the “no substantial business activity” test of the 2004 legislation. By calling off the special domestic taint if a member of the corporate group conducts substantial business activities in the country in which the post-inversion parent is incorporated, the provision implies that the location of a corporation’s business activities may be a more legitimate determinant of residence than is the place of incorporation.

If, as the supporters of the new provision imply, a change in the corporate parent’s place of incorporation is mere “paperwork” involving a new “sheet of paper,” the logical



Michael S. Kirsch

question is why does the general rule in the U.S. tax code focus on a corporation's place of incorporation as the touchstone for defining residence? While the rhetoric regarding "mere paperwork" might have been overstated—at least some limited substantive non-tax consequences depend on place of incorporation—it seems difficult to justify imposing such significant tax consequences based solely on that factor (and other possible factors, such as administrative simplicity). Indeed, in an apparent acknowledgement that place of incorporation is not a sufficient determinant of a corporation's residence, a recent protocol to the U.S.-Netherlands tax treaty adopts a test focusing on the corporation's "primary place of management or control" to determine eligibility for treaty benefits.

The corporate inversion phenomenon focused significant attention on U.S. tax policy—in particular, the manner in which the United States taxes corporations in an international setting. Like a Rorschach test, legislators projected their own tax policy belief systems when interpreting the causes of, and appropriate responses to, corporate inversions. Some politicians viewed inversions sympathetically as an understandable response to a flawed and overreaching U.S. tax system. Accordingly, they advocated a change in the underlying tax system that would reduce the tax burden of U.S.-based

multinational companies and thereby eliminate the incentive to invert. Others viewed inverting corporations as unpatriotic traitors, improperly taking advantage of a loophole in the tax code. Accordingly, they advocated legislation, as evidenced by the recently-enacted provision, that would close this loophole by continuing to treat a post-inversion corporation as domestic.

Perhaps both sides in the Congressional debate misinterpreted the inversion ink-blot, projecting too much of their own pre-existing notions regarding appropriate tax policy. Rather than demonstrating the need for a radical overhaul of our international tax system or the need to selectively target corporations exploiting perceived loopholes, the inversion phenomenon primarily demonstrates the need to reexamine the definition of what is a U.S. corporation for tax purposes. The inversion debate rhetoric reflects a significant gap between the place-of-incorporation standard for determining a corporation's status and the public's and Congress's perception of what is an American company. Given the tenuous normative underpinnings of the place-of-incorporation rule and its ability to be manipulated, the definition of what makes a corporation domestic should be revisited across-the-board, not merely when enterprising corporations seek to turn the rule's shortcomings to their advantage.



FACULTY SCHOLARSHIP

Matthew J. Barrett published the latest supplement to his **Accounting for Lawyers** casebook.

Joseph P. Bauer published the annual pocket parts to the 11 volumes of the Kintner Federal Antitrust Law treatise. He was an invited panelist at the Copyright and Licensing Workshop sponsored by the University Libraries, Notre Dame, November 17, 2004, and in a teleseminar sponsored by the American Bar Association section of Antitrust Law on the topic "Defending Discrimination: Exploring Statutory and Non-Statutory Defenses to Robinson-Patman Act Liability" on January 19, 2005. Professor Bauer was an invited speaker at the Conference on Litigating Conspiracy at the University of Western Ontario, London, Ontario, on April 1, 2005, and also at a symposium on Intellectual Property and Antitrust sponsored by DePaul Law School, in Chicago, on April 8, 2005, with a presentation entitled "Refusals to Deal with Competitors by Owners of Patents and Copyrights: Reflections on the Image Technical and Xerox Decisions."

Geoffrey Bennett co-authored the 9th edition of **Davies on Contract**, published by Sweet & Maxwell, London, 2004.

G. Robert Blakey published "Mandatory Minimums: Fine in Principle, Inexcusable When Mindless." (Symposium on Criminal Punishment). 18 *Notre Dame J.L. Ethics & Pub. Pol'y* 329 (2004).

Gerard Bradley presented "The Catholic Intellectual Tradition and the Idea of Human Rights," an invited lecture, at St. Michaels College, Vermont, March 2005; "Religion and International Order: Generating Violence or Constructing the Common Good?" at the Conference on Religious Freedom: The Cornerstone of Human Dignity, sponsored by the United States Embassy to the Holy See, Rome, December 2004; "A Political Constitution for Europe?" as a panelist at the VI Annual Conference on Catholics and Public Life, sponsored by the San Pablo-CEU University Foundation, Madrid, November 2004; "The Common Good and the Rule of Law in the International Order," invited Lectio Magistralis at the Postgraduate School of International Relations and Economics, Catholic University of the Sacred Heart, Milan, Italy, November 2004; "Pluralismo e universalismo dei diritti umani in Europa," address at the Università di Genova/Universidad de Salamanca conference on Genesi, sviluppi e prospettive dei diritti umani in Europa e nel Mediterraneo, October 2004; "Comparing Comparative Methods in Human Rights Adjudication: A Plea for New Theoretical Foundations," a paper delivered at the American Society of Comparative Law Conference on

Comparative Law and Human Rights, University of Michigan Law School, October 2004; "Subsidiarity and the Universal Common Good in the International Order," address at the Villanova University School of Law Symposium on Catholic Social Thought and the Law, October 2004. He also published "Law and the Culture of Marriage" (Symposium on Marriage and the Law). 18 *Notre Dame J.L. Ethics & Pub. Pol'y* 189 (2004).

Rev. John J. Coughlin presented the following: "The Refusal of Holy Communion to Catholic Public Officials" at the National Press Club in Washington, D.C. on September 16, 2004; "The Expectations of Believers and Non-Believers" during the section on Religiously Affiliated Law Schools during the Annual Meeting of the Association of American Law Schools in San Francisco, CA; "Sacrifice, The Common Good and Catholic Lawyers" at the Inaugural Conference of the Terrence J. Murphy Institute for Catholic Thought, Law and Public Policy, University of St. Thomas Law School, Minneapolis, MN; "The Relation Between the Diocese and Parish In What Pertains to Property," Canon Law Society of America Meeting, LaCrosse, WI; "Teaching Canon Law at the Catholic Law School," Canon Law Society of America Meeting, LaCrosse, WI.

Richard Garnett serves as Program Co-Chair for the AALS Section on Law and Religion (2005-present). Professor Garnett published "Changing Minds: Proselytism, Freedom, and the First Amendment," *St. Thomas L. Rev.* (forthcoming 2005); "Assimilation, Toleration, and the State's Interest in Religious Doctrine," 51 *U.C.L.A. L. Rev.* 1645 (2004); "American Conversations With(in) Catholicism," 103 *Mich. L. Rev.* 1191 (2004) (reviewing John T. McGreevy, *Catholicism and American Freedom: A History* (2003)); "Less is More: Free Speech, Public Property, and Government Money," in C. Bradley, ed., **The Rehnquist Legacy** (Cambridge U. Press, forthcoming 2005); "Good News Club v. Milford Central School," in K. Hall, ed., **The Oxford Companion to the Supreme Court of the United States** (forthcoming 2005); "The Ten Commandments," *Commonweal* (May 2005); "Hail to the Chief?" *Legal Affairs* (March 2005); "Debate Club," *Legal Affairs*, Feb. 28, 2005; "Law Schools and the Military," *Commonweal* (Jan. 2005); wrote Amicus Curiae with Tom Berg and Stephen Emmanuel, *Bush v. Holmes*, Nos. SC04-2323, SC04-2324, SC04-2325, Brief Amicus Curiae in Support of Appellants of the Florida Catholic Conference, Inc. et al. Professor Garnett presented "Changing Minds: Proselytism, Religious Freedom, and the First Amendment, Teaching, Faith, and Service" at the Foundations of Freedom Conference at the University of Portland, June 2-4, 2005; "Free Speech, Public Property, and Government Money" at a Symposium, *The Rehnquist Legacy*, Indiana University School

of Law, Bloomington, Indiana, April 1, 2005; "Were Terri Schiavo's Religious-Freedom Rights Violated?" at a panel discussion, The Schiavo Case at the Notre Dame Law School, March 30, 2005; "Should Christian Legal Thought Be Taken Seriously?" at the Annual Conference of Law Christian Fellowship, January 8, 2005.

Jimmy Gurulé delivered the invited lectures "Terrorist Financing: The Role Played by Islamic Charities," at the Conference of Professional Journalists in Washington, D.C., and "The Challenges Confronting The Global Effort to Stop Terrorist Financing," delivered in Vienna and Linz, Austria, a presentation sponsored by the Austrian Bankers Conference and the American Chamber of Commerce.

Dwight B. King, Jr. published "Libraries Ask, 'Hey, How Am I Doing?'" 97 *Law Libr. J.* 103 (2005).

Michael S. Kirsch spoke on a panel at the annual Fall ABA Tax Section meeting in Boston.

Donald P. Kommers presented invited lectures at Northwestern Law School on April 19 and at Syracuse Law School on April 16 on the topics of German law and constitutionalism.

John Copeland Nagle published "The Appearance of Election Law." (Symposium: Supreme Court and Election Law) 31 *J. Legis* 37 (2004).

Teresa Godwin Phelps presented "Telling Stories in a Search for Justice" at the University of New Mexico Law School on November 3; "The Work of Truth Commissions," at the Narratives of the Holocaust and Genocide Conference, San Diego, Calif., on January 16; and participated in a Roundtable on Truth Commissions for Princeton University's Latin American Studies Department on March 4.

Thomas L. Shaffer published a new edition of his **Legal Interviewing and Counseling Nutshell**; two of his poems, "In the Mountain" and "Green Eggheads and Old Hams," were published in 29 *Legal Stud. F.* 561 (2005).

J. Eric Smithburn published three pocket supplements to his three-volume treatise, **Indiana Family Law**. His book **The Illustrated American Tourist Guide to English English**, Second Edition was published by AuthorHouse.

Conrad Kellenberg Award *Inaugural Presentation*

In the spring of 2005, the Class of 2005 created the Conrad Kellenberg Award to be awarded to a student for service toward the betterment of the Law School and the local community; the first recipient was Lindsay Christine Updike. The remarks that follow are excerpted from the introductory comments made by Meghan Rhatigan, a member of the class and the vice-president of the Student Bar Association.

The Conrad Kellenberg Award was created at the insistence of the Class of 2005 who recognized the enormous impact Professor Kellenberg has had on our law school and the local community over the past 50 years. It is the Class' intention that this award be given out annually to a graduating student who has followed in the footsteps of Professor Kellenberg by dedicating a substantial amount of time to the betterment of the community through service.

Professor Kellenberg's contributions to the law school community are many. Current students spoke of his willingness to share practical lessons that would serve them well in the early years of practice. They mentioned his willingness to welcome them to class with a hearty hello and big smile, and they noticed the care he took to learn their names and remember them. When Dean O'Hara looked back on her time here as a student, she commented on this very trait and proclaimed it as a "strong symbol of the personal attention and energy he has invested in students during his extraordinary tenure here at the Law School."

He has touched the lives of students in other ways as well. Throughout his career, he has given students opportunities to enjoy a more complete legal education. As the founding director of the London study-abroad program, Professor Kellenberg invited students to study the law from a new perspective.

Additionally, Professor Kellenberg has challenged his students to reach out into the neighboring community and serve the needs of the less fortunate. One of the most tangible manifestations of this encouragement was the establishment of an in-house legal aid program, which has since grown into today's Legal Aid Clinic. To make the in-house program work in its early stages, Professor Kellenberg gave up a portion of his office so that students would have a place to work with their clients.



Lindsay Christine Updike and Professor Kellenberg

While students have certainly benefited from Professor Kellenberg's contributions, the real benefactors have been the poor and needy whose lives have been altered by his service. Throughout his career, Professor Kellenberg has shown compassion for people of all races and economic classes. Professor Dutile described him as a "fierce fighter for the poor and oppressed."

Through his service to this school and the local community, his devotion to others, and his unparalleled kindness, he is an example for us all.

Meghan Rhatigan (JD '05)

Commencement



As is tradition, the diploma ceremony for the Class of 2005 ended the day for the graduates and their families and friends.

Yet, as is always the case, regardless of how long the day has seemed, each graduate knows that there is no better way to end this special day: the one day on which they begin as students and end as graduates.

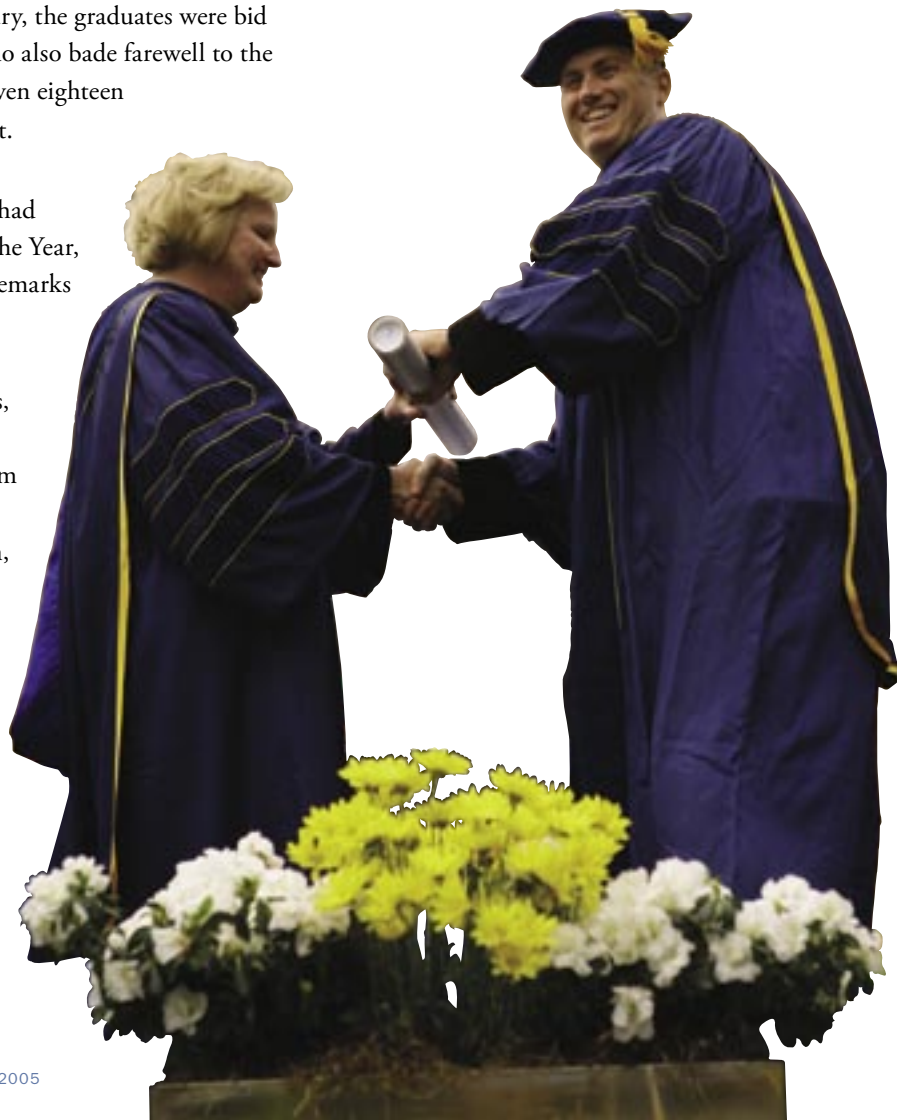
Law School community wish each graduate good fortune, happiness, success, and steadfast faith in their future lives. We look forward to greeting them as Notre Dame lawyers!

Held by the reflecting pool and before the towering mosaic that is on the Hesburgh Library, the graduates were bid farewell by Father Malloy, who also bade farewell to the University to which he has given eighteen years of service as its President.

Professor Jay Tidmarsh, who had been selected as Professor of the Year, addressed the graduates; his remarks follow.

After receiving their diplomas, graduates listened to Dean O'Hara as she challenged them to remain steadfast in their dedication to faith and reason, the hallmarks of a Notre Dame Law School education.

Graduates received one final memento of their time as students: a baseball cap, designed especially for them with their graduation year on it. All of us in the





2005

GRADUATION AWARDS

Dubin Prize in Intellectual Property
for academic excellence in intellectual
property

Adam Barrett Townshend

Judge John R. Brown Award for excellence
in Legal Writing

Angela Nicole Petrucci

Conrad Kellenberg Award for service
toward the betterment of the Law School
and the local community

Lindsay Christine Updike

Clinical Legal Education Association
Outstanding Student Award

Kimberly Marie McLeod

Arthur Abel Memorial Competition
Writing Award for excellence in writing
for the *Notre Dame Law Review*

Diane J. Hellwig

American Bar Association Negotiation
Award for excellence in the art of
negotiation

Brian Gregory Noonan

Ross Allen Boughton

Edward F. Barrett Award for
outstanding achievement in the art of
trial advocacy

Shauna Lynn Ripley

Casey Michael Nokes

Joseph Ciralo Memorial Award to a law
student who exemplifies spirit, service,
and significant achievement in the face
of adversity, as did Joseph Ciralo,
member of the class of 1997

Joshua Matthew Fine

Jordan Alexander Mundt



GRADUATION AWARDS

The Farabaugh Prize for high scholarship in law

Erin Elizabeth Gallagher

The Colonel William J. Hoynes Award for outstanding scholarship, application, deportment, and achievement

Christopher Edward Goggin

International Academy of Trial Lawyers Award for distinguished achievement in the art of advocacy

Paul Russell Harris

Mark Henry Schauerte

William T. Kirby Award for excellence in brief writing

Mark Thomas Emery

Dean Konop Legal Aid Award for outstanding service in the Legal Aid and Defender Association

Rosanne Mercurius Perry

The Jon E. Krupnick Award for excellence in the art of trial advocacy

Philip James O'Beirne

David T. Link Award for outstanding service in the field of social justice

Kathleen Sheila Eich

The Judge Joseph E. Mahoney Award for outstanding leadership

Meghan Lynn Rhatigan

The Arthur A. May Award to a member of the Barristers team who demonstrates a commitment to professional ethical standards and exhibits excellence in trial advocacy

Shauna Lynn Ripley

Captain William O. McClean Law School Community Citizenship Award to the person who has done the most to contribute to the lives of students at the Law School

Meghan Lynn Rhatigan

National Association of Women Lawyers Award for scholarship, motivation, and constitution to advancement of women in society

Katherine McGinnis Anand

The Dean Joseph O'Meara Award for outstanding academic achievement

Jeannette Christine Cox

The A. Harold Weber Moot Court Awards for outstanding achievement in the art of oral argument

Charla Tanyce Blanchard

Robert Malty Crea

Katharine Hoyne Hosty

Jeremy Andrew Moseley

The A. Harold Weber Writing Award for excellence in essay writing

Thomas Michael Messner

2005 PROFESSOR OF THE YEAR

I particularly appreciate receiving this award from you, such a strong, wonderful, and now graduated class, the Class of 2005. I must admit, though, that I have never liked receiving awards. I have always seen the process of legal education as a collective enterprise, to which no one faculty member contributes much. You have been trained by a tremendously talented group of faculty. I should mention just a few, Ray Gallagher, Alan Gunn, Con Kellenberg, and Fr. John Pearson, all of whom leave the faculty this year. Among them, if I have my math right, they have a collective 88 years of teaching at Notre Dame, with 50 of them belonging to Con Kellenberg.

And we are not alone in teaching and guiding you. There are your first and best teachers, your parents and families, as well as your elementary, high school, and college teachers who have brought you to us. Most of all, you have been each other's teachers, in class, in study groups, and in conversations over at Recker's. What you are and what you will accomplish in the law you owe to each other.

Well, I take it that my job here today is to make you laugh, to say a few wise words, and then to make you cry, and, because you have been talked at for the past two days, to do all this in three minutes or less.

So I was thinking this morning about what I might do or say, and it dawned on me that there was one thing, just one thing, that I hadn't done since you guys came here three years ago. So if you can wait just a minute here, ...There. [Professor Tidmarsh combs his hair.] That ought to do it for another three years. Hey, I don't need this [his comb] anymore. Anybody want it? Only used once. Now I don't want to see that on e-Bay in a couple of years.

Well, after that, I'm not sure that anyone is going to think that what I have to say is very wise, so let me make just one observation. I am certain of only one thing, that human society does and will inevitably change. The society that you will inhabit 30 years from now, when you are watching your own children graduate, will be different from today's society. And the world in 50 years, when you are contemplating retirement, will be different still from that world. If you are an optimist, and believe in human progress, as I do, you hope that changes are for the better. But there are no guarantees. Progress depends on the constant interaction between tradition and creativity, sometimes sticking with tradition, and sometimes striking out on a new path, and on the wisdom to recognize when it is right to do each.

At every step of this movement into the future lawyers will be there, you will be there, shaping society for the generations to come. Lawyers are rarely the catalysts of change, but we shape those catalysts into social, economic, and political structures and institutions that define and determine the future. Sometimes

you will find yourself aligned on the side of tradition, and sometimes on the side of change. My hope and prayer for you are to treat those with whom you disagree with the dignity and respect for which Our Lady and this University stand. When I was a young lawyer, many years ago, I'd often eat lunch or dinner, or maybe have a drink, with the lawyers who represented the other side, sometimes even during the heat of trial. We disagreed about many things, like who ought to win the case, but we never disagreed about our shared commitment to leave the world a better place for our efforts. Differences of ideas and arguments are goods to be treasured, for without them progress is not possible. So assume the best, and not the worst, about those who would disagree with you. They are almost always people of good faith.

Lawyers are not always popular in our society. I have heard most of the jokes, and some of them are actually quite funny. But one way in which society needs our leadership now more than ever is to do what lawyers for centuries have known and done, to disagree civilly, professionally, and courteously, and to respect the fundamental dignity of all those with points of view different from our own.

And now for the tears. You will pardon me if some are my own. In the end, I don't know very much, not even about design defects, or class actions, or collateral estoppel. What I have just said about progress and civility is all that I know, and all that I have ever tried to teach you. It is also what you have taught me. On graduation day it is fashionable to speak of how you will take Notre Dame with you as you leave. Know as well that all the talents you have contributed to this school remain here. Thank you for all you have done for us. For as long as I am here, you also remain here, in my heart.



REUNION 2005

On June 3rd and 4th, 2005, the Law School hosted returning alumni for Reunion 2005. This year's event was held for those whose graduation year ended in "0" or "5."

While Reunion is an annual event, one that the Law School celebrates within the larger event that is held by the University's Alumni Association, this year marked the beginning of a Law School initiative to create a reunion special for its own alumni. Judging by the increased attendance, the initiative was a success!

On Friday morning, alumni had an opportunity to attend a CLE lecture by Professor emeritus Thomas Shaffer. A popular faculty member who is remembered fondly by all who had him, the presentation was well-attended and proved to be a mini-reunion in itself, as the lecture hall in which it was held seemed especially attractive to members of the class of 1975!

Friday afternoon featured a business practice lecture by John Moore, an undergraduate alumnus of the University who had been Professor Matt Barrett's roommate.

On Friday evening, Father John Pearson celebrated a Law School Mass, assisted by John Straub ('55) who served as Deacon. Sheila O'Brien ('80) arranged the liturgical music and enlisted the voices of several alumni who served as a choir, leading the alumni in music during the service.

Following the Mass, alumni and their families attended the Law School's All-Class reception and dinner. Almost 200 people gathered, one of the largest groups of Law School alumni to be together at one time.

On Saturday, alumni attended a continental breakfast in the Law School and then participated in an interactive tour of the Kresge Library that was organized and hosted by Associate Dean Roger Jacobs and members of the library staff. More than 50 alumni attended the morning's activities.



Class of '50

Jack Wiessler, Bill Mahoney



Class of '55

left to right

John Vuono, Joe Straub, Bob LeMense,
Ted Romer, Harry Buch, Harry Snyder
and Vince Raymond

In between these formally-scheduled events, Law School alumni took advantage of the beauty and peace of the University campus to gather informally and to attend some of the countless seminars organized by the Alumni Association for all returning graduates.

The success of this year's Reunion is the result of a joint effort between the Law School's Office of External Relations, Advancement, the Alumni Association, and alumni from each returning class who contacted fellow classmates to encourage their attendance. Members of these committees were:

1975: Joe Conney, Bob Foster, Jack Garbo, Ray Garza, John Kazanjian, Elizabeth Mattingly, Paul Mattingly, Mike Quinn, Mary Sommer Sandak, Gene Smary.

1980: Dennis Allen, Peg Romanik Allen, Debbi Boye, Bernadette Broccolo, Tom Costa, Maxwell Griffin, Jr., John Hendrickson, Jr., Sheila O'Brien, Eileen Carr Riley, Rick Slager, Dick Waris.

1985: Tom Ajamie, Matt Barrett, Molly Bruton Murphy, Michael Bruton, John Gibbons, Carol Ruda, Barb Scheper, Dave Scheper.

1990: Jim Flynn, Peter Fruin, Cathy Pollock Gregory, Mike Roberts, Michelle Shakour, John Watkins.

1995: Rochelle Cotter, Sheley Lake DeGraw, Martin Foos, Julia Meister, Katie Pamerter, Marty Schrier.

2000: Brian Zavislak, Shazzie Naseem, Colleen Grogan, Claire Storino, John Storino, James McCament, David Dwyer, Stasia Mosesso.

Special thanks must be given for the efforts of John Vuono ('55) to gather his fellow alumni for their 50th Reunion. John single-handedly contacted each class member, encouraging attendance. He also helped arranged a Thursday evening pre-Reunion dinner, graciously hosted by Kent Rowe at his lovely South Bend home. For several of this class' members, Reunion 2005 presented the first time to reconnect with each other since graduation.

For those alumni who graduated in years ending with a "1" or a "6": plan to attend Reunion 2006! The Law School community looks forward to seeing you; we promise you a special time of reconnection.



Class of '60

Paul Titus
Joe Marino
Nick Neiers



Class of '65

Ed Osowki
Bob Kennedy
John McQuillan
Doug Spesia



Class of '70

Dean O'Hara
Carl Frank



Class of '75
down the steps left to right

- Ray Garza
- Mike Quinn
- Pete Shirk
- Bob "Bear" Foster
- Paul Fortino
- Tom Pollihan
- Jack "The Judge" Garbo

standing left to right

- Dennis Mulshine
- Kenn Klatt
- Hon. Anne Williams
- Arturo Estrada
- John Kazanjian
- Hon Beth (Baringhaus) Mattingly
- Mary (Sommer) Sandak
- Paul Mattingly
- Nancy (Proudfit) Wilkins
- Phil Morse
- Joe Cooney

Class of '80

**front row,
left to right**

- Debbie Thomas Boye
- Tina Walsh McLaughlin
- Eileen Carr Riley
- Carolyn Short
- Judy McMorrow
- Joyce Corsello
- Antonia Greeman Chambers
- Dick Waris
- Mary Walsh
- Dave Crossett

**second row,
left to right**

- Mike Laak
- Jerre Doak
- Wendell Walsh
- John Hendrickson
- Todd Greenburg
- Max Griffin
- Andy Bury

**steps
left to right**

- Sue Zwick
- Bev Peyton Griffith
- Terry Dytrych
- Kathi Deane
- Ruth Beyer
- Sheila O'Brien
- Joe Dunn
- John Selent
- Jane Farrell



Class of '85

front row left to right

Jay Habas, Kim Kirn, Barb Scheper,
Dave Scheper, and John Roda.

Back row (from left): Matt Barrett,
Terry Brady, Paul Brennan, and
Steve Dunn



Class of '90

Bill Kelly
Michelle Shakour
Cathy Gregory
Bruce Hicks



Class of '95

Cathy Pieronek
Linda Kizivat
Mike Wilson

REUNION 2005

1950s

Robert Rossiter, '59 J.D., is currently practicing plaintiff medical malpractice and motor vehicle negligence law at law offices of Cullan and Cullan in Omaha, Nebraska.

1960s

Stephen R. Lamantia, '67 J.D., was elected vice president of the Bar Association of Erie County at its annual meeting. He will assume the presidency in June 2006.

Timothy J. Malloy, '66 B.S., '69 J.D., was included in the 2005 "100 Super Lawyers" of the State of Illinois. He is a founding partner of McAndrews, Held & Malloy, Ltd. in Chicago specializing in patent infringement trials involving complex technology.

1970s

Mario L. Beltramo, Jr. '72 J.D., was inducted into The American College of Trial Lawyers in a fall 2004 ceremony.

Gregg W. Zive, '73 J.D., was inducted into the American College of Bankruptcy on March 18, 2005 in Washington, D.C. The ceremony took place in the Great Hall of the Supreme Court of the United States.

Cecilia Januszewicz, '74 J.D. was appointed Secretary of Budget and Management by Maryland Governor Robert L. Ehrlich, Jr. on June 6, 2005.

Thomas H. Pollihan, '75 J.D., was named executive vice president in addition to his current position of secretary and general counsel of Kellwood.

Jack Garbo, '75 J.D., has his own estate planning and probate practice in Arlington, Texas. In addition, he works with a professional group from Dallas which specializes in Employee Stock Ownership Plan implantations.

Theodore F. Smith, Jr., '76 J.D., was named an Indiana Super Lawyer for 2005.

William J. Wernz, '77 J.D., was awarded the HCBA's 2005 Attorney Professionalism Award.

Patrick A. Salvi, '78 J.D., was selected as an Illinois Super Lawyer and was featured in the May 2005 issue of *Chicago* magazine and *Illinois Super Lawyer* magazine for being

among the best lawyers in the state. He was also honored by Saint Mary's University of Minnesota with a Distinguished Alumnus Award.

1980s

Wendell Walsh, '80 J.D., coached the St. Joseph High School (in South Bend, Indiana) team to a sixth-place finish in the state mock trial competition. Walsh received the Woods Dedication Award by the Indiana High School Mock Trial program.

Robert N. Allen, Jr., '81 J.D., relocated and expanded his firm, Robert Allen Law. The firm is engaged principally with the representation of manufacturers, television programming providers, technology providers and foreign investors in the United States.

Gregory Karyl Blanford, '86 J.D., served as the direct coach of Adam High School's junior mock trial team, which competed in the Charlotte, North Carolina, national mock trial competition.

1990s

Tim Maher, '90 J.D. was named of-counsel for Barnes & Thornburg's South Bend, Indiana office. He handles wrongful death, school, municipal and products liability cases.

Susan Jasper Stein, '90 J.D., joined the newly formed west Michigan office of Foster, Swift, Collins & Smith, P.C.

Shaun Graham, '95 J.D., was named partner at Barnes & Thornburg LLP in Fort Wayne, Indiana. He handles arbitrations, labor disputes, and labor contract negotiations and counsels on employment relationship issues.

John Smarella, '96 J.D., was named partner of Barnes & Thornburg LLP in South Bend, Indiana. He concentrates on corporate and business law, counseling on business formations and joint ventures, succession planning, acquisitions and dispositions, contract negotiations, general business, and tax matters.

James Sweeney II, '96 J.D., was named partner of Barnes & Thornburg LLP's Indianapolis office. He assists with obtaining, commercializing, and enforcing patents, trademarks, trade secrets, and copyrights. He also co-directs the firm's Business and Technology Group and advises on domestic and international technology, trade regulation, Internet, and e-commerce.

William P. Tunell, Jr., '96 J.D., M.B.A., joined the law firm of Rainey, Ross & Binns, PLLC in Oklahoma City where he practices in the area of corporate litigation and transactional planning.

Scott L. Sroka, '97 J.D., serves as Legal Counsel to U.S. Senator Charles Schumer on the Senate Judiciary Committee in Washington.

John Cerone, '98 J.D., was named co-chair of the International Public Law, Policy & Human Rights Committee of the International Law Section by the Boston Bar Association. John teaches Public International Law, Human Rights Law, and International Criminal Law at the New England School of Law where he also serves as director of the law school's Center for International Law and Policy.

Thomas Johnston, '98 J.D., was promoted to Counsel at Porzio, Bromberg & Newman, P.C. in Morristown, New Jersey, where he practices education and employment law.

Christian S. Thornburg, '98 J.D., left Northern Trust and is now a Vice President at Bessemer Trust. He also founded a men's necktie company called South Beach Ties LLC.

2000

Joseph M. Butscher, '00 J.D., was promoted to partner at the Chicago intellectual property law firm of McAndrews, Held & Malloy.

Daniel G. Douglas, '00 J.D., is a Deputy District Attorney with the 17th Judicial District's District Attorney's Office in Adam's County Colorado.

John W. Geelan, Jr., '00 J.D., started an in-house position with Piper Jaffray as Assistant Vice President and Corporate Counsel.

Thomas M. McDermott, Jr., '00 J.D., Mayor of Hammond, Indiana, has recently been named Deputy Chair of the Indiana Democratic Party.

Daniel P. McShane, '00 J.D., has joined The McShane Companies as Corporate Counsel. He will oversee legal matters in both real estate development and construction activities.

Peyton Berg, '02 J.D., graduated from the Indianapolis Bar Association's Bar Leader Series. Peyton is a member of Bose McKinney & Evans' Litigation and Appellate Groups.

Nicole Homann Juba, '02 J.D. passed the Indiana bar examination and is working as a staff attorney in the Fort Wayne offices of Indiana Legal Services.

Sean T. McLaughlin, '02 J.D., is serving in Iraq as one of three U.S. Navy officers selected to investigate and prosecute anti-coalition crimes with the Central Criminal Court of Iraq.

Fernando V. Narvaez, '03 J.D., is in-house counsel for NICA, Inc. in Braintree, Massachusetts and is a service provider for independent contractors in the courier and messenger industry. He specializes mostly in labor and employment matters, tax law, and regulatory compliance.

Brian Josias, '04 J.D., got engaged over Valentine's Day weekend.

James W. Murray, '04 J.D., was selected and has accepted a position for the 2005-2006 Coro Fellowship in Public Affairs. He will be working in San Francisco starting in September 2005.

Michelle Barton, '05 J.D., won the best feature article, scholarly magazine, in the annual awards of the Catholic Press Association, for "Oregon's Oxymoron: The Death with Dignity Act" in *National Catholic Bioethics Quarterly*, Philadelphia, PA, Winter.

BIRTHS

Eric Scheske, '91 J.D., and his wife, Marie, welcomed their seventh child, Therese Elizabeth on April 23, 2005.

Joy Smith, '96 J.D., gave birth to Katherine Eleanor Smith Lieberty on April 20, 2005 in Glens Falls, New York.

Christian Thornburg, '98 J.D., and his wife, Teresa, announce the September 17, 2004 birth of their first child, Miles Alexander.

Jason Thompson, '03 J.D., and his wife had a baby boy named Benjamin in September 2004. They live in Traverse City, Michigan.

Mark Emery, '05 J.D., and his wife, Celina, had a baby boy named Charles Francis.

MARRIAGES

Daniel G. Douglas, '00 J.D., married Constance Verquist on November 29, 2004.

Karen Ecker Kratz, '92 J.D. married Jay Kratz in Cincinnati on May 21, 2005. In attendance were Jenine Lawlor Hembree, '92 J.D.; Todd Hembree, '91 J.D.; Lisa Marre Sommer, '92 J.D.; Margot O'Brien, '92 J.D.; Theresa Otto, '92 J.D.; and Dina Lallo Brantman, '92 J.D. Karen is Counsel with Frost Brown Todd LLC in Cincinnati.

IN MEMORIAM

Robert Affeldt, '51 J.D., died on June 7th after battling cancer. He was 83.

Peter F. Flaherty, '51 J.D., died of cancer at the age of 80.

Robert Maley, '54 B.S., '55 J.D., passed away at the age of 74.

Frederic M. Carlin, '78 J.D., died on June 20, 2005.

Carla J. DeVelder Joins the Notre Dame Law School as Director of Career Services

Ms. DeVelder graduated from the University of Nebraska College of Law in 1996,

having earned her bachelor's degree in Criminal Justice from the University of South Dakota in 1993. She has served as Assistant Dean and Director of Career Services at the University of Nebraska



College of Law since February 2003.

Carla managed the College of Law's professional development office, which served both students and alumni. In addition to counseling and assisting students on a regular basis, her accomplishments include developing and implementing programming, employer outreach programs, and off-campus recruiting programs.

Ms. DeVelder practiced criminal defense litigation as a Douglas County Assistant Public Defender and practiced general civil litigation in private practice. She is an active member of the National Association of Law Placement (NALP) serving as co-chair of the Alternative Careers Committee and presenting at the 2004 annual conference. She remains active in the legal community through bar association membership and pro bono work. She is also a past member of the Board of Directors for the Nebraska Criminal Defense Attorneys Association.

The Law School community welcomes Carla!

CLOSING ARGUMENTS

Reflections on Twenty Years of Service

Twenty years ago, in 1985, I was confirmed by the United States Senate as a Justice for the Court of Appeals for the Seventh Circuit. To mark this anniversary, I offer the following reflection on both the courts and the Notre Dame Law School.

In the fall of 1984, I was informed that my name was being considered for appointment to the bench. Congress had just created two new seats on the Court of Appeals for the Seventh Circuit: one for Illinois and one for Indiana. In October of that year, I was invited to the Department of Justice to speak with the Assistant Attorney General in the Office of Legal Policy and his staff. As the process continued, I became aware that the list was becoming shorter and that my name was still on it.

My confirmation hearings took place in late April 1985. Things moved very quickly. I was confirmed on May 3, 1985, on the last day of the spring semester. Just before 11:00 that morning, I received a call from then Senator Quayle, who told me that my confirmation was the first order of business that day for the Senate; just after 1:00 that afternoon, I received another call from Senator Quayle which began with him saying, "Judge, this is Dan Quayle. . . ." I took my oath of office on June 10th in the Supreme Court building under the portrait of John Marshall. Chief Justice Burger administered the oath. When he finished, he took off his robe and put it over my shoulders.

Over the years, I have noticed several changes in the judiciary. First, there has been a tremendous increase in the number of cases with which we must deal. When I came to the Court in 1985, there were about 2,000 cases per year on our docket; today, there are about 3,400—and there are the same number of active judges in the Circuit.

The caseload of the court has changed from time to time, tending to reflect the various pressures which society has felt. Certainly, changes in the region's economy are reflected in the kinds of cases we get: more bankruptcy, contracts cases, criminal, and so on.

Generally speaking, I have been very impressed by the quality of the practice and the dedication of the lawyers who appear before me. I have been especially impressed with the very significant number of lawyers who take on pro bono cases with the Court and do such a great job with them. We simply would not be able to discharge our own responsibilities as a Court on the qualitative level we'd like were it not for the tremendous efforts of the Bar. Another source of support is the Seventh Circuit Bar Association, which fosters and helps to maintain the high quality of work that is done. I've had occasion to work with them and those have been some of my happiest memories. Alexis de Tocqueville, in his observations of America, said that lawyers were a great force in the preservation of democracy in the United States because of their commitment to democratic ideals. I really don't think that he'd be disappointed if he came back to visit us today.

Another important relationship is my continued connection to the Notre Dame Law School. In the United States, we have always had a symbiosis between the judiciary and law schools. Law schools have always welcomed judges as participants on the education team, in the hope of providing students with a sense of the issues of substantive

law, a method for confronting those issues in practice, and an ethical underpinning. All of that is done to make the students better practitioners once they get their degrees.

On the other hand, for judges, the participation and work of law schools is really part of our continuing legal education. In judging, we only see slivers of the law, because we are looking at very focused issues. But in academics, we take a much broader view and try to see the law as an integrated whole. Scholars can think more about policy concerns of the law. For judges, participation in law schools allows us to push back from the bench and to view the law more broadly. Plus, law students ask judges questions that practitioners would never think to ask. They provoke us to re-think. It's good for judges to be exposed to that.

I believe that the Notre Dame Law School has experienced a sustained period of growth in terms of the quality of faculty and the graduates, and of the school's influence within the profession. There has been inspired leadership; I was present during the early days of Dean Link's tenure and admire his vision and courage to establish and maintain so many programs that have served the school so well. Dean O'Hara continues that tradition.

The Law School has always had a very teachable student body. They are prepared all of the time, open to new ideas all of the time, and capable of a level of self-criticism that is admirable and that allows them to be constantly engaged in the process of self-improvement. I have rarely seen an intellectual arrogance that gets in the way of self-improvement.

I came to a new appreciation of the quality of the school's product after seeing two of my sons go through the Law School. Watching them confirmed for me that Notre Dame's claim to stress the ethical dimensions of the practice of law actually does happen. That claim is not mere publicity.

I'm really hopeful about the Law School's future. The new building will be a wonderful asset. But the most important asset for our future is the very fine young faculty that the Law School has been able to attract in these past few years. They are committed teachers and scholars and they will preserve well the Notre Dame perspective on legal education.

We have challenges ahead of us at Notre Dame Law School. The first is to deal with the reality of globalization: to bring to the law school scholars and teachers from all over the world. We have to provide our students with an education that will permit them to practice law in an international environment. It will be important for the Law School to resist succumbing to the politicization that has infected so many institutions of legal education in the United States today. Law schools should be places where people of different views can engage one another in civil discourse, not places where there are "ins" and "outs" based on one's political ideology.

I consider Notre Dame Law School to be a big part of my life's work and I enjoy it tremendously. I'd need to write a whole book to tell all of my happy memories, especially since new memories come with every week.

Honorable Kenneth F. Ripple

