



THE
CHRISTIAN LAWYER
A PUBLICATION OF THE CHRISTIAN LEGAL SOCIETY

Vol. 6, No 3
Summer 2010

Lawyers Making an Impact

“Choose for yourselves this day whom you will serve,... But as for me and my household, we will serve the LORD.”

Joshua 24:15

Lawyers Giving Back Through Law, Page 3

God is Still in the Business of Miracles, Page 16

**The World Will Be Different:
An Interview with Michael McConnell, Page 18**



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LAWYERS MAKING AN IMPACT

LEADERSHIP DEVELOPMENT

By Craig Shultz

“...if we take discipling seriously, there is simply no substitute for **witness**.”

What does a well disciplined Christian lawyer look like? Perhaps your thoughts on that question will be similar to those of our Attorney Ministries committee which began discussing that question last year and has worked to develop material to assist our members in that purpose. An obvious starting point, of course, for such a discussion is found in Scripture - in looking at how Jesus worked with other men to accomplish His purpose. As a friend of mine, Doug Coe, has noted on this issue, the methods of Jesus are radically different than those we often employ—He appears to have had no agenda except love.

Doug succinctly suggests the implications of what Scripture tells us about the life of Jesus:

“If we take Jesus seriously and make him our model for discipleship, then we do not need a book or a workshop or a class on how to disciple. What we need is to make a decision: to choose to be with the persons we are called to disciple. We cannot disciple someone through a book or through television. We cannot disciple in absentia. We can only disciple as Jesus did, by being with the one disciplined. It is a costly endeavor. It takes time and effort. It is much simpler to write a letter or give someone a book or lay down a set of precepts for the person to follow. But, if we take discipling seriously, there is simply no substitute for **witness**.”

CLS wants to encourage lawyers around the country to become disciplers. It seems like a great idea. That said, the goal must not be to further an agenda or to create yet another program or method for discipleship. Even if it isn't a recognized word, the idea of “witness” is compelling. Certainly it takes time, and sometimes a lot of it. Still, we must recognize the need for each of us to spend time with someone—another lawyer perhaps. Maybe that person is someone in your law firm. Maybe you are a sole practitioner and that person is someone in a similar position. Whatever the case, let's encourage each other to make a decision. A decision to take the time and effort to “be with” that other person with an agenda based solely on our love for God and others.

PS: It has been my great joy to serve the past two years as President of CLS and, as my term is coming to an end in October, this will be the last column I write. Thank you for the incredible privilege to serve in this capacity and may God continue to bless the Christian Legal Society.

CLS President Craig Shultz, a graduate of Washburn University School of Law, is involved with Christian Legal Aid of Wichita. He practices primarily in the areas of personal injury and professional negligence.

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LETTERS TO THE EDITOR

THE
CHRISTIAN LAWYER®

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Dear Christian Legal Society,

I am a bisexual non-Christian, therefore in numerous ways your organization and I are probably in vehement disagreement concerning certain areas of secular law.

But, I hope you win your US Supreme Court case.

You have as much right to freedom of association as a GLBT students legal society does. Just as it would negate a GLBT student group's purpose if anti-gay people took control of the group, so it would negate your purpose if someone antithetical to your cause leads your group. By protecting your freedom of association, gay student groups' freedom of association is also protected. Just as the Supreme Court decreed that the Boston Hibernians had the right to keep Irish gay groups from marching in their St. Patrick's Day parade, so too does the organizer of a Gay Pride parade have the right to keep Exodus or Fred Phelps from marching in that parade.

So, while I probably oppose many of your group's goals with regard to secular law and secular civil rights, including secular marriage, nevertheless I support your right to freedom of association because that protects the right to freedom of association for groups I support.

Thank you
Peter G.

Hello,

I just read an article on the Web where the Supreme Court is hearing an issue with regards to your club not allowing certain people join. I have to tell you, your 'actions' are not displaying the true nature of the Christ that I know: the one that saved me, loved me and gave his life for me when all others wanted to turn their heads and walk away.

You should change your club's name to: "HYPOCRITE LEGAL SOCIETY", good luck with your mission...

Terry W.

Dear CLS:

I wanted to take a few minutes to applaud you for standing up for your beliefs. It is commendable. And while I am not able to help financially at this time, you and your organization will be in mine and my family's thoughts and prayers.

Olivia H.

Editor's Note:

We received the following emails in response to the *CLS v. Martinez* case.

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CLS sends out bi-weekly devotional emails to our members. Written by various CLS members, these E-Devotionals have been well received. If you haven't been getting the devotionals and would like to receive them by email, please make sure the CLS has your most current email address by updating your member profile at www.clsnet.org or by emailing us at memmin@clsnet.org.

The Christian Lawyer welcomes letters, comments and suggestions from our readers. We'd like to hear how God is moving in your life, law practice, CLS chapter or law school. Letters may be edited to suit the format of the magazine. Mail to: Editor, Christian Legal Society, 8001 Braddock Road, Suite 300, Springfield, VA 22151 or e-mail your submissions to memmin@clsnet.org.



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Lawyers Giving Back Through the Law:

How the Use of the *Cy Pres* Doctrine is Changing One State

By Patrick J. Perotti



Patrick Perotti presented a check to the United Cerebral Palsy in summer of 2008. Miles Ketterer, a 6-year-old with cerebral palsy, was one of many children blessed by this gift.

Practicing law while practicing faith can be very tough. On one hand, the pressure to win at all costs. On the other, acting with the love and compassion of Our Savior. The recent use of an ancient and obscure legal doctrine is helping lawyers to stay on the side of the angels.

The line stretched down the block and around the corner. Every week it got longer by a few more people. The kitchen director shook his head in frustration, walking back into the building out of the cold, biting rain. Once again, he would have to shut the doors, leaving almost half the people out in the cold. His eyes welled, remembering the neatly dressed woman and her two young children from the day before. "Momma, I am hungry. Why can't we eat tonight?"

**'HOW WILL
I TELL THIS
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CAN'T HELP
HER AND HER
CHILD,'**

Continued on page 4

“He was the perfect little baby, so how is this happening now,” Lisa asked the social worker between tears. Nathan talked, laughed and reached all the milestones—until twenty months. Then he stopped. Another victim of autism, a multi spectrum disorder that now affects 1 out of every 150 children. The social worker knew that Lisa’s insurance would not cover Nathan’s treatment based on a standard “experimental exclusion” in the policy. Biting back anger, her mind ran again through the list of states which legislatively require children to receive the treatment, knowing Ohio was not yet one of them. “How will I tell this mother we can’t help her and her child,” she thought.

The weather was unseasonably warm. The kids were looking forward all month to the field trip to a real horse farm. They would never rise from their wheelchairs to ride a horse but were so happy at just the chance to visit. What they didn’t know is the counselor had been on the phone all morning, trying to find someone to donate replacement transportation for the bus that had broken down again. After reading about across-the-board 25% agency budget cuts earlier that morning, the counselor was not surprised the bus would not be fixed anytime soon. The kids would not be having any field trip.



Big Brothers & Big Sisters was another grateful recipient of the Cy Pres money.

What if there were a way to visit each of these organizations and countless others with the news—don’t worry, we have the money you need? Sadly, few people would think that one answer to these problems could come from a lawyer and the judicial system.

Yet instead of being an only desperate wish, that has become a reality thanks to an obscure legal doctrine known as “*cy pres*” and the vision of a Cleveland law firm, Dworken & Bernstein Co. L.P.A., and its class action partner, Patrick J. Perotti.

Over the last few years this firm has directed over \$20 million dollars to charities and nonprofits throughout the country: monies for thousands of meals to hungry and homeless families; research to defeat killing diseases like leukemia, cerebral palsy, and muscular dystrophy; alcohol and drug abuse counseling, treatment and prevention; temporary and permanent housing for hundreds of homeless families; scholarships to needy kids and teens; speech and hearing treatment, including hearing aids for poor families; guidance and therapy for runaway teens and adolescents; lifesaving surgeries for children; legal assistance and services to the poor and displaced; transitional housing and aid to young, single, pregnant women.

‘IN OHIO . . . \$60 MILLION DOLLARS IS UNCLAIMED FROM CLASS SETTLEMENTS EVERY YEAR.’

In a history making event last July, 2008, Mr. Perotti distributed the largest *cy pres* of its kind in the United States—nearly \$14 million dollars from a single lawsuit—to almost fifty deserving charities and branches. For many of the organizations, the money meant the difference between keeping entire categories of programs open or having them closed because of the seriously declining economy.

After the shock and excitement of receiving donations of almost \$500,000 each, everyone asked the same questions. “How did they do this?” “Where did all this money come from?”

The legal answer is something we probably haven’t heard of since law school wills and trusts. The practical answer is closer to home: it is sitting on your kitchen table with all the rest of the mail. That little envelope you may toss into the garbage.

Because class actions take years to resolve, when it is time to pay out the settlement monies, over half of the class members cannot be found. Some have passed-away. Others have moved or remarried. Still others do not read the claim material.

This presents a quandary where the defendant has agreed to settle for a fund of a specific amount. It is not uncommon to be unable to find 40 or even 50% of the class members. It does not accomplish the objective of the settlement for a party to keep the monies which they agreed to pay in settlement. Without use of *cy pres* however, that is where the unclaimed monies go in nearly all class actions: back to the wrongdoer.



Representatives from Rotary Gift of Life receive a check from Mr. Perotti

The alternative used by Dworken & Bernstein in nearly all of its settlements is *cy pres*, an ancient legal doctrine from the third century. *Cy pres* means “as nearly as possible.” It allows an alternative, beneficial use to be established for monies, where the full intended payment has not been made. Its first known use was in response to a bequest to construct aqueducts—which could not be met because the testator died long after the canals had already been constructed. Instead, the money was put to another use for the benefit of the community.

Although around for centuries, the use of *cy pres* in class actions has not been widespread. Class action plaintiff attorneys rarely insist on it—perhaps because it does not increase the attorney fees which they receive. In fact, use of the doctrine requires much more time to resolve a case. Also, few judges are familiar with its use under the class action rule, Civil Rule 23.

Under Rule 23, any settlement of a class action must have court approval as to its reasonableness. But a disconnect occurred in many class cases. For example, the parties would inform the court that a certain settlement payment was being agreed to be paid to the class, only for the judge to find-out later that the ‘payment’ was not money but coupons. Yet, the class lawyers were being paid in cash. That problem quickly disappeared when one court indicated willingness to approve the settlement, provided that the attorneys take their fee in coupons!

A similar quandary exists when parties inform the court that a settlement has been reached providing for a class payment fund of \$1,000,000, and seek approval of that amount as the basis of the settlement, but do not inform the court that less than 50% of that money will ever be paid because of the number of class members who will not be found. Using *cy pres*, the amount which is used to gain the court’s approval is required to be distributed either to the class or to charities.

It is not honest for counsel for both sides to present the court a settlement fund number which they know will never be paid-out. Honesty demands that if the attorneys tell the court a settlement will be \$1,000,000, the amount must be a sincere number. Otherwise, the number is just a gambit. Otherwise, the defendant is paying a fraction of their agreed amount and the plaintiffs’ counsel is making fees that have no realistic connection to the actual amount of benefit generated.

Dworken & Bernstein is doing this in all of their class actions. The challenge has been to encourage all class action firms nationally to do this. One way to achieve this goal was the formation of a 501(c) (3) organization known as Ohio Lawyers Give Back. The organization’s sole purpose is educational. The organization seeks to highlight that over \$12 BILLION Dollars in class action settlement monies are unclaimed. As an example, for the state of Ohio where Mr. Perotti is headquartered, over



A cy pres award was also given to Muscular Dystrophy Association.

\$60 Million Dollars is unclaimed from class settlements **every** year.

This campaign turns the practice of law into practicing faith. The campaign needs help across the country to educate judges around the country about the availability of the *cy pres* doctrine for class actions where a significant amount of the funds committed by a defendant to settlement will be unclaimed. The campaign needs help to pass legislation—like the laws or rules already enacted in the states of Illinois, Washington, North Carolina, Massachusetts, South Dakota, and California.

Whatsoever you do...

Because *cy pres* can save lives, it is a practice that must be spread all over our country. Our justice system can use *cy pres* to do much more. Those in need deserve no less.

Will you help? For more information about these efforts, and a list of all groups which have received a *cy pres* distribution, visit www.ohiolawyersgiveback.org.



Patrick J. Perotti, Esq., a CLS Member since 1998, is a partner with Dworken & Bernstein, Co., LPA. This article was written in consultation with Judge Forrest Burt, Geauga County Common Pleas Court.

A Word for Christian Lawyers: Remember Russell Kirk

By Allen Mendenhall

Christian belief is not the only source of ethical principle behind law, but it is the most powerful and popular source. If all connection between the Christian religion and the verdicts of courts of law is severed in this country, the law will become erratic and unpredictable at best.

—Russell Kirk (147)

Most remember Russell Kirk, if at all, as the Dean of Conservative Letters, an erudite, bespectacled man with an aw-shucks grin and Anglophile tastes. Few remember Kirk as a jurisprudent or constitutional commentator. But Kirk's *Rights and Duties*, first published in 1990 as *The Conservative Constitution*, is a sweeping, Burkean-informed survey of the American legal order. Portions of the book draw from Kirk's previous essays in, among others, *The Notre Dame Law Review*, *The Journal of Christian Jurisprudence*, *Law and Contemporary Problems*, *The World & I*, *Modern Age*, *The Intercollegiate Studies Review*, and *The Presidential Studies Quarterly*.

Some on the left and right may be alarmed by Kirk's mission, to "understand the Constitution of the United States as a framework for a conservative political order," will ring alarm bells (vii).¹ After all, any call to enlist the Constitution in the ranks of conservatives or liberals seems self-defeating. Yet Kirk's notion of conservatism and liberalism is nothing like the infantile movement politics of the current Republican and Democratic parties. His notion is cultivated and historically informed, drawing parallels to ideals of sober-sided, Old Whig statesmen on the one hand, and to Lockean, Enlightenment *philosophes* on the other. A conservative, for Kirk, is the former, one who appreciates the rootedness of institutions and who rejects ideology of any stripe. Kirk's objective, then, is to show that the U.S. Constitution does not have as its *telos*



the emancipation of the individual from historical and social convention. To that end, he contrasts the American Constitution and the French Declaration of the Rights of Man and of the Citizen, which was more or less a vehicle for radical and often militant change. (It bears asking why Kirk compares this French document with the U.S. Constitution while downplaying the Declaration of Independence, which gushes with abstractions and revolutionary ferment.) Jefferson and Jacobins notwithstanding, Kirk's argument is that the virtues of the U.S. Constitution are, above all, its permanence and continuity, which would not exist without the ongoing consent and reverence of the citizenry.

Kirk's definition of *constitution*—"a system of fundamental institutions and principles, a body of basic laws, for governing the commonwealth"—may sound strange to some conservatives (3). Strange, I say, because this interpretation implies that a constitution is not a fixed and knowable text, as originalists proclaim; rather, a constitution is a set of values and mores that transcends written words. A constitution, in other words, is "made up of old customs, conventions, charters, statutes, and habits of thought," including religious customs, conventions, and so on (4). A constitution is by nature conservative because its purpose is to endure for generations, although in practice it is as mutable as its adherents. The problem with this position is that not all constitutions are meant to endure—some are

1 All citations come from RUSSELL KIRK, *RIGHTS AND DUTIES* (Ed. Mitchell S. Muncy, Intro. Russell Hittinger) (Dallas, TX: Spence Publishing Company, 1997).

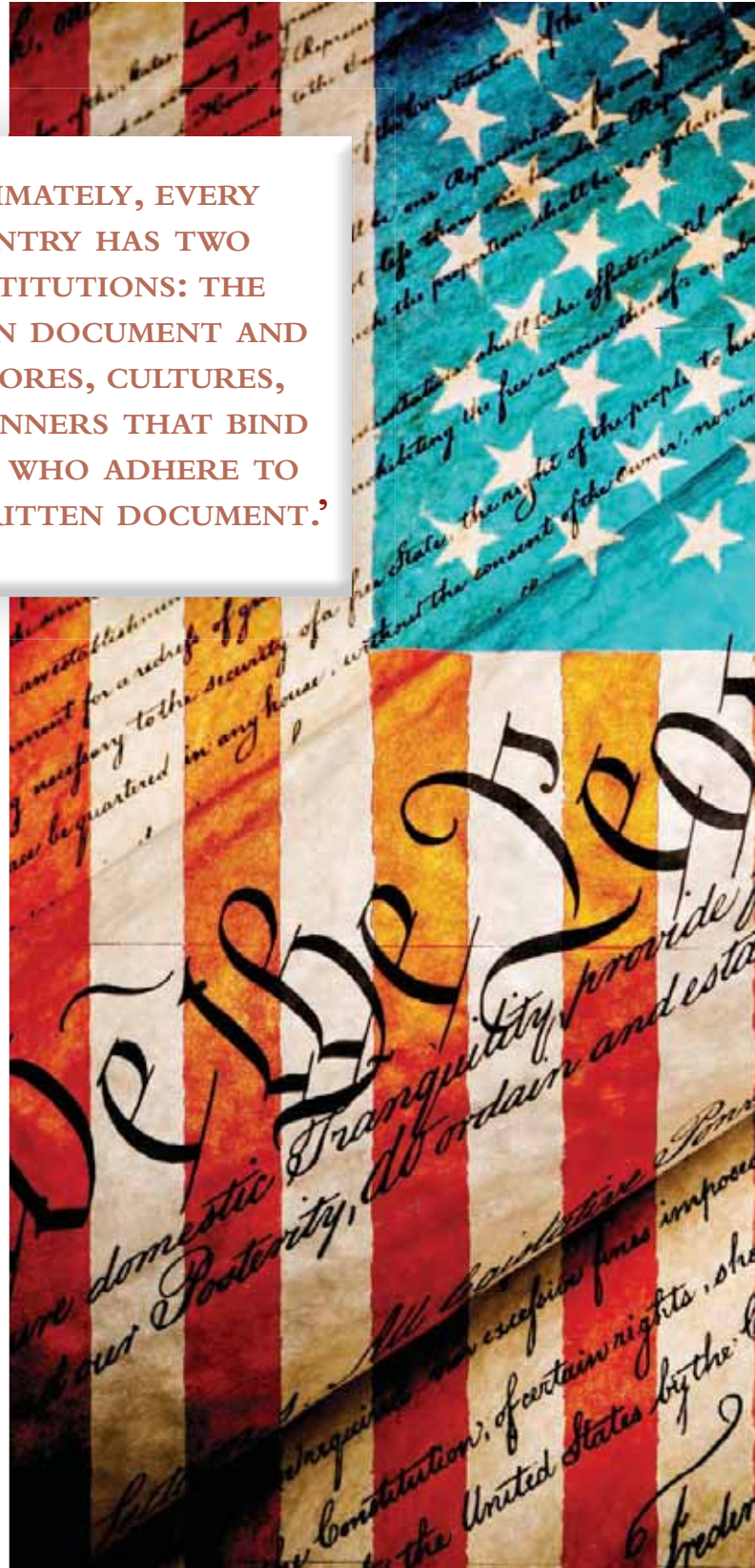
merely placemarkers, temporary solutions to be supplanted later, when the populace has had more time to deliberate about various provisions. To address this tangle in his reasoning, Kirk distinguishes successful and unsuccessful constitutions. Some constitutions, though conservative, have not endured as has the U.S. Constitution, which allows for changing opinions but which resists spur-of-the-moment trends. “The Constitution of the United States,” Kirk proclaims, “has endured for two centuries because it arose from the healthy roots of a century and a half of colonial experience and of several centuries of British experience” (110). Kirk mentions the constitutions of other nations only in passing. His is not a comparative treatise but a dissertation on the order and tradition of an Anglo-influenced American document, which embodies an Anglo-American ethos. One may be left wanting more comparisons—that is, more evidence about what makes the U.S. Constitution and its several constituents different from others.

Ultimately, every country has two constitutions: the written document and the mores, cultures, and manners that bind people who adhere to that written document. The aim of these twin structures is political harmony. Without political harmony, a constitution cannot last. The fact that the U.S. Constitution has survived so long testifies to the general content and accord among the American people throughout history. A populace will not continue to follow a constitution that is too rigid; nor will a constitution that is too flexible restrain the exercise of arbitrary power, either of tyrants or of elites. Thus, a good constitution must be organic, not evolving. The difference between these adjectives, though slight, is essential: the former abides by tradition whereas the latter serves, or has the potential to serve, fashionable ideologies.

Kirk argues for the necessity of original intent, coupled with a careful study of history (58), as a hermeneutic methodology. He acknowledges, however, the difficulties of ascertaining such intent. A “reasonable attachment” to the written text of the Constitution, not a “blinkered literalism,” is his standard of interpretation (29). Any significant departure from this standard could lead judges down the road towards archonocracy, or a “national domination of judges” (31), because it would give judges an infinite “power to do mischief” (30). This conclusion, though probably true, is somewhat figurative, lacking in any concrete examples. It begs the question: how much departure is too much? Which raises other questions: how will we know when judges have gone too far? Who or what must check the power of tyrannical judges? How will judges vest power in the judicial branch despite overwhelming public opposition to their practices? Kirk leaves these and other, similar questions unanswered.

Kirk’s conservatism has little to do with Robert Bork’s

‘ULTIMATELY, EVERY COUNTRY HAS TWO CONSTITUTIONS: THE WRITTEN DOCUMENT AND THE MORES, CULTURES, AND MANNERS THAT BIND PEOPLE WHO ADHERE TO THAT WRITTEN DOCUMENT.’



positivism in that Kirk, according to Russell Hittinger, “subscribed to the dicta of Roman and English-speaking jurists, who held that the natural law enters into the organic laws of a people through customs and usages, and eventually through the many judgments which go into the making of statutory law” (xxvi). Recognizing the vagaries that trouble most notions of natural law—evidenced by public objections, during Senate nomination hearings, to Bork’s positive law convictions and shortly thereafter



President Ronald Reagan with Russell Kirk.

to Clarence Thomas's natural law convictions—Kirk suggests that law is not absolutely natural or absolutely positive but that natural law authorizes positive law. Accordingly, positive law is not divorced from but married to natural law; it derives its lexicon of intelligibility from a discourse of higher principles. In this respect, Kirk subscribes to a long and venerable tradition: that of classical and Catholic natural law. To avoid laboring the point, suffice it to say that this “old tradition of natural law comes down from Christian divines” (131). Implementation of this tradition involves “moral law” that “should not be taken for graven tables of governance, to be followed to jot and title,” but for guiding precepts that must “be appealed to in different circumstances, and applied with prudence” (131). It does not follow that judges may substitute their views of natural law for the law of the land; but views of natural law that are in keeping with history, tradition, and the sacred may—indeed should—inform judges' application of written law.

Although Kirk believes that “law necessarily is rooted in ethical assumptions or norms,” which derive “from religious convictions” (139), he does not pretend that the U.S. Constitution was or is a religious document. He is not after hagiographic renderings of the Founding Fathers. The delegates to the Constitutional Convention neither aspired to establish “some civil religion as an alternative to Judaism and Christianity,” nor set out to create a “work of politico-religious dogmata” (62). Instead, these delegates sought a “practical instrument of government” (62). They were not gods, but men. That does not mean the Founding Fathers were not religious. In fact, Kirk submits, the “religious and moral convictions of the Framers had something to do with [their] probity in prudential decisions” (85). Kirk cites M. E. Bradford's suggestion that “with no more than five exceptions (and perhaps no more than three),” the Founding Fathers “were orthodox members of one of the established Christian communions: approximately twenty-nine

Anglicans, sixteen to eighteen Calvinists (of various churches), two Methodists, two Lutherans, two Roman Catholics, one lapsed Quaker and sometime-Anglican, and one open Deist—Dr. Franklin, who attended every kind of Christian worship, called for public prayer, and contributed to all denominations” (85). Tired debates over whether the Founding Fathers meant to establish a Christian nation are beside the point. More relevant is the fact that American government arose out of the common experience of a Christian people devoted, for the most part, to a republican order anchored by religious faith. The Founding Fathers clearly did not intend to level Christian institutions—with the possible exception of Thomas Paine, whose anti-religious fervor turned Americans against him—and the U.S. Constitution was not about preserving Christian institutions, so it cannot be said that our *written* Constitution is an anti-religious or a pro-religious text. Our *unwritten* Constitution, however, is almost indisputably religious, shaped as it is by a transcendent moral order based principally on Biblical teachings. Accordingly, judicial activism may not be as pressing an issue as cultural activism, since the latter is a departure from a far more ancient constitution. Kirk believes that ideology will fill any vacuum left by the decay of religion. As more and more Americans profess themselves nonbelievers, we will see whether Kirk's predictions come true.

Although the U.S. Constitution is not a sacred text, the corpus of English and American law “cannot endure forever unless it is animated by the spirit that moved it in the beginning: that is, by religion, and specifically by the Christian people” (139). Kirk laments the attempts by some to sweep away religious beliefs from our courts of law. He therefore endeavors to demarcate boundaries between a legal system completely separating church and state, on one extreme, and a legal system conflating all laws with Christian doctrine, on the other. We deceive ourselves if we downplay the influence of Christianity on American law; likewise, we vulgarize Christianity if we equate everyday administrative procedures with a general understanding of Christian justice. Here, the line of demarcation divides law from sources of law. Kirk explains the difference in this way: “The law that judges mete out is the product of statute, convention, and precedent. Yet behind statute, convention, and precedent may be

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discerned, if mistily, the forms of Christian doctrines, by which statute and convention and precedent are much influenced—or once were so influenced” (143). Put another way, the underlying principals of the American legal order, constituted by Christian thought and practice, shape the way legislators promulgate laws as well as the way judges interpret laws. Rules and regulations emerge and exist within a field of Christian discourse dating to the English common law and perhaps even to antiquity. The meaning of certain laws depends upon a vast network of Christian interpretation that precedes those laws; and unless legislators and judges dispense with those laws altogether—an act Kirk would be loath to endorse—the Christian element will persist, even if retarded beyond quick recognition.

There can be no pure Christian polity on earth in part because humanity is imperfect and imperfectible, and in part because the Church, historically, has been either hesitant or wrong to dictate State policies. Kirk does not believe humanity will ever achieve a worldly paradise. That, however, does not stop him from championing right law and moral order. His support for religious schools and his invectives against pornography stand as two examples of his Christian “activism,” a label at which he would wince, he being a disinterested man of letters in the Arnoldian sense. Something of an armchair philosopher, albeit with ties to political organizations, Kirk does not wish to revolutionize the legal profession, which should, he thinks, “repair to Burke” (124). He declares that “in an age of virulent ideology, an age of immensely quick, unthinking communication,

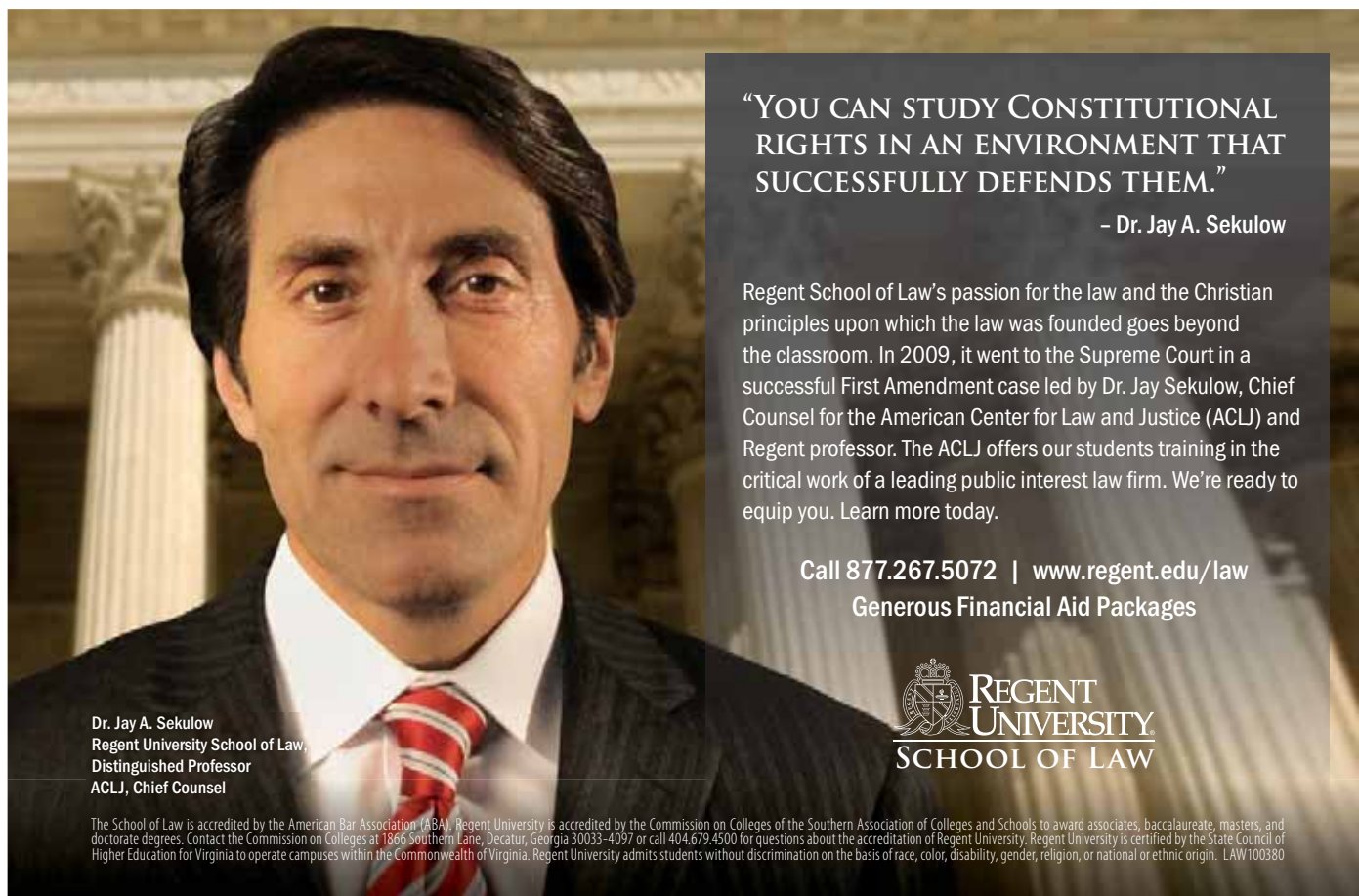
old institutions everywhere require intelligent defense” (124). He is, thus, a guardian of ancestral wisdom and of the moral imagination, duty bound to teach and transmit an intellectual and spiritual inheritance that too many Americans have neglected. Christianity makes up the vast sum of this inheritance. It is the bedrock of our society and government. Try as we might, we cannot break from that foundation—not without toppling the very order that holds us in place and protects us from ourselves.

“Christian belief,” Kirk claimed, “works upon the political order in three principal ways: faith’s influence upon statesman; faith’s influence upon the mass of mankind; and faith’s shaping of the norms of the social order” (162). Kirk’s jurisprudence pivots on these three influences. It deserves our attention. In an age of secularism, we must, I think, remember it, lest we forget who we are—and why our constitution is important.



A former adjunct legal associate at the Cato Institute, Allen Mendenhall is an LL.M. candidate at Temple University and will teach English at Auburn University in 2010. He holds the J.D. from West Virginia University College of Law, M.A. in English from West Virginia University, and B.A. in English from Furman University. He would

like to thank Mrs. Annette Kirk for providing him with his copy of Rights and Duties.



“YOU CAN STUDY CONSTITUTIONAL RIGHTS IN AN ENVIRONMENT THAT SUCCESSFULLY DEFENDS THEM.”

– Dr. Jay A. Sekulow

Regent School of Law’s passion for the law and the Christian principles upon which the law was founded goes beyond the classroom. In 2009, it went to the Supreme Court in a successful First Amendment case led by Dr. Jay Sekulow, Chief Counsel for the American Center for Law and Justice (ACLJ) and Regent professor. The ACLJ offers our students training in the critical work of a leading public interest law firm. We’re ready to equip you. Learn more today.

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CLS v. Martinez in 1000 Words or Less

‘THE COURT PROVIDES A MISLEADING PORTRAYAL OF THIS CASE. . . . I BEGIN BY CORRECTING THE PICTURE.’ —SUPREME COURT JUSTICE SAMUEL ALITO

On June 28, 2010, the U.S. Supreme Court rendered its decision in *Christian Legal Society v. Martinez* affirming the 9th Circuit’s decision that Hastings College of Law could refuse to recognize a CLS law student chapter because it required its members and leaders to sign a statement of faith and adhere to that statement in their conduct. Links to the Court’s opinions are at www.clsnet.org, and we encourage you to read them. The following excerpts are from Justice Alito’s dissenting opinion in which Chief Justice Roberts, Justice Scalia, and Justice Thomas joined (some citations have been omitted):

The proudest boast of our free speech jurisprudence is that we protect the freedom to express “the thought that we hate.” *United States v. Schwimmer*, 279 U.S. 644, 654–655 (1929) (Holmes, J., dissenting). Today’s decision rests on a very different principle: no freedom for expression that offends prevailing standards of political correctness in our country’s institutions of higher learning.

The Court’s treatment of this case is deeply disappointing. The Court does not address the constitutionality of the very different policy that Hastings invoked when it denied CLS’s application for registration. Nor does the Court address the constitutionality of the policy that Hastings now purports to follow. And the Court ignores strong evidence that the accept-all-comers policy is not viewpoint neutral because it was announced as a pretext to justify viewpoint discrimination. Brushing aside inconvenient precedent, the Court arms public educational institutions with a handy weapon for suppressing the speech of unpopular groups—groups to which, as Hastings candidly puts it, these institutions “do not wish to . . . lend their name[s].” Brief for Respondent Hastings College of Law 11.

The Court provides a misleading portrayal of this case. . . . I begin by correcting the picture.

In May 2005, Hastings filed an answer to CLS’s first amended complaint and made an admission that is significant for present purposes. . . . Hastings admitted that its Nondiscrimination Policy “permits political, social, and cultural student organizations to select officers and members who are dedicated to a particular set of ideals or beliefs.” *Id.*, at 93. The Court states that “Hastings interprets the Nondiscrimination Policy, as it relates to the [registered student organization] program, to mandate acceptance of all comers.” But this admission in Hastings’ answer shows that Hastings had not adopted this interpretation when its answer was filed. Within a few months, however, Hastings’ position changed.

Hastings’ effort to portray the accept-all-comers policy as merely an interpretation of the Nondiscrimination Policy runs into obvious difficulties. First, the two policies are simply not the same: The Nondiscrimination Policy proscribes discrimination on a limited number of specified grounds, while the accept-all-comers policy outlaws all selectivity. Second, the Nondiscrimina-

tion Policy applies to everything that Hastings does, and the law school does not follow an accept-all-comers policy in activities such as admitting students and hiring faculty.

This Court does not customarily brush aside a claim of unlawful discrimination with the observation that the effects of the discrimination were really not so bad. We have never before taken the view that a little viewpoint discrimination is acceptable. Nor have we taken this approach in other discrimination cases.

To appreciate how far the Court has strayed, it is instructive to compare this case with *Healy v. James*, 408 U.S. 169 (1972), our only First Amendment precedent involving a public college’s refusal to recognize a student group.

Unlike the Court today, the *Healy* Court emphatically rejected the proposition that “First Amendment protections should apply with less force on college campuses than in the community at large.”

In the end, I see only two possible distinctions between *Healy* and the present case. The first is that *Healy* did not involve any funding, but as I have noted, funding plays only a small part in this case. And if *Healy* would otherwise prevent Hastings from refusing to register CLS, I see no good reason why the potential availability of funding should enable Hastings to deny all of the other rights that go with registration.

This leaves just one way of distinguishing *Healy*: the identity of the student group. In *Healy*, the Court warned that the college president’s views regarding the philosophy of the SDS could not “justify the denial of First Amendment rights.” 408 U.S., at 187. Here, too, disapproval of CLS cannot justify Hastings’ actions.²

In the end, the Court refuses to acknowledge the consequences of its holding. A true accept-all-comers policy permits small unpopular groups to be taken over by students who wish to change the views that the group expresses. Rules requiring that members attend meetings, pay dues, and behave politely would not eliminate this threat.

The possibility of such takeovers, however, is by no means the most important effect of the Court’s holding. There are religious groups that cannot in good conscience agree in their bylaws that they will admit persons who do not share their faith, and for these groups, the consequence of an accept-all-comers policy is marginalization. . . . This is where the Court’s decision leads.

I do not think it is an exaggeration to say that today’s decision is a serious setback for freedom of expression in this country. . . . Even those who find CLS’s views objectionable should be concerned about the way the group has been treated—by Hastings, the Court of Appeals, and now this Court. I can only hope that this decision will turn out to be an aberration.

No More Questions

By Dr. David Butler

“**Y**ou would make a great lawyer.” A member of our church leadership team once told me that after serving together several years. Hopefully, he meant it as a compliment, because I took it that way. Maybe he just thought I was argumentative, but his comment triggered the possibility of what might have been. As a college freshman I declared myself a pre-law major, which, in my case, turned into thirty-six hours of Political Science study and nothing more. My heart and life took a different turn toward full-time vocational ministry a year later. It was a decision I’ve never doubted. But there remains today a deep level of intrigue and respect for those who “practice law,” including a member of my extended family. So far he’s not heard from me professionally, but it’s good to know he, along with a few “legally-minded” friends, is close by.

Without knowing all that goes into making a great lawyer, presenting well-crafted questions has to be a key signature of a skilled and effective officer of the court. Questions carefully designed for the purpose of discovery or drawing conclusions can turn evidence into compelling and winnable arguments.

For a moment, let me play out your role and ask a question with you in mind. I know lawyers are the ones who are supposed to ask the questions, but this opportunity is too good to pass up. I’ll warn you up front it’s a loaded question that may sound simple at first glance. But, like your questions, it’s meant to probe and arouse some serious reflection on your part. You can also expect this question to raise other questions. There’s one final but necessary disclosure. This can be a life-defining question if asked at regular intervals over the span of a lifetime. Now here’s the matter in question:

**‘IS THERE MORE TO LIFE
THAN WHAT I’M PRESENTLY
EXPERIENCING?’**

What’s so challenging about this query isn’t so much your answer but what your answer implies. Anything less than a “yes” hints at either apathy or arrogance. Likewise be careful to filter out any response shaped or driven by selfish ambition or personal gratification. Both are dangerous dead-ends that distort the intent of the question and turn it into a potentially life-wrecking pursuit.

The word order places pivotal importance on two words, *more* and *presently*. *More* in this case has little to do with size

or scope but value and substance. That’s what a small group of accomplished professionals recently discovered when I tossed this life-long question their way. Accomplishments and achievements, while appreciated, came up short in favor of the *more* Jesus described in John 7:38, “Whoever believes in me, as the Scripture has said, streams of living water will flow from within him.” The promised *more* of God’s Spirit, they realized, is to “fill up” and “flow out” of the life of every Christ-follower. That’s when the discussion turned silent and then honest, as the *presently* part of the question took hold.

No one doubted the promise or the empowering presence of Christ in his respective life. But each made it clear they had “soul cravings” for the *more* Jesus offered. An obvious follow up question couldn’t be avoided for them or anyone else taking the question to heart. If there is *more*, why am I not experiencing the *more* Jesus made clear was His gift to every Christ-follower?

Could it be the *more* you’re not experiencing has less to do with what’s missing than what you find yourself clinging to with a tight-fisted grasp. Subtly our mind can be taken over by the empty promises of the surrounding culture. A divided heart becomes the norm as we unknowingly sabotage His work in us. We lose out on the deeper and richer experiences of His grace due to the clutter of competing “gods.”

John Calvin, the 16th century reformer made the case that you and I are creatures of desire. In fact, everything we choose, do or say reflects our innermost longing. He observed: “Man’s nature, so to speak, is a perpetual factory of idols.” Idolatry doesn’t typically come to mind in matters of spiritual formation, but it should given it is at the root of what keeps God from being our all in all. That brings to mind another personal and unsettling probe, “Which idol is God’s biggest rival in my life?”

I leave you with that question as well as all the others. They just keep coming, but there is a time to say as you often do, “No *more* questions, I rest my case,” with added emphasis on the *more*.

Someday, hopefully sooner than later, we can say with the Psalmist, “Who in heaven do I have but You and there is nothing I desire on earth but You.” Psalm 73:25. We’ll be taking up the pursuit of that vision and reality for your life and mine at the 2010 CLS National Conference in Orlando. I look forward to sharing that journey with you.

After all, spending the weekend with a group of lawyers might just make me a “good lawyer.” Hopefully something *more*.

Dr. David Butler, Senior Pastor of CenterPoint Church in Concord, NH, will be one of our keynote speakers at the CLS National Conference in Orlando, October 21-24.

IN THE TRENCHES



Editor's Note: Several months ago, a CLS member suggested that *The Christian Lawyer* have a regular feature of articles from member attorneys practicing "In the Trenches." This article is the first instalment. If you have your own story that you would like to share as an encouragement to other members, please let us know.

The Case for Opening Mediations with Prayer

By Sam Crosby

For the past eighteen years I have been mediating cases. Two months ago a case was settled in mediation that disposed of nine separate jury trials on the dockets of five different judges. Last week a nine million dollar settlement was reached in the mediation of a case that was two weeks into a five-week long jury trial. Each year, mediations are becoming a larger part of my general civil law practice with a ten lawyer firm.



A Jewish king who was believed to be the wisest person of his era once spoke these words: "...acknowledge him in all your ways and he will direct your paths."¹ I begin every mediation with prayer, because by so doing I acknowledge Him, and He directs my path. For example, recently in a very difficult wrongful death case, the decedent's family members were screaming and wailing with grief when I walked into the room to meet them. After spending an hour listening and trying to console them, we prayed together

before the mediation sessions started. This began a process that led to settling the case in mediation.

Roy Bowes, president of the New Orleans Chapter of CLS, asked me to write this article to share my method of introducing prayer in mediations.

When I conduct a mediation, my opening remarks are, "Good morning, my name is Sam Crosby. I want to start by thanking you for giving me the privilege of working with you. I also want to give you a little background about myself. The most important thing you need to know about me is that I followed in the great tradition of all Crosby men and married way over my head. Asking Ann to marry me was the second most important decision I ever made."² I then present my mediation outline and notes and conclude by asking the lawyers if I have forgotten anything they wish for me to cover. My final statement is, "For the past eighteen years, I have opened every mediation with prayer, and if no one has an objection, I would like to do so now."

The prayer that I say to open the mediation should be helpful to persons of any faith: "Heavenly Father, thank you for our health, our families and the privilege of living in this country.

Please bless everyone present here and their families. Please give us wisdom from above and guide us in our words and actions. May everything we say and do glorify you." I close the prayer with either "amen" or "in the name of the wonderful counselor and the prince of peace."³

I try to bring up the issue of prayer in a sensitive manner, and I have never had a complaint or objection from a participant in a mediation. My experience has been that because it is a stressful situation most people are grateful for a prayer. If I ever do get an objection, I plan to say, "Thank you for letting me know this is objectionable to you. Let's just share a moment of silence together to think about the task at hand or pray silently."

Occasionally a participant in a mediation will say to me, "Sam, we appreciate your being here, but it is impossible for you to settle this case." This statement is true. However, whenever I hear it I am reminded that we know someone for whom "nothing is impossible,"⁴ and He can settle the case and often does.

Just as many physicians believe that praying with their patients promotes the healing of disease, I believe that praying with the participants in a mediation is helpful in healing conflict. In his book, *The Peacemaker*, Ken Sande states, "Conflict always provides an opportunity to glorify God..."⁵ As mediators, we can take advantage of this opportunity by including prayer in the conflict resolution process.

REFERENCES

- 1 Proverbs 3:6.
- 2 Randy Thomas, a retired Montgomery judge, encouraged me to add this statement to my opening remarks. He said that this statement sometimes prompts the question, "If selecting your wife was the second most important decision you made, what is the most important decision?" At this point Randy gives his testimony about his relationship with Christ.
- 3 Isaiah 9:6.
- 4 Mark 10:27.
- 5 Kenneth Sande, *The Peacemaker*, p. 26, Baker Books (1999).



Sam Crosby graduated from the University of Virginia with academic distinction and the University of Alabama School of Law. He is a past president of the Alabama State Bar and the first Alabama lawyer to receive the Chief Justice's Outstanding Leadership Award for his service to the public. He is a director of the Mobile Area Chapter of CLS.

Executive Director Musings

By Fred L. Potter



Hastings' Troubling Outcomes.

Christian Legal Society lost, by a sharply-divided 5-4 Supreme Court ruling, its appeal from the surprisingly brief 9th Circuit decision. That 9th Circuit ruling departed from a solid line of decisions affirming student rights of association and rejecting application of purported anti-discrimination policies to suppress religious speech. The irony of Hastings' requirement that a student religious association empower students vehemently opposed to its beliefs to control its message as a required ticket to access a campus speech forum is striking. In this case Hastings' purported "all comers" policy, a late-articulated justification substituted for its constitutionally-defective "anti-discrimination" policy, was deployed by those adverse to CLS's message to shut down a student ministry which was quite intentional about inviting all students, including those who disagreed with its message, to participate in its events. Thankfully, the factual record was clear that all students were welcomed to CLS activities even though they were not invited to frame its message.

Troublingly, Hastings' feigned openness does not extend to the idea that there may be moral absolutes relevant to the lives and wellbeing of its students. Hence it will be even more challenging for Hastings students to hear the truth that the loving, caring Creator of the universe communicates through His timeless written word to those He seeks to redeem and embrace as children. When another Christian student group began to meet to fill the void left by CLS's exclusion from campus, its student leader was challenged by a school administrator who asked "Why do you Christians need to have Bible studies?" Certainly, one would expect in our pluralistic society to find some public higher education administrators who do not agree with Biblical principles. Reaching, as this Hastings administrator did, the point where either hostility or lack of understanding produces such an administrative affront, exemplifies how far many have drifted from our Judeo-

Christian cultural foundations. Those are the very foundations which also supported the concept that public universities, serving us commoners and not just the elite, are institutions to be valued. Today, however, it's "buyer beware".

So Hastings' now has persuaded five justices that it should be allowed to apply an "all comers" policy to assure that not all comers will be able to speak at its speech forum. Even those writing for the majority recognized that this bizarre policy which would require that Republicans have access to leadership of the student Democrats and white supremacists be able to take over the black student group was suspect on its face. If CLS is allowed on remand to present the actual facts that Hastings' purported policy, prior to revisionist acts to dress it up for litigation, was used only to exclude selectively a clearly open and inviting orthodox Christian student group from recognition, the evidence of pretext will be clear.

Meanwhile Hastings now (i) shields its graduate students from expression of widely held religious views it finds offensive and (ii) faces protracted and painful litigation probing the motivation behind its administrative actions. Additionally, it now must monitor the risk of some sort of springing *de facto* constitutional infirmity should students abuse their newfound takeover opportunities to suppress groups expressing views not consistent with the predominant mind set of the age. One has to wonder if Hastings, or any other university's administrators, ultimately will find this opportunity to restrict speech the university currently disfavors preferable to the simpler principle advocated by CLS. CLS's position would have allowed not only its own speech, but continued access and a voice for others. In short, Hastings and its students lost as well.

CLS's Renewed Ministries. The sharply divided Hastings opinions reflect an apparently widening fault line in our justice system. Certainly we all need to remain prayerful for the Supreme Court itself as

newly advancing ideologies tear at professional collegiality which could have contributed to better outcomes. And, of course, we certainly will want to enhance our support for emergent Christian professionals through law school and their formative early practice years as those hostile to the faith maybe emboldened by cultural and judicial developments such as this.

But take heart! He that is within us is greater than he who is in the world. An excellent example of CLS in action was the remarkable and collaborative energy generated as a sub-group from the national conference planning committee recently met with Dr. David Butler to plan the spiritual formation components of CLS's upcoming October conference. We started together on the telephone, with Conference Committee Chair **Delia Bouwers Bianchin** and incoming President **Pete Rathbun**. Mertie and I had the joy of hosting participants **Sue and Roy McCandless, Beth and Bruce DiCicco, and Lisa and Michael Schutt** to continue the conversation afterwards in our home. The immediate bond of fellowship we shared was heartwarming. Particularly meaningful to me was to observe how all of the spouses and attorneys both genuinely enjoyed and effectively contributed to ideas about how our distinctively Christian approach to the practice of law can be improved through such times of fellowship, including the upcoming national conference experience. I was encouraged personally as we encouraged one another through this fresh experience of the value of CLS as "Society": very intentional about its spiritual mission, its support to members, and its ministry to others through legal aid and advancing Christian jurisprudence.

Thank you for being part of this organization. I urge you to join hundreds of others at the October National Conference both to gain from the numerous activities that conference will afford attendees and to support one another as we build an even more effective ministry together over the years ahead.



A Ministry of Mercy a Decade in the Making

By Paul Baertschi



TCCLA Volunteer Appreciation Banquet (l to r): attorney Rich Krambeer; attorney Lynette Bledsaw; her husband, Pastor Jim Bledsaw; attorney volunteer Brad Johnson. (back to camera): Mrs. Krambeer; Loretta & Greg Dittrich.

It was an easy weekend drive to the New Hope Center in South Minneapolis on a clear winter day. Several months of meetings with some law students and lawyers set the groundwork for this initial training session in a very plain room on the second floor of this residential treatment center, the first of its kind in the upper Midwest. Upon arrival, I met John Robb and Chuck Hogren, who traveled from New Mexico and Chicago respectively, to participate in the initial training session for Christian Legal Aid. It was a great day of encouragement and training to jumpstart a new Christian Legal Aid program. Ten years later, we are at a crossroads. This is the story of Twin Cities Christian Legal Aid (TCCLA), a program that just had its 10 year birthday. It feels like we are in that awkward pre-teen time, where big

changes could be on the horizon, but we feel like we need to rely on God's grace and wisdom for the next steps.

I went to the informational CLS meeting, where John Robb came to explain the concept of Christian Legal Aid. The case for not sitting on our hands was compelling—over 200 Scripture verses discussing God's love for the poor and His commands to care for them. Three people signed up for interest in joining a steering committee to start a program. Klara Huesers, who I just met, called me and told me that I should be the one to head up the committee. I prayed and couldn't escape the conviction that God was calling me to use my gifts to head up the effort. So, I started to assemble a steering committee. I was overjoyed at the willingness of several individuals to join the team. We met

monthly for several months to formulate plans for the program, using materials from John Robb as a resource.

Not really knowing what kind of response we would get, we were pleased to greet about 25 people for the initial training. We opened the doors a month later and have been going strong each week for over a decade. Since then, thanks to some additional dedicated attorneys including Greg Dittrich and Daryl MacLean, we opened two new sites, the Union Gospel Mission in St. Paul and our current headquarters at First Covenant Church in downtown Minneapolis. Brad Johnson, a regular volunteer looks forward to his Wednesday afternoons at First Covenant as the highlight of his week. He has had an average of 5 but as many as twelve clients show up for help with modifying their child support, seeking help with old warrants, problems with child visitation, and other issues. "It's the highlight of my week", says Brad. "I'd rather see ten people in the lobby waiting to see a lawyer than just one or two".

One day I remember coming to the New Hope Center, feeling tired and looking forward to going home. One of the clients that day was a tall, slender black man I'll call "Stuart." He came in with a lot of worries about his pending probation in the State of Kansas. Stuart had come to New Hope Center without any permission to leave the state and concerned about getting a warrant for not staying in contact with his probation officer. It just "happened" that criminal law is my primary area of practice, so I had some familiarity with procedures and how probation officers think. I made a quick call to the Courthouse and located the probation officer while still meeting

‘IT’S THE HIGHLIGHT OF MY WEEK. I’D RATHER SEE TEN PEOPLE IN THE LOBBY WAITING TO SEE A LAWYER THAN JUST ONE OR TWO.’

There are many similar stories of legal issues that just “happen” to be within the primary practice area of the attorney that volunteered that week.

“Mike” was a man who visited TCCLA because he was being denied visitation with his children. In an attempt to manipulate the legal system to prohibit him from spending Christmas with his children, Mike’s previous wife improperly obtained an *ex parte* order and was granted service by publication, claiming she did not know his address, thus preventing Mike from adequately protesting the claims she made in requesting the order. For two months, Mike had no knowledge of this order, until his ex-wife used it to prevent him from picking up his kids for Christmas. Both surprised and distraught, Mike sought assistance from TCCLA and was fortunate enough to speak with volunteer Anthony Bushnell. The district court denied a request to vacate the order or give him a hearing to prove the order was unjustified, but Anthony was undaunted because of the justice of Mike’s cause. Going beyond the typical advice and referral, Anthony took on the case *pro bono* and filed an appeal. The order was successfully reversed and vacated. Anthony was able to defeat this attempt to abuse the system in order to interfere with Mike’s presence in the lives of his children. “It’s an amazing privilege to see what the Lord did with my meager efforts”, says Anthony, “and to see such a positive and definitive result. It was a very good opportunity to grow in faith and to be reminded that God is not slow in fulfilling His promises, even though we are often impatient and want to see results right away. God shows Himself faithful and mighty, and He ensures that our labor is not in vain.”



Paul and Sally Baertschi singing a song at the TCCLA Volunteer Appreciation Banquet in April.

of the volunteers. But time and time again, when the numbers are overwhelming, someone responds to the request for another attorney to come help out.

The journey of our “volunteer only” model is coming to a crossroads now. As the number of legal needs increases there is an increasing sense that we may need to gear up and call upon Christian lawyers and others to increase their commitment to allow hiring a staff attorney to manage the steadily increasing caseload. God never calls us anywhere without providing the resources to do what he calls us to do. We covet your prayers as TCCLA seeks to discover God’s will for a program that is ten years young. May God lead and inspire us to obey His calling in our lives to trust Him and take those steps of faith in the fulfillment of the Great Commission and the great commandments to “love the Lord your God with all your heart, soul, mind and strength, *and to love your neighbor as yourself*”.



Paul Baertschi is a graduate of Southern Illinois University School of Law (1979). He has been a member of CLS since law school and is the current President of the Minnesota chapter of CLS. He is located in downtown Minneapolis at the firm of Tallen and Baertschi, where he practices primarily in the field of municipal prosecution and private criminal defense.

with Stuart. The probation officer made some notes and assured me that no action would be taken against Stuart until he had a chance to complete his treatment. Stuart was greatly relieved that he could focus on his recovery and not worry about his probation. We have found that often the most appreciated advice is very simple. The clients appreciate just having someone who will listen to their situation and guide them.

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I typically leave a session at New Hope Center feeling that I did so little in one respect, but feeling such a sense of satisfaction in seeing the relief and appreciation in the eyes of the clients. As I pray with each client, there is an amazing bond of love and appreciation I sense from the client. There is also a strong

brotherhood when it comes to helping Christian men who are being transformed through a Christian treatment facility such as the New Hope Center.

Chapter Life Revived

The formation of TCCLA gave the Christian Legal Society in Minnesota a huge breath of new life. It gave a focus and a purpose for coming together as Christian lawyers. It spurred the reformation of the CLS chapter, ushered in new Board members and led to the creation of TCCLA, with attorneys using their gifts in different ways including outreach, board service and some community education through one of our volunteers.

In recent weeks, we have had increasing numbers of clients at our First Covenant site, which is sometimes straining the ability



God is Still in the Business of Miracles

By Kristen Burns

‘A FORMAL INTERVIEW AT 8:15 IN THE MORNING? YIKES!’

God truly moves in mysterious ways. The summer of 2009 was no time to look for a new job, but my clerkship was ending on Labor Day and I had been applying for jobs since February. My goal was a government position that focused on white-collar crime, finances, or taxes. I sent out applications to the Department of Justice, the FBI, multiple U.S. Attorney’s Offices, the military, the NSA, Capitol Hill, and, of course, the IRS. I even reached out to my prior contracting agency, but was told that there was not a lot of available work. By August, I was in full-blown worry mode. While I did not know where God would place me, I certainly knew where I would not be.

On the Monday morning of my final week of work, my husband was driving me to the Metro when I received an unexpected phone call. The caller introduced himself as David from the IRS and asked if I had applied for a job with the Exempt Organizations group. Now, I must disclose that I am the furthest thing from a morning person (of which God is fully aware). Only halfway through my morning dose of caffeine, I vaguely recalled applying for over thirty-five IRS positions nearly six months before. I answered, “Yes, I did.” Expecting him to ask me to come in for an interview, I was ready to say I was available any time. Instead, he said that due to time constraints he did not have time for an in-person interview, and asked if I could answer a few questions on the phone. A

formal interview at 8:15 in the morning? Yikes!

He asked me questions about my tax experience, what type of writing I had done with the Court, and my responsibilities in my prior accounting career. Starting out slow, I repeated each question out loud to give myself time to formulate an answer. Thankfully, my husband knew my resume by heart and helped me through the first few questions.

After listening to the position description, I mentioned that I had a close friend who worked in a similar position. David asked what her name was, and I told him. He said she worked right down the hall from him.

David then told me that he would call my judge for a recommendation and then call me back. His final question was whether I could start by the end of the month! The whole call lasted less than

twenty minutes. Five minutes later, I received a call from my friend. David had already asked her for a recommendation. By the time I reached my office, he had also called my judge. At 3:00, David called me back to offer me the position. God does not mess around when He finds you a job!

Let no one doubt that God still performs miracles. Within seven hours the Government interviewed me, checked my references, and hired me – sight unseen. Only God can make the Government move that quickly.



Kristen Burns is a Tax Law Specialist at the Internal Revenue Service and a member of CLS in Washington, DC. Prior to law school, she worked as an accounting consultant in Silicon Valley. She received her J.D. from Regent University and her B.A. from Westmont.



**Dean of the School of Law
Pepperdine University**

Pepperdine University invites inquiries, nominations, and applications for the position of Dean of the School of Law.

Pepperdine University is an independent, private Christian university enrolling approximately 7,700 full-time and part-time students in its five colleges and schools. With a full-time faculty of approximately 365, Pepperdine offers bachelor's, master's, and doctoral degrees in a wide range of disciplines. Seaver College, the School of Law, and the School of Public Policy are located on Pepperdine's beautiful Malibu campus overlooking the Pacific Ocean, along with the University's principal administrative offices, student and faculty housing, and arts and athletic facilities. The Graziadio School of Business and Management and the Graduate School of Education and Psychology (which are headquartered at Pepperdine's West Los Angeles campus) offer residential programs on the Malibu campus and extensive programs for employed professionals at satellite campuses strategically located throughout Southern California. The University also maintains residential study abroad facilities in six foreign countries.

The Dean is the chief academic and executive officer of the School of Law. The Dean reports directly to the Provost of the University, represents the law school to the Board of Regents (along with the President) and is a member of the University's Deans' Council. Reporting to the Dean are the Vice Dean; Associate Dean, Academics; Associate Dean for Research; Associate Dean, Student Life; Associate Dean, Library and Information Services; Assistant Dean, Career Development; Director of Global Programs; Academic Director of The Straus Institute for Dispute Resolution; Managing Director of The Straus Institute for Dispute Resolution; and Administrative Assistant to the Dean. Many are newly created administrative positions.

The School of Law seeks a Dean of the School of Law to build on the significant momentum achieved in recent years. Prospective candidates should be experienced legal educators, jurists, or practitioners, with experience in legal education. The candidate should have a strong record of legal scholarship, be eligible for a tenured teaching appointment at the School of Law, possess excellent administrative and leadership abilities, and demonstrate a commitment to advancing the intellectual and spiritual mission of the School. The successful candidate should be capable of further raising the profile and enhancing the reputation of the School of Law among its peers. A strong academic background is required for consideration, including a juris doctor from an ABA/AALS-accredited institution.

Confidential review of applications, nominations, and expressions of interest will begin immediately and continue until an appointment is made, to be effective June 2011. To be ensured full consideration, please forward a letter of interest and curriculum vitae to pepperdinelaw@kornferry.com by October 1, 2010 (electronic submission preferred). Please direct inquiries and nominations to John F. Amer, Esq., Client Partner - Korn/Ferry International (310-556-8577).

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The World Will Be Different: An Interview with Michael McConnell

MAY 11, 2010

By Timothy Dalrymple, www.patheos.com

Editor's note: this article was condensed from the original online interview and is reprinted with permission of the author

Constitutional provisions separating church and state were intended by the Founding Fathers not merely to prevent the establishment of a state church but also (and especially) to protect the churches from government interference. Those longstanding protections hang in the balance as the Supreme Court prepares its decision on *Christian Legal Society v. Martinez*, according to Michael McConnell. Oral arguments were presented on April 19, 2010, and a decision is expected in June.

The case began roughly six years ago, when the Hastings School of Law, which belongs to the public University of California system, denied official status to a Christian student group because it required its members to affirm a statement of faith and conduct. The Christian Legal Society (CLS), a nationwide ministry to students and practitioners of the law, professes the traditional Christian teaching that sex is reserved for marriage between a man and a woman. This, determined the law school and its dean, Leo Martinez, constitutes discrimination on the basis of religion and sexual orientation.

McConnell argued the case before the Supreme Court on behalf of CLS. A federal judge on the Tenth Circuit Court of Appeals from 2002 to 2009, he is one of the nation's preeminent authorities on the framework of church and state. McConnell now directs the Stanford Constitutional



In front of the Supreme Court following oral argument. (front L to R) Fred Potter, Sam Casey; (back L to R) Michael Woodruff, Prof. Michael McConnell, Sam Ericsson, Greg Baylor, Steve McFarland and Kim Colby

Law Center at Stanford University.

He spoke by telephone with Timothy Dalrymple.

Before we come to the details of *CLS v. Martinez*, I want to ask: Where do you see the emerging battlefronts right now on matters of religious liberty?

It depends in part on how *CLS v. Martinez* is decided. If it is decided in favor of Hastings, it will open up any number of battlefronts where political majorities that dislike one or another aspect of religious practice will employ all of the carrots and sticks at the government's disposal to attack what they do not like.

The essential theory underlying Hastings' position is that allowing a group to meet on campus amounts to a benefit or a subsidy that the university is entitled to grant or withhold on the basis of its own

approval or disapproval of the group's practices. If that is so, if being able to participate on an equal basis with other groups in the common resources of civil life is a benefit or subsidy that the government controls in this way, then there is essentially no more separation between church and state. The government will be able to exercise a kind of power over religious organizations that it has never before exercised in America.

The opposition might say that they are protecting the separation of church and state by keeping the state from subsidizing a religious group. Yet you insist that it is you who are on the side of the separation of church and state, because you are rejecting the notion that the state can encourage some religious groups and inhibit others by granting common resources to those it favors and withholding those resources from those it does not favor. Is that right?

That's exactly right. One of the critical questions here is what we consider a "benefit" or a "subsidy." The right to speak on an equal basis on public property has never been understood to be a benefit or subsidy.

Could Hastings' line of argument eventually lead, for instance, to some churches being denied the tax-exempt status other churches receive if they are unwilling to ordain female or homosexual pastors? If the state could give advantages to the religious groups it favors, and therefore social-engineer the churches, where would this line of argument stop?

‘WHY ARE CHRISTIAN GROUPS SINGLED OUT? WELL, I WOULD ASK HASTINGS THAT QUESTION.’

I think that is clearly what their argument is. Hastings itself explicitly cites tax-exempt status as a benefit to which the state can attach conditions. And for the past twenty years, feminist law professors have argued that tax-exempt status should be denied churches that discriminate on the basis of sex in the selection of clergy.

If the state can withdraw tax-exempt status because it does not approve of the way in which a church conducts its business, I have no idea where it will stop. Can the state withhold the ability to operate on government property? How about the use of the airwaves? The use of the postal service? Having your denomination represented in the chaplaincy corps? How about attaching conditions on *individuals* who use government benefits to obtain government-subsidized services such as voucher programs, hospitals, Medicare and Medicaid? All of those things are generally available to everyone, and we do not think of them as being occasions for the government to manipulate religious groups or individuals.

Obviously, there are political obstacles that would have to be overcome before threats of this kind could be put into effect. But if the Hastings case were decided in favor of Hastings, there would *only* be political obstacles and not Constitutional ones. All of these conflicts would become political battles for the legislatures, rather than having Constitutional protections that guarantee freedom of religion from the outset. That would open up any number of nasty battles that the First Amendment was intended to foreclose.

It’s difficult to avoid the impression that this is another expression of liberal academics’ antipathy toward Christianity, as though Christianity itself is discriminatory and oppressive and deserving of exclusion from the public sphere. Around the country there have been numerous cases of public colleges or universities attempting to deny normal student-group status and resources to Christian groups



About 50 CLS members, mostly law students, gathered near the Supreme Court the day before oral argument to pray for Prof. McConnell and the Justices.

that require their members or leaders to consent to a statement of faith that includes traditional Christian positions on sexuality. Yet we could certainly imagine other groups that are even more exclusionary or discriminatory. Why are Christian groups singled out? [Pause]. Or is this asking you to speculate outside your comfort zone?

[Laughs]. Well, I would ask Hastings that question. But I don’t think it’s any secret that traditional Christianity is regarded by many as inimical to the progressive project. And the truth is that until the sexual orientation issue arose, even Hastings didn’t really care. Yet the important point is that the Christian Legal Society theologically does not believe in discrimination on the basis of orientation, but only on the basis of belief and conduct: that is, whether you believe that sex is properly reserved for married couples. They ask their members to subscribe to the traditional Christian teaching that sex is reserved for marriage between a man and a woman.

Our position, however, has absolutely nothing to do with what one thinks about

same-sex conduct or whether sexual orientation should be protected as a matter of law. Our case would be identical in its legal framework if I were representing a religious student group that *advocated* same-sex marriage and was excluding leaders and voters who refused to accept the legitimacy of same-sex marriage. Our position would be exactly the same if we were representing a gay rights group that had been excluded from campus on the grounds that it didn’t allow homophobic evangelicals to become voting members and officers. The First Amendment position here is completely independent of what happened to be this group’s own beliefs about sexual morality.

I *hope* the Supreme Court sees that. A Civil Rights organization could be just as threatened under different social circumstances. It was not long ago that the ACLU was kept off of campuses. A fledgling chapter of the NAACP would have just as much reason to confine its officers and voters to people who share their mission. This is about protecting the freedom of any group to be able to form around shared beliefs.

LAW STUDENT MINISTRIES



Students Having an Impact

By Kim Colby



years has protected the right of all public secondary school students to meet for Bible study and prayer. When the Senate Judiciary Committee was considering whether to approve the EAA, Lisa along with several other high school students testified before Senate and House committees. Their heartfelt testimony had a profound impact on senators and representatives who were used to listening to lobbyists and special interest groups.

At one point during the two years of congressional debates, witnesses were needed to testify before the House committee considering the bill, particularly any witnesses who lived in the Kentucky district of the committee chairman. I called Lisa's parents to see whether she would testify before the House committee only to learn that, upon graduation from high school, Lisa had left Pennsylvania to train for missionary work—in eastern Kentucky. She lived in the chairman's district and would testify. Soon the chairman was the EAA's leading proponent.

In 1990, Scott Rosenberger thought that the University of Virginia needed a

An individual can have an impact on the law without having passed the bar. Law students, college students, even high school students, often make a profound difference for religious liberty. Without students who took courageous stands for free speech and association, several important Supreme Court religious liberty decisions would never have come about in the past 30 years.

These students are my heroes. They have been bold in taking a stand for Jesus on their campuses—often not a popular move. But the thing I admire most about these students is that they are peaceable people. Never looking for a fight, they try to oblige school administrators until the choice is surrender or stand firm. Then they quietly hold fast to what they believe is right.

A high school student named Lisa Bender wanted to have a small Bible study with about a dozen other students at her

Pennsylvania high school. A favorite of the principal, she was nonetheless advised that the school district's legal counsel had determined that her Bible study group would have to cease its meetings on campus because student prayer and Bible reading violated the Establishment Clause. Despite not knowing a tort from a tortoise, Lisa knew that the school district attorney was mistaken.

‘IN THE EARLY 1990s, CLS LAW STUDENTS BEGAN TO BE HARASSED—NOT FOR PUBLIC STATEMENTS BUT SIMPLY FOR CHOOSING LEADERS WHO WERE CHRISTIANS.’

Lisa became the named plaintiff in a Supreme Court case that became the impetus for Congress's passage of the 1984 Equal Access Act (“EAA”), which for 25

student publication that addressed student concerns, including racism, drugs, and bulimia, from a Christian perspective. Simply having his name on the magazine's

‘DESPITE NOT KNOWING A TORT FROM A TORTE, LISA KNEW THAT THE SCHOOL DISTRICT ATTORNEY WAS MISTAKEN.’



masthead took countercultural courage. But Scott faced a further challenge. Mr. Jefferson’s university happily funded fifteen student publications representing diverse viewpoints, but would not fund this sixteenth student publication because of its evangelical Christian viewpoint. Five years later, the Supreme Court ruled in Scott’s favor that the university violated his free speech rights by refusing to give his publication equal access to student activity funding. (Please note that CLS filed an amicus brief in support of, but did not represent, Scott.)

At the same time in the early 1990s, law school administrators began to implement the odd notion that a Christian group violated a university’s nondiscrimination policy if it required its leaders to be Christians. CLS law students began to be harassed—not for public statements but simply for choosing leaders who were Christians. In the past 17 years, many CLS students have stood for this basic right on law school campuses nationwide. Just as one example, Mike Berry was the

president of the CLS chapter at Ohio State University when a couple of students demanded that CLS be kicked off campus. When the tempest broke, Mike faced finals, job interviews, and the imminent birth of his first child. Nevertheless, he agreed to participate in a lawsuit against his law school. His Marine training served him well as he endured other students’ taunts when he walked the hallways on the way to finals. Thanks to his courage, the law school restored CLS’s recognition.

With *Christian Legal Society v. Martinez* before the Supreme Court in April, Christian law students across the country again stood for the right to be Christian in challenging law school environments. Law students at Hastings College of Law continued to meet for prayer and Bible study. CLS students in the Washington, D.C., area agreed to allow the Public Broadcasting System to film their Bible study for a national broadcast, despite possible negative employment consequences. Law students at numerous law schools hosted public speakers to address the First Amendment

issues raised in the case. And over two dozen CLS students stood outside all night to gain entry to the Supreme Court oral argument—a huge encouragement to the CLS legal team.

Due to the publicity surrounding the Supreme Court case, a number of attorneys have expressed their gratitude for their involvement in a CLS student chapter during law school. Some have even ascribed surviving law school to the encouragement drawn from fellow CLS law students. If you are a CLS member and live near a law school with a CLS chapter, consider supporting this new generation of lawyers by taking a student to lunch, offering to be a guest speaker at a chapter meeting, or even paying a student’s way to the national conference. By being an inspiration to law students, you will be inspired.



Kim Colby is Senior Legal Counsel at the Center for Law and Religious Freedom. She is a graduate of Harvard Law School.



How CLS Blessed a Paralegal

By Mary Carol Swedo

As a paralegal, my experience as a member of the Christian Legal Society has been thoroughly enriching, and I hope more paralegal professionals will join me as members.

Although I have been a member and have served on the boards of numerous statewide and national paralegal associations, until recently, I had been searching for an organization in which all Christian legal professionals could come together. God's timing for me was perfect: I joined CLS in October 2009 after reading about it in Stephen Bloom's book *The Believer's Guide to Legal Issues*.

My Story

I have been active in the legal environment for most of my working career – approximately 30 years – and God has provided many wonderful opportunities for me over the years. I knew even as a teenager that I wanted to work in the legal profession, and I have always tried to serve the Lord by demonstrating a strong work ethic, kindness and respect to others, and integrity in my job.

My interest in the law stems at least in part from the fact that Jesus Christ is a legal counselor and advocate:

*1 John 2:1-2: 1*My dear children, I write this to you so that you will not sin. But if anybody does sin, we have one who speaks to the Father in our defense—Jesus Christ, the Righteous One. *2*He is the atoning sacrifice for our sins, and not only for ours but also for the sins of the whole world.

I strongly believe that, as Christian legal professionals, God has blessed each of us with certain talents, abilities, and knowledge to reach out to individuals who have been treated unjustly. To me, there is no separation between being a Christian and being a legal professional.

Our Times

It is not a coincidence that we find ourselves serving in a day and time when society seems to be bashing Christians, and the need is great for legal advisors who are not afraid to take a stand for the Christian values on which this country was founded. More than ever before, we need a strong coalition of Christian legal professionals to come together to uphold the basic legal rights and Christian value system that has made this nation so great.

We also live in a time when many prominent business professionals have fallen prey to greed, pride, and deceit, and it seems as though honesty, discretion, and integrity are rare traits. As Christian legal professionals, it is our responsibility to consistently demonstrate these values in our business operations as well as in our personal lives.

Deuteronomy 15:10-11: 10 Give generously to him and do so without a grudging heart; then because of this the LORD your God will bless you in all your work and in everything you put your hand to. *11* There will always be poor people in the land. Therefore I command you to be openhanded toward your brothers and toward the poor and needy in your land.

Our Ministry

It is important for all of us to make time to minister to others in some capacity. Two organizations I have enjoyed serving with are the House of Hope in York, PA, which helps troubled teens through counseling, prayer, and other support, and the American Association of Christian Counselors.

For me personally, one of the most uplifting volunteer experiences has been reading scripture to nursing home residents. Although I had never done this before, while I was listening to a Psalms and Proverbs CD, I suddenly felt a calling to read scripture to nursing home residents who were not able to read for themselves. This sounds simple, but it was a profoundly powerful spiritual experience.

As I strive to foster and integrate my spiritual life with my duties and responsibilities as a legal professional, I appreciate organizations such as CLS. I believe that this organization can be used as a trusted forum from which we can all communicate and share, and encourage one another in our faith.

During my short time as a CLS member, I have already enjoyed connecting with other legal professionals who have freely accepted me into the membership, and I look forward to meeting many more in the future.



Mary Carol Swedo serves as the Corporate Paralegal at Adhesives Research, Inc. She is a Pennsylvania Certified Paralegal and has been working in the legal profession since 1981.

**‘THERE IS NO SEPARATION BETWEEN BEING A CHRISTIAN AND BEING
A LEGAL PROFESSIONAL.’**

Calling All Paralegals

CLS is actively seeking to expand its membership to include paralegals and other legal professionals.

Of CLS 3000+ members, only about 30 are paralegals, even though statistics show that there are 16,020 certified paralegals in the U.S.

According to the Department of Labor, paralegals and legal assistants held about 263,800 jobs in 2008.

CLS is hoping to expand its paralegal-specific services, starting with “Being and Developing A Dynamic Paralegal: A Panel Discussion,” a workshop designed specifically for paralegals at the 2010 National Conference.

If there are paralegals working in your firm that you think might be interested in joining CLS, please share this article with them and invite them to consider joining CLS.

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1971 University Boulevard
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Advocates International: 20 Years of Impact

**Advocacy, Training and Mentoring in
 Doing Justice with Compassion:
 1991—2011**

‘WE CAN DO ALL THINGS THROUGH CHRIST WHO STRENGTHENS US.’ PHIL 4:13

By Sam Ericsson



Advocates International Global Council convened at the 2008 Global Convocation in Washington, DC. Nations represented on the Global Council include: Australia, Brazil, Bulgaria, Cameroon, Canada, France, India, Isle of Guernsey, Israel, Malaysia, Peru, Singapore, South Africa, South Korea, Sweden, Trinidad & Tobago, Uganda, United Kingdom Uruguay and the United States” Photo taken by Marge Bancroft.

- In 1991 there were 10 national Christian lawyer groups but only two that were engaged proactively promoting and protecting freedom, faith, family, reconciliation, human rights and the rule of law. Today Advocates International (AI) informally links 30,000 advocates and jurists in 156 nations through 100 national Christian lawyer groups linked by six regional networks.
- At the 5th Global Convocation, AI launched 7 Global Task Forces to facilitate promoting an issue with each continent taking the lead on an issue: 1) Religious Freedom (Asia); 2) Peace & Reconciliation (Africa); 3) Family & Community (North America/Canada); 4) Sanctity of Human Life (North America/USA); 5) Rule of Law with Integrity (Europe); 6) Human Rights & Justice for the Poor (Latin America); and 7) Global Prayer (Australia).
- Law professionals in an estimated 700 cities, towns and law schools gather together regularly.
- 24,000+ people have attended conferences or other gatherings since 1991 organized, funded or co-sponsored by AI,

**‘L-O-R-D STRATEGY: L-LOCAL MEETINGS;
O-ORGANIZED NATIONALLY INTO; R-REGIONAL NETWORKS THAT
D-DISCIPLE AND MENTOR GLOBALLY. (ACTS 2:8).’**

its regional networks or national affiliates, including:

- 5,800 delegates attended 45 regional and sub-regional conferences in Africa, Asia, Europe, Latin America, North America and the Balkans, Middle East, and Caribbean.
- 1,200 delegates attended five Global Convocations in the USA since 1998, joined by 2,000 Christian Legal Society/USA members and friends.
- 3,900 justices, judges and magistrates have participated in 33 judicial conferences or seminars.
- 7,000 lawyers, judges, clergy, students, business leaders and government officials have participated in 100+ meetings other than the global, regional or judicial conferences.
- 3,500+ have received peace & reconciliation training at gatherings co-sponsored by AI.
- 23,000+ Russian prisoners have corresponded with advocates who responded with counsel.
- 3,000+ Russian prisoners received assistance appealing their improper sentences.
- 3,000+ years in Russian prison sentences have been reduced through these appeals.
- In 1997, a three-lawyer Russian team of advocates obtained a moratorium on the death penalty.
- AI’s networks are engaged in major freedom, faith, family and justice advocacy on all continents.
- 1,000+ orphans and adoptive families have been helped materially or legally.
- 3,500+ churches, missions or other ministries have been defended, received as-



Advocates International Home Office Staff (l to r): Sam Casey, Romi Kobayashi, Bart Waxman, Lourdes Piscioti, Sam Ericsson and Zachary Edwards.”

sistance in the registration process, or had their properties returned after the State’s illegal confiscation.

- 1,000+ missionaries have received visa and other assistance from advocates within the network.
- 15,000+ books focusing on justice, law, faith and profession have been given away.
- 1 million *When Things Go Wrong* counseling cards have been distributed globally in 24 languages.
- 8,000+ refugees have received help through advocates within the network.
- AI’s networks have provided counsel to legislators in over 60 nations as to freedom, faith and family legislation or Constitutional revisions.
- AI Board, Staff, Global Council and net-

work leaders have travelled an estimated 10 million miles since 1991 to encourage, enable and equip advocates.

- AI’s Staff, Board & Global Council members and affiliated colleagues have addressed the UN Human Rights Commission or Council on Human Rights on more than a dozen occasions.
- Over 3 million hits on AI’s website since 2004.
- Within a “lean and keen” budget, AI’s small staff implements the L-O-R-D strategy: L-local meetings, O-organized nationally, R-regional networks that D-disciple and mentor globally.



Sam Ericsson is a graduate of Harvard Law School and is the president of Advocates International, which he launched in the early 1990s.

BORGER'S BOOK BIN

by Byron Borger
Hearts & Minds
Bookstore



To Change the World: The Irony, Tragedy, and Possibility of Christianity in the Late Modern World James Davidson Hunter (Oxford University Press). This is surely one of the most talked about books in recent years among thoughtful Christian leaders. Dr. Hunter, who has been doing seminars on this project for years, has documented the weaknesses of the primary styles of cultural engagement typically found among what might be called the Christian right and the Christian left. With intellectual lucidity and fine prose he offers a third approach of “faithful presence.” Most reviewers have insisted that this is an extraordinary work, a tour de force. Some have suggested that Hunter may overstate some of his concerns. (And is he right about the strategic significance of reaching cultural elites and professional gatekeepers?) This is a most important book, robust, stimulating and exceptional.

The Last Christian On Earth: Uncover the Enemy's Plot to Undermine the Church Os Guinness (Regal). Guinness has long been an ally for those seeking to be faithful to God in their careers and callings, especially those whose jobs lead them into areas of law, politics and corporate culture. Thoughtful professionals have much to be grateful for in Dr. Guinness' years of sociological, theological and doxological writing and speaking. Some say that his most clever work was in a book from the early 80s called *The Grave Digger File* which was written with an approach similar to *The Screwtape Letters*. That is, it is a fictional piece, imagined from the perspective of the Devil's henchmen. This grand novel---which is enjoyable and creative and yet heavily didactic---has been updated, expanded and re-issued as *The Last Christian on Earth*. When asked about the Lewis inspiration, Os suggested that, in fact, he was more inspired by the great espionage thrillers of John Le Carre. What are contained in these folders secretly leaked to Guinness by a turncoat spy of the Dark Side? Memorandums on how they intend to stop God's work. Our easy slide towards capitulation to the spirit of modernity may be, as the sociological research by the bad guys shows, subtle and yet deadly. Do we dig our own graves, as the earlier title implied? Who is the “last Christian”? This is serious theology, profound cultural criticism, and one riveting spy thriller.

Culture Making: Recovering Our Creative Calling Andy Crouch (InterVarsity Press). A week doesn't go by that I do not recommend this wonderful and enjoyable (and surprisingly provocative) book to someone. We are all called to be creative in our work, to reflect God's rule over His world, by “making something of it.” Work, hobbies, and daily activities such as lawn care, meal preparation, and financial planning, all can glorify God and make His world a better place. Interestingly, Crouch is mildly critiqued in the aforementioned book by Hunter (and Andy was chosen by Books & Culture to review *To Change the World*.) This is a conversation you should be a part of. In fact, reading and acting on these somewhat different visions of societal reformation is a “culture making” activity that can advance God's cause in the world.

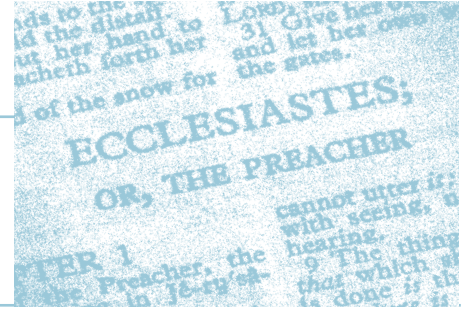
Bonhoeffer: Pastor, Martyr, Prophet, Spy Eric Metaxas (Thomas Nelson). Metaxas is known as a deep thinker (he started the conversation salons in New York called Socrates in the City) and a very solid historian (he won acclaim for his thrilling biography of William Wilberforce, *Amazing Grace*.) His several works of popular apologetics are very useful. And--surprise-- he has been a writer for Veggie Tales and has done a few nice children's books. This new, mammoth biography of the German pastor martyred under Hitler, will, I predict, soon be seen as definitive. The advanced accolades were superlative, it is being seriously reviewed (The Wall Street Journal raved) and the forward by Timothy Keller notes just how remarkable this particular volume is. Anyone interested in making a difference in God's world should know the life and writings of Dietrich Bonhoeffer. Although it is meticulous, Metaxas keeps the story moving at just the right pace. Kudos to Mr. Metaxas, for writing this stellar, strong biography.



Byron and his wife own Hearts & Minds, an independent bookstore in Dallastown, PA. A friend of CLS, he ruminates

about books, faith, and public life at www.heartsandmindsbooks.com/booknotes.

ECCLESIASTES 1:9



“WHAT HAS BEEN WILL BE AGAIN, WHAT HAS BEEN DONE WILL BE DONE AGAIN; THERE IS NOTHING NEW UNDER THE SUN.”

Editor's Note: This article was first published in the CLS *QUARTERLY* magazine, Winter 1987, Volume VIII, Number 1. Justice Utter resigned from the Washington State Supreme Court in 1995 to protest the death penalty. You can read more about him here: <http://www.sos.wa.gov/legacyproject/oralhistories/RobertUtter/Default.aspx>

The Power of Love

By Justice Robert F. Utter

If there is a reason why I am a Christian, it is because I have seen the power of love in peoples' lives and the desolation that occurs without it. An incident from 20 years ago, when I presided over one of the most famous murder trials in Washington State, illustrates this well.

The young man on trial was 18. From the time he was 5, tests had predicted that he would kill someone. When he was 16, he was committed to the adult state penitentiary for burglary. Two years later, released from prison and on his way back to Seattle, he and his parole officer went past the state mental hospital. The young man said, "I belong in the mental hospital, not on the streets." He was right. Within two weeks of arriving in Seattle, he savagely and brutally killed two innocent people. One was an elderly woman in a laundromat. The other was a passerby on the street in front of his home. During the trial he was so out of control that the jury felt an animalistic sense of fear. In only two hours, they deliberated on over two and one-half weeks of evidence and unanimously reached the verdict that he should die by hanging. The inevitable appeals were brought; and eight years later, the decision was reversed—the trial judge had not inquired whether the young man had the mental competency to assist his attorney in his defense. Obviously he did not.

But eight years after he had been put on death row, when we tried the same evidence, there was no doubt about his competency. Again, the jury deliberated on two and one-half weeks of evidence in

two hours. The verdict: He was guilty of murder in the first degree by premeditated act and should not hang.

What happened to cause the jury to reverse its verdict? More than anything else, the man experienced the power of love.

A Catholic reporter covering the case became concerned about the murderer as a human being, and vowed that he would drive 400 miles each way over the Cascade Range once every two weeks to visit him

**‘I HAVE SEEN THE
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in prison. Soon, the reporter also convinced the Archbishop of the local diocese to visit him. Over those eight years, an impossible-to-describe change took place, and it was graphically evident at the second trial. The man's lawyer appeared before me and said, "Judge, I'm going to enter a plea of not guilty. Although he was unquestionably insane at the time the act was committed, he is now safe to be at large." If the jury accepted this argument, the defendant would be free. However, the defendant objected and said he would not enter such a plea because he did not believe he was safe to be at large. The jury then convicted the defendant but did not impose the death penalty. The defendant went on to become an accomplished architect and college

lecturer. One jury took two hours to say that this was a man with no redeeming qualities; eight years later, the jury had an equally justified reason for reaching a totally different verdict. The power of love was the key to the change.

I first saw love at work in the juvenile court where I started my career. I learned that if we have the faith to exercise God's promises, provide each person with a sense of self-worth and are concerned to exemplify love, set reasonable limits and maintain reasonable consistency in imposing these limits, then incredible things will happen.

From a Jewish colleague with a doctorate in jurisprudence from Oxford, I learned a second, corresponding lesson. He wisely advised, "You'll have many opportunities to win in the practice of law, but your win will only mean something if you find a way to win while preserving the dignity of the other side." When we apply the power of love to each situation, it works. As Paul said in I Corinthians 13, "If I speak with the tongues of men and of angels, but do not have love, I have become a noisy gong or a clanging cymbal. Love does not seek its own, is not provoked, does not take into account a wrong suffered, does not rejoice in unrighteousness, but rejoices with the truth."



Justice Robert F. Utter was elected to the Washington Supreme Court in 1971 and served as chief justice from 1979- 1981. This article is extracted from an address he gave in Anaheim, California, at CLS' 25th anniversary conference in October 1986.

The Ripple Effect of a CLS Lawyer

By Brent McBurney

It has been said that our actions often have further implications than we imagine, and within the CLS network, that may be especially true. I'd like to tell a story of how I have seen two CLS members' efforts come full circle in my own life over nearly 4 decades.

Splash!

When I was five years old, my family met Mary Libby Payne, a CLS member, who was visiting our church in Carbondale, Colorado. I think of that moment as the proverbial rock splashing into the lake. Only much later in my life would I come to understand the far-reaching ramifications of her actions then. At the time, I'm quite certain that I stood still only long enough for my parents to introduce me before I ran off to play with my friends.

The first ripple

My parents were trying to launch their counseling center for clergy, the Marble Retreat, and needed to get the ministry set up as a 501(c)(3), but their initial application was rejected.

Payne introduced my parents to a colleague of hers named Joe Jack Hurst, a CLS member from Jackson, Mississippi. It turns out that Hurst was already in the process of helping the "Jackson 1975 Billy Graham Crusade" corporation get its own 501(c)(3) set up in preparation for the crusade coming the following year. When he heard about the ministry my parents were starting, he was more than pleased to let us piggyback on his work. Thanks to that initial networking, Marble Retreat was ultimately granted its 501(c)(3) status and has ministered to over 3,000 pastors and missionaries since its founding. It continues to this day to provide Christ-centered crisis counseling for clergy.

The second ripple

Fast forward about a dozen years and Mary Libby Payne introduced my parents to then-CLS Executive Director Sam Ericsson, who invited my dad to write his "From the Doctor" column in the CLS *QUARTERLY* magazine. I have heard that many CLS members were encouraged and blessed by the wisdom of that column. During that time, I was off at college, completely oblivious to the nature of these relationships, yet God was continuing to use Payne's generosity and obedience.

Only a few years after the column ended its run, I was re-introduced to Payne at my very first CLS conference in SnowBird, Utah, and started learning some of this story.

The third ripple

A dozen years after that meeting, I learned of yet another "ripple in the lake" connected to those original relationships: Now on staff with CLS, I was visiting Jackson, Mississippi, to co-lead the inaugural training for the Mission First Legal Aid Office, the newest Christian legal aid office at the time, where I learned from our old family friend Mary Libby Payne that the clinic had been made possible in large part by a bequest from Joe Jack Hurst, who was a promoted to Glory in 2005.

Once again, I realized that I was the beneficiary of relationships that only God could have orchestrated. Had Payne not met my parents all those years ago in the Roaring Fork river valley, high in the mountains of Colorado, and introduced

'I REALIZED THAT I WAS THE BENEFICIARY OF RELATIONSHIPS THAT ONLY GOD COULD HAVE ORCHESTRATED.'

them to Joe Jack Hurst, and then to Sam Ericsson, there is no telling how different my own life might have been.

More ripples in the making...

What I do know is that, standing there in Jackson instructing volunteer attorneys at that training, at a Christian legal aid clinic born out of Hurst's generosity, it struck me how God uses a life dedicated to Him more than we may ever know. Hurst's generosity over 30 years ago provided a generation of pastors and missionaries with counseling, and it now provides a new generation of attorneys a place to integrate their faith with the practice of law.

So next time you wonder whether God is using you, or whether your actions will matter to another generation, rest assured. Someone you met last year, or will meet next year, may write another version of this article 30 years from now.



Brent McBurney is the Director of Legal Aid Ministries and Attorney Ministries for the Christian Legal Society. He was admitted to practice before the U.S. Supreme Court on May 17, 2010, and is here with his wife Elizabeth on the Court's front portico.

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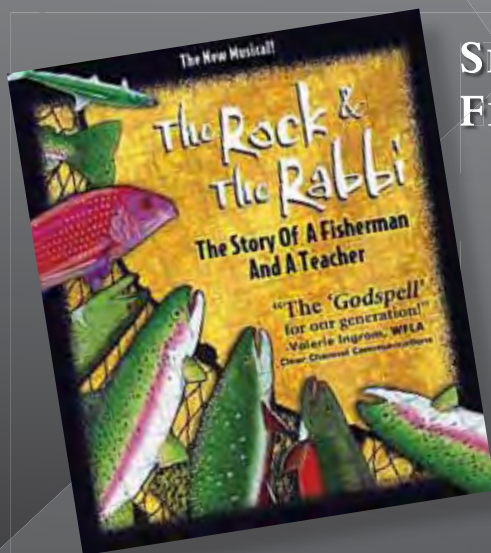
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