

THE COMMENT

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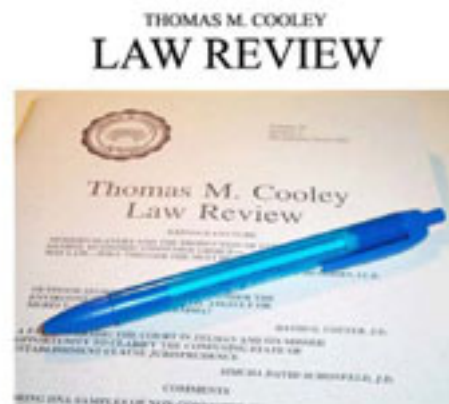
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World Views Collide Symposium Panel



Symposium Speakers

Front (L to R): Symposium Editor Eric Earley, Nikolas T. Nikas, Eli D. Stutsman, Dr. Ellen M. McGee, Wesley J. Smith
Back (L to R): Prof. William Wagner, Louis Guenin, Bernard Siegel, Richard Doerflinger, Dr. William B. Hurlbut, Dean Nelson Miller
(Missing from photo: George J. Felos)

Law Review Symposium a Success

On October 5, 2006, the Thomas M. Cooley Law Review hosted its annual World Views Collide Symposium. Entitled “A Dialogue on State-Authorized Embryonic Stem-Cell Research, Human Enhancements, Physician-Assisted Suicide and the Value of Life,” this year’s symposium was one to

remember. Moderated by Assistant Dean Nelson Miller, nine nationally-recognized experts came to discuss and debate their views with the intention of fostering and deepening the audience’s understanding of the present-day legal, moral, and ethical issues that surround these controversial topics.

The first part of the symposium included a discussion on embryonic stem-cell research. Louis Guenin, a proponent of

embryonic stem-cell research, argued that there are enormous hopes for prospects in regenerative medicine through stem-cell research that can reduce suffering in everyday human life. Guenin is a lecturer on ethics in science at the Department of Microbiology and Molecular Genetics at Harvard Medical School.

Another proponent, Bernard Siegel, opined that at least 95 prominent organizations support embryonic stem-cell research with most of the opposition coming from religious organizations and their supporters. As Founder and Director of the Genetics Policy Institute, he leads a movement to allow scientists to experiment with stem-cells to determine what role they can play in our lives.

The first opponent was Dr. William B. Hurlbut, a Stanford School of Medicine ethics professor, who discussed alternatives to embryonic stem-cell research such as altered nuclear transfer. He argued that regardless of how many people believe in this type of research, there are many ethical and moral problems that suggest this type of research may be wrong.

The other opponent was Richard Doerflinger, the Deputy Director of the Secretariat for Pro-Life Activities for the United States Conference of Catholic Bishops, who gave the audience current views on restrictions on stem-cell research. Doerflinger opined that the issue dealt mainly with ethics and that a good portion of society believes that embryos are individual beings and shouldn't be used for research.

The second part of the discussion was on the ethics of human enhancements, particularly implantable brain chips. Dr. Ellen M. McGee, Founding Director and Director Emeritus of the Long Island Center

for Ethics of Long Island University, discussed the current state of this technology. She discussed brain chip interfaces that would "facilitate cyberthought where we can communicate mind to mind." She stated that these developments would make hybrids between man and machines. McGee stressed that although this technology is new and has many issues to work out before it is a viable option, this is an ideal time to begin a discussion on "transforming humanity."

The final portion of the symposium centered on physician-assisted suicide. This portion began with supporter Eli D. Stutsman, co-founder of Oregon Right to Die, who discussed Oregon's "Death with Dignity Act." Stutsman explained that the Act allows a terminally-ill patient who has met all the other conditions of the act to obtain a prescription from a physician for medication to orally ingest and hasten the patient's impending death. He defended that law saying that it is very narrowly drawn and is rarely used—with an average of just 30 patients per year.

The second proponent, George J. Felos, the attorney who argued Terri Schiavo's right-to-die case, argued that current polls suggest two-thirds of the American public believes that physician-assisted suicide is okay. He stated that as a society, we should "provide humane, dignified, holistic, end-of-life care, which respects the wishes of the patients." He believes that taking care of terminal patients is extremely important and that it should be made a priority in our society.

The discussion continued with, Nikolas T. Nikas, President and General Counsel of the Bioethics Defense Fund, who fervently opposes physician-assisted suicide. He argued that even though terminally-ill

patients suffer, physician-assisted suicide should not be legalized. In response to the supporters, he stated that there is a clear distinction between withholding medical assistance and physician-assisted suicide. Nikas stressed that there are four primary reasons that drive people to physician-assisted suicide: 1) fear of dying in pain, 2) fear of dying alone, 3) fear of being a burden, and 4) the fear of losing autonomy. He believes that these reasons do not justify the use of physician-assisted suicide and that many ethical problems arise with its use.

The last opponent was Wesley J. Smith, an attorney for the International Task Force on Euthanasia and Assisted Suicide, who argued that killing a person is a crime worse than human suffering. He argued that it is a false belief that nothing else can be done for patients with terminal illnesses besides physician-assisted suicide. He argued that one of the reasons patients turn to physician-assisted suicide is because they are consumed with the burden that they may place on others. He strongly suggested that physician-assisted suicide was not the solution in our efforts in dealing with terminally-ill patients.

The symposium was closed by Professor William Wagner who posed this simple question to the audience, "what do you believe, why do you believe it, and what if you are wrong?" There is no correct answer to these questions, but those who attended can surely make an educated decision based on the information they received. The Law Review extends its appreciation to the speakers and the Cooley community for its support with this event.

A Preview of an article on the Public Display of the Ten Commandments

Each year the Thomas M. Cooley Law Review holds one of its lively and controversial *World Views Collide* symposiums in the fall. The previous article detailed the success of the 2006 symposium and we are pleased to announce that the long-awaited and anticipated articles from our 2005 symposium are now available in the latest edition of our Law Review publication. The *Symposium Issue* contains a diverse portrayal of the topics discussed at the 2005 symposium.

The highly contested and unsettled area of law that sparked the debate was the separation of church and state as it related to the public display of the Ten Commandments and faith-based initiatives. Two federal circuit courts had reviewed the constitutionality of displaying monuments of the Ten Commandments on government property, and the courts arrived at opposite conclusions. In *Van Orden v. Perry*, the Fifth Circuit held that the state's display of the Ten Commandments was constitutional. However, in *McCreary County v. American Civil Liberties Union of Kentucky*, the Sixth Circuit held that the display was unconstitutional. The U.S. Supreme Court affirmed the constitutional violation in *McCreary County*, and agreed with the circuit courts decision in *Van Orden* that the display was constitutional. These contradictory decisions were among the highly contested issues debated by the panel of distinguished legal minds at the 2005 symposium.

One of the speakers, Jay Alan Sekulow, is a highly-esteemed defender of religious freedoms and free-speech rights of religious

organizations. Along with his co-author, Erik Michael Zimmerman, the two took the position that the Supreme Court's approach to the Establishment Clause of the First Amendment is in need of serious revision. Their article is entitled: "Posting the Ten Commandments is a 'Law Respecting an Establishment of Religion?': How *McCreary County v. ACLU* Illustrates the Need to Reexamine the *Lemon* test and its Purpose Prong." The authors argue that the different holdings in *Van Orden* and *McCreary County* clearly illustrate the need for reexamination and rejection of the *Lemon* test. They argue that the test is inconsistently applied; for example, it was applied in *McCreary County* but not in *Van Orden*. They suggest that the current *Lemon* test should be abandoned and they suggest that the court approach Establishment Clause cases "based on the First Amendment's text, viewed in light of historical practice...."

The *Lemon* test consists of three parts: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'" The authors believe the idea that it is a constitutional violation of the Establishment Clause to publicly display the Ten Commandments because it is a misrepresentation of the Establishment Clause's original meaning. The authors believe that a simple review of "the purpose and original understanding of the Establishment Clause" shows that the *Lemon* test should be abandoned and that it is not constitutionally required. They state that the Establishment Clause was enacted to prevent "coercive practices" and actions such as "the inclusion of 'one Nation, under God,' in the Pledge of Allegiance, the

longstanding practice of congressional chaplains, and the use of the Ten Commandments in public displays" do not constitute coercion and thus, do not violate the Establishment Clause. Such actions are merely "governmental recognition of the nation's religious and moral heritage." Principally, the authors conclude that the *Lemon* test should be abandoned and replaced with a "method of analysis actually supported by the Constitution's text and connected to historic practice."

On the other end of the spectrum is David Friedman, who was the lead defense counsel in *McCreary County*. Friedman, the author of "Why Governmental Decalogue Displays Endorse Religion" argued in his article that to display the Ten Commandments on public property is a violation of the Establishment Clause if a reasonable, knowledgeable observer would believe the display to be a government endorsement of religion. Moreover, he asserts that the claim that posting the Ten Commandments is to teach history or display influential documents is flawed for several reasons.

Friedman argues that the assertions that the Ten Commandments have a "profound influence" on America's formation are "wildly exaggerated." He further notes that the Magna Carta and the 1689 English Bill of Rights, which did have enormous influences on American law, neither mentioned the Ten Commandments, nor any individual commandment. He recognizes that the Bible was a source that influenced the development of colonial law, but argues that it was the Bible that was influential and not the Ten Commandments. Moreover, although one of America's central founding documents, the Declaration of Independence contains references to "Nature's God" and "a Creator," the Constitution and Bill of

Rights contain no such references. Friedman believes that the historical record demonstrates that “American law is not rooted in the Ten Commandments.” His overall conclusion is that a governmental display of core religious text “disserves both religion and government.” “[I]ncluding the Ten Commandments in a comparative religion course or a neutral display comparing ancient moral codes is perfectly fine.” Essentially, he proffers that the use of the Ten Commandments should be in a form where the reasonable observer understands the use is not intended as enforcing religious objectives.

A full version of this article is available in the newest edition of the Law Review publication available in our office in Room 303 of the Cooley Center.

A Positive Approach to Essay Exam Writing

As week fifteen approaches we reach the time of year that most students dread—finals. The biggest adjustment to law school for many is that now you are tested only once per course during the entire term. The exams are normally made up with several essay-type questions (blue book exams) and some multi-state questions. While the impending doom that some students are starting to feel may cause a flurry of sleepless nights and a lot of coffee, it may help to try to understand the nature of the exam-taking process. It is equally important to appreciate on the importance of the skills learned in taking essay-type exams. The skills that you will be tested on are essential to passing the bar and also for use in your future legal career.

First, it is important—especially for first-termers—to realize that taking a law

school exam is fundamentally different to the exams taken at the undergraduate level. It is not the case of basic memorization and regurgitation that can be studied the night before. Exams at the law school level require much more. In law-school exams there are “four intellectual functions tested, on the surface, in a blue book exam: (1) issue spotting; (2) identification of relevant legal authority; (3) application of legal authority to facts; and (4) organization of material.”¹ Your professor will require you to look at the question presented and then apply these skills to form a cognitive answer that answers that question.

Being able to specifically answer the question presented on your exam as effectively as you can is a skill that is needed to succeed in passing the bar exam. If a student can master the skill of writing law school exams, it may enhance his or her ability to effectively write and pass the bar exam. Further, good exam-writing skills will transfer to skills you will need when you start your legal career. This is because the same types of intellectual functions tested on in a blue book exam are essential what a lawyer will face in practice. While there are many critics of the blue book system of testing, one positive aspect is that blue book testing enhances the basic skills of spotting a problem, recognizing the legal issues, and analyzing the overall situation. These core skills will develop and be refined as you take more courses in law school, but for the sake of your exam scores you do not want to wait to learn them.

A typical example of how these skills will be useful in your law career is as a

¹ Adam G. Todd, *Exam Writing As Legal Writing: Teaching And Critiquing Law School Examination Discourse*, 76 Temp. L. Rev. 69, 72-73 (2003).

new associate in a law firm. As a new associate in a few years, you will be given some factual situation, and asked to identify any legal issues and implications. The partner giving the new associate the assignment will frequently ask a specific question to identify the issue, which is exactly what some professors do on their exams. On the other hand, the partner may just require an analysis of all possible issues similar to a “discuss and decide” question on a law school exam. In addition, both a student and new associate should sketch out their answer before providing the final product. In the exam setting, it is frequently recommended that a student use his or her scratch paper to quickly outline the question’s answer. In both situations, the student and new associate must consider the time constraints given, whether it is a 30-minute question on an exam, or a longer deadline given to an associate.

Law-school exams are traditionally given under considerable time constraints and assignments in practice will sometimes be no different. Accordingly, many professors believe that learning to perform under time constraints are important to performing in real practice situations. Some professors have stated that they design their exams so that the student cannot finish, forcing the student to think quickly and apply what they know effectively. Similarly, both situations also will require the same type of analysis. The essential components will be the same – the facts, the legal authority, application of the facts to the legal authority (the analysis), and the conclusion. Thus, these similarities are believed to develop and improve students’ writing, analytical, and organizational skills for future use.

Finally, here are just a few essay exam writing tips that may help in the exam setting: (1) Read and understand the question being asked; (2) Think about the answer and quickly outline your answer; (3) Use your time wisely – there is no rule that you must answer the first question first, and the last question last. For example, if you feel that you are not yet prepared to answer question one, do not spend time struggling with it, move to a question you are prepared to answer; (4) Remember, the importance of your analysis – the application of the relevant law to the facts; and (5) Try not to panic and become stressed out if you find a question difficult – take your time and do your best.

The Law Review wishes all students good luck on exams this term.

Honors Convocation Awards

On the evening of November 10, 2006 the Auditorium was filled with students being honored for outstanding service by the school and many organizations. The Law Review honors every member who has completed their time requirements and will no longer be serving as an editor, and there are three special awards given to members for going above and beyond what is required of them during their stay on Law Review.

The John D. Voelker Award is presented to associate editors that have, during their tenure, made the most significant contributions to the publication of the Law Review. This year’s recipients were: William Casey, Sandra Coira, Adam Cortes, Jill Gannon-Nagle, Russell Gubler, Sean Mulchay, Anna Rapa, Neil Spaber, Katherine Tirone, and Roumiana Velikova.

The Eugene Krasicky Award is presented to the assistant editors that have, during their tenure, made the most significant contributions to the publication of the Law Review. This year's recipients were Anne Mabbitt and Lance Stevenson.

The Dawn Beachnau Award is presented to the member(s) of the Board of Editors that has made the most significant contributions through their leadership and dedication to the Law Review. This year's recipients were Geff Gismondi and Eric Earley.

The Law Review would like to honor these award recipients and thank all outgoing members for their dedication and service during their tenure. The Law Review wishes you all the best of luck in your future legal careers.

Law Review Eligibility Criteria

Students who have completed 20 credit hours with a cumulative GPA of 3.0 or above and who have a grade of 3.0 or above

in Research and Writing are invited to enroll in Scholarly Writing. Scholarly Writing is a two-credit honors writing class. Upon completion of Scholarly Writing with a "B" or better, students are invited to interview for positions on the Law Review.

Students who have completed 20 credit hours with a cumulative GPA of 2.75 to 2.99 and who have a grade of 3.0 or above in Research and Writing are eligible to compete in the Write-On Competition. This competition is held in the sixth week of every term. Students who successfully compete in the Write-On Competition are then invited to enroll in Scholarly Writing. Upon completion of Scholarly Writing with a "B" or better, students are invited to interview for positions on the Law Review.

All Law Review candidates must have received a "B" or better in Research and Writing and Scholarly Writing.
