


Center for Professional Ethics, Fall 2006

Case Western Reserve University

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CASE WESTERN RESERVE UNIVERSITY

THE CENTER FOR PROFESSIONAL

ETHICS

The Center for Professional Ethics Newsletter at Case Western Reserve University

FALL 2006

DIRECTOR'S CORNER: A NEW BEGINNING

"For us there is only the trying; the rest is not our business."

— T.S. Eliot

This is the final Director's Corner I shall write. On June 30, 2007, I will retire from the faculty of law at Case Law School and will resign my position as Director of the Center for Professional Ethics. I am retiring because it is the right time for me to do so. I still have good health and much energy; and I have writing projects that will more than keep me busy over the long and short haul. They are projects that demand more from me than I can give them with the rather busy academic life I lead. Everyone has her or his own internal clock on these matters. For me, it is time.

It is also time for new leadership and new direction for the CPE. When Bob Clarke walked into my office in 1978, proposing that we initiate a campus-wide center devoted to the discussion of ethical issues across disciplines and professions, I had no idea where the journey would lead. I only knew I had found a dear friend and colleague, and we would try to do good things together. I think we did. It was not easy; but it was always a joy to try. At first we were a bunch of like-minded faculty, students, administrators, and Cleveland professionals, reading and talking and planning together to get the conversation going—and keep it going. We had no school or university affiliation. We just did stuff. We held seminars and conferences. We begged money and asked generous people to help. Through the good offices of its then dean, Tom Anderson, we were invited to become a part of the office of student affairs, a foot in the door. I kept asking then-president David Ragone to make CPE a university center. He always refused, by saying Case Western Reserve University was not structured that way. There could be no university centers.

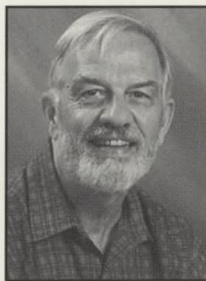
Every center must be based in individuals schools. Paradoxically, it was President Ragone who really put us on the map in a special way when he announced at his retirement that he and his wife were giving \$110,000 to the CPE, "because the CPE is the only group on campus that is trying to pull us together." Immediately, incoming President Agnar Pytte, simply did what couldn't be done. He announced that the CPE was, indeed, a university center; and he gave us a line-item in the budget to boot. The Pytte years were the CPE's best of times. We continued our programming; but began to be a behind-the-scenes force for teaching and research in ethics in many of the schools of the university. In the summers of 1996 and 1997, the CPE ran a program for faculty across the university who were interested in teaching ethics, even though their academic positions were engineering, theater, history, biology, what-have-you. It was the single most exciting intellectual and moral endeavor I, personally, was ever part of. We had a national presence, too. I was one of the founding members of the Association of Practical and Professional Ethics, the largest and most influential body of its kind in the country; and I am still serving on its executive board to this day. After the Pytte years, and the ensuing years of turmoil with the university, the CPE lost its funding and status within the central administration. Luckily, the Dean of the Law School, Gerry Korngold, offered the CPE a home within the law school itself. We had always done some programming with the law school—after all, it is my academic base; but with Bob Clarke, I had conceived the CPE as a university center, reaching out to all. Nevertheless, with the advent of the new Inamori Center for Ethics and Excellence (which

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you can read about elsewhere in this newsletter), the law school seems now like a very good fit for the CPE. There is much good work that needs to be done within the profession of law—and I have some ideas about how some of that work may be done. But at 65, it is time to offer advice to the younger folk, give them the reins, and let ‘em loose—which is what I intend to do. The new dean of the law school, Gary Simson, has assured me that the CPE is alive and well in his plans; and he asked the Appointments Committee to include me in their discussions as they seek a successor for me, both as a faculty member and as director of the CPE. Rest assured, whoever he or she may be, the CPE will rise again like the phoenix, and continue what Bob and I, and so many countless others tried to do: keep the conversation about practical ethics going.

In a brief outline of the CPE I just sketched, I did not identify many of the “countless others” who were so important to the success of the CPE through the years; not did I say much at all about any individual person. There is simply not enough space here to make even a modest attempt to do so. Nonetheless, I need to offer a “thank you” from the bottom of my heart to three special people: Kim Diemert, Denise Coleman Rowell, and Jeannie Gielty. Each of these women, who succeeded each other *seriatim* in the position of “the entire staff of CPE” kept the enterprise afloat with skill, grace, tact, independence, good humor and so much more. Each functioned as CEO and CFO, as Bob Clarke and I did our other full-time jobs. They were often on their own; and they were more than up to the task(s). If there is an ethics hall of fame, Kim, Denise and Jeannie are first-round shoo-ins. Thank you. Thank you. Thank you. So good-bye for now. Within this academic year, there will be an announcement of good things to come.

As the epigraph at the beginning of this column suggests, the business of life is to work toward good ends, success being hard to achieve and harder to measure. As I push off toward retirement, I am proud that Bob Clarke and I started a good thing. I am satisfied that I kept on trying for nearly 30 years. I am happy that others—known and unknown—will carry the work forward.



Robert P. Lawry is the Director of the Center for Professional Ethics and a Professor of Law at Case Western Reserve University School of Law. His column, Director's Corner, appears in each issue.

THE GLOBAL IS FINALLY LOCAL: SOME NOTES ON ETHICS

A CONVERSATION WITH BILL DEAL, INAMORI PROFESSOR

IN APRIL 2005, CASE WESTERN RESERVE UNIVERSITY RECEIVED A \$10 MILLION GIFT, TO BE GIVEN OVER FIVE YEARS, FROM THE INAMORI FOUNDATION TO ESTABLISH THE INAMORI INTERNATIONAL CENTER FOR ETHICS AND EXCELLENCE.

The gift will support an Inamori Professor of Ethics, as well as an international ethics symposium and the Inamori Prize, an award that will honor a variety of international figures in the ethics field. After a long and thoughtful search process, the university announced the appointment of William Deal, Case's Severance Associate Professor of the History of Religion, as the first Inamori Professor and the new Center's Director.

While the university has seen its share of difficulties recently, the appointment of Professor Deal was a bright spot as well as an exciting affirmation that things are moving forward in a positive way. The right man for the job was right here all along. The editor of the Center for Professional Ethics newsletter had an opportunity to speak to Professor Deal, the new Center's Director, about his goals and the Center's mission.

CPE: First of all, congratulations on your appointment. If it's OK, I'd like to start at the beginning, specifically, your beginnings. What drew you to the study of ethics; was it a life-long interest or something that grew as time went on?

BD: Both. I have always had a very strong interest in religion, philosophy, history—all the classic humanities fields. I see these fields as always being about human values, and when you encounter human values, you encounter ethics. In some sense, my interests have never been far removed from ethical inquiry, but it really wasn't until I went to college that I came to think about ethics as a field of study. In graduate school, ethics was a specific aspect of my study of the history of religion;

then it became a lot more important to what I was doing. Clearly, religions do, in part, tell people what they should or shouldn't do. Because my area of specialty is East Asia, particularly Japanese religion and ethics, I have tried to apply what I know about Western ethical traditions to non-Western contexts in order to understand how ethical perspectives are similar and different across traditions.

CPE: It sounds as though the new Inamori Center has a unique mission as well as a different set of goals than most ethics centers at other universities. Could you talk a little bit about that? Also, if you could, talk a little about the Center's desire for partnerships with other centers on the Case campus.

BD: While it depends on the ethics center and the university—and there certainly are ethics centers with an international interest—I cannot think of any well-known ethics center in this country that is charged specifically with the kind of global mission that marks the Inamori Center. I am not saying other people don't care about this, but this [emphasis of the global] is quite central to the charge of the Inamori Center's mission. Part of the mission, too, is to actualize the vision that Dr. Inamori has about ethics and the role of university ethics centers in the world. It will be interesting to see what kind of cross-cultural/inter-religious dialogues can take place. It is Dr. Inamori's feeling that there is enough commonality between cultures and ethical traditions that significant and positive cross-cultural conversations can take place. I share Dr. Inamori's view, but I am also mindful of the fact that these kinds of conversations are often complicated and sometimes contentious. But this does not negate the importance of making the effort. These are clearly conversations that human beings need to have right now. Like it or not we are citizens, not only of local communities, but citizens of a global community as well, and while we may go kicking and screaming into that new world, here we are. What will be the quality of the dialogues and conversations we have with people who are different from us? Or with those who have different values? I wouldn't say the mission of the Center is to

“begin” that conversation—others have already started it—but rather to further it and move it along, or to kick it unstuck when it gets stuck.

From my perspective, the vitality, the importance, the relevance of the Inamori Center really rests hard on the quality of its relationships with other ethics activities on campus. So the Inamori Center is very interested in building connections and partnerships with other Case ethics centers. The Inamori Center wants to facilitate ethics-related programming and to co-sponsor the work of others on this campus. We also hope to offer financial support to program initiatives when we have the means to do so.

CPE: Could you tell us what your personal goals are for the Center as its first director?

BD: I want to make sure we get off on the right foot with programming. Some programming is already established, and some we will create on our own. I want to establish the center fiscally, so that subsequent directors will be on solid financial ground. I also want to get the word out about the existence of the Inamori Center and its mission both within the university and in the larger outside community. One of the challenges for the center will be to balance a number of competing ideas and interests such as the notion of ethics as local versus the idea of ethics as global. As an ethics center in an academic institution, the Inamori Center will be further challenged by balancing the theoretical and philosophical with the actual practice of ethics in the world. All of this, of course, is incredibly exciting and I am grateful for the opportunity to be a part of this project.

CPE: Could you speak about the broad purpose of the Inamori Center? Will it be a sort of campus hub for ethics study, discussion and resources across the spectrum for all (faculty, students, staff?) Or will it serve more as an academic center focused on research? Or perhaps something entirely different?

BD: Setting up the center will be an ongoing, evolving process. I see the center as having a role to play not only on this campus, but also in the local community, nationally, and internationally. I strongly believe that a university has a responsibility to its community so I want the Inamori Center to partner with people and institutions in northeast Ohio. Our national and international presence will probably be more academically-oriented. I expect that the center will always be concerned with tensions between the local and the global, and with theoretical perspectives juxtaposed against the practice of ethics.

The bottom line is that we want to engage in programming and other activities that gets people to think deeply about their own ethical perspectives. Needless to say, there is a lot to be done and we are starting from scratch. I am setting up an advisory committee from the Case community that will be important in helping outline Inamori Center goals.

CPE: Could you discuss the Inamori Prize in Ethics?

BD: The Inamori Prize in Ethics will be awarded every year. There will be four ethics categories—business ethics, biomedical ethics, scientific and technological ethics, and social ethics—and each year will be devoted to one of these four categories. The first prize—to be awarded in 2008—will be in business ethics. Along with the prize ceremony, there will be an academic symposium that will explore the larger significance of the work of the recipient. We also have plans to publish papers from the symposium.

CPE: What role do you see the Inamori Center playing in the greater Cleveland community and beyond?

BD: A focus on global doesn't preclude doing things in the local community. My hope is that the center will play an important role in getting people to think both locally and globally, and to consider how to bridge that gap. I have already been thinking about what specific contributions the Inamori Center might make to the community. We definitely want to make a contribution to discourse and practice on the local level.

CPE: Some say that Case Western Reserve is in a vulnerable position right now. Do you see the Inamori Center playing a role in promoting dialogue or discussion around the difficulties Case has suffered lately?

BD: We would be glad to participate in conversations about the state of the university because the Inamori Center is an interested party in campus affairs. But I would see this role as one that all members of the university should play—this is certainly not an area of concern proprietary to a campus ethics center.

CPE: Is there anything at all you would like to add?

BD: I want to encourage all those interested in ethics and ethical issues to be a part of the activities and programming of the Inamori Center.

ARE YOU READY TO TAKE FREE EXERCISE RIGHTS SERIOUSLY?

ALAN BROWNSTEIN EXPLAINS WHY YOU SHOULD

IN MARCH OF 2006, THE WILLIAM A. BRAHMS LECTURE ON LAW AND RELIGION PRESENTED BY THE CENTER FOR PROFESSIONAL ETHICS AND THE SCHOOL OF LAW, INVITED PROFESSOR ALAN E. BROWNSTEIN, OF CALIFORNIA, DAVIS SCHOOL OF LAW, TO SPEAK ON FREE EXERCISE RIGHTS.

That evening the crowd listened intently as Professor Brownstein outlined how we might, or rather the State might, begin "Taking Free Exercise Rights Seriously."

Professor Brownstein began his speech by admitting that he didn't believe that American constitutional law took free exercise law seriously. "Well, at least, the Supreme Court via their decision in *Employment Division v. Smith* didn't take free exercise rights seriously," he said. "It permits government to prohibit, interfere with, and to regulate religious practices entirely free from judicial review—as long as the law substantially burdening that of religion is a neutral law of general applicability." *Smith* has its supporters, many arguing that it reflects the original understanding of the First Amendment. But he does not think those views undermine the accuracy of his premise; rather he thinks it may "suggest that the framers didn't take free exercise rights seriously either."

The decision has been sharply criticized, however. "Congress and state legislatures have crafted statutory responses to it," he noted. "The responses claim the right way to protect this right is to strictly scrutinize any law or administrative government action that burdens religious belief or practice—I am not sure that these provide a satisfactory response to *Smith*." Professor Brownstein explained that constitutional discourse on free exercise rights seems fixed on two opposing, but equally simplistic and inflexible constitutional formulas; and both formulas seem divorced from the real world, and from fundamental rights jurisprudence.

He believed the courts must develop "a nuanced, complex and sophisticated jurisprudence regarding the right," like it does in other constitutional matters. Additionally, doctrine must be crafted in a way that respects the right, as well as any State's interest that may conflict. Professor Brownstein asked the group to think

about freedom of speech. "Everyone recognizes that American courts take it seriously, but no one thinks that courts adjudicate free speech claims under a 'one size fits all' standard of review," he said. "Equal protection is another, good example. We apply equal protection principles to some fundamental rights, but not others, and with varying degrees of rigor."

So, what would it look like if the courts did take free exercise rights seriously?

In looking at *Smith*, Professor Brownstein discussed what he called the anomalous treatment argument and the anarchy argument. "Both assume that no nuanced workable free exercise jurisprudence is possible," he said. "If you reject the two as untested assumptions, then that moves the discussion to the correct starting point—whether free exercise doctrine can be developed that distinguishes and provides courts the degree of guidance that they receive in other areas of Constitutional law."

Next, Professor Brownstein offered some ideas about doctrinal responses regarding some of the issues that can come up regarding free exercise rights. The first, he explained, is the problem of privileging religion.

"What this suggests is that when courts grant religious individuals and institutions exemptions, they do much more than simply prevent government from interfering with religion," he said. "Free exercise exemptions may convey benefits that have significant secular value to religious individuals." He used two examples: a religious pacifist avoiding conscription, and an employee not having to work on the Sabbath (normally, a weekend day). Both of these provide secular benefit, prized by many people (religious or not) for various reasons.

Religious institutions can also be at risk for receiving secular benefits. "In *Catholic Charities v. Superior Court*, Catholic Charities challenged the application of the Women's Contraceptive Equity Act on free exercise grounds. WCEA requires employers to provide health insurance to include medically prescribed contraceptive drug coverage. Catholic Charities argued against this," he said. Granting this would mean Catholic Charities would avoid an expense that other employers would have to provide making this an equity issue. Moreover, he added, "the surplus secular benefits that accompany these exemptions create perverse incentives; perhaps an

inducement to adopt beliefs, and the possibility of sham claims." He explained the courts already have enough difficulty in evaluating the sincerity of religious beliefs.

One answer, he believes, would be to require religious exemptions to be stripped of any surplus secular benefits that accompany them, or allow/require the state to limit any surplus benefits. For example, religious pacifists need not violate their beliefs, but public service of some sort would be required. Or, when a worker requests a weekend day off for religious reasons, there could be a monetary amount that could suffice, "a salary reduced, or for the person to fill in for the religious individual, a salary supplemented."

"Translating this into legal rules, decisions and practice may be more difficult," he said. "Remember the goal doesn't require precise calculations either; it just needs to reduce concerns about privileging religion."

He envisions the courts handling these cases somewhat like freedom of speech claims. "It would require them to determine if a less restrictive alternative exists, similar to free exercise," he explained. "The Court will have to evaluate competing arguments—not unfamiliar territory. It would have to be unidimensional since there's no basis for drawing distinctions in free exercise claims; all cases are adjudicated under the same, largely ad hoc and indeterminate, standard of review. It is important to remember that we can't hold free exercise review up to some impossibly high standard; we must demand no more from it than other parts of constitutional law. Freedom of speech and freedom of religion share a common problem; both involve pervasive aspects of life." However, he explained that law can't possibly protect all exercises of either right.

"I would like to suggest that religion serves several important functions in our society," he explained. "Religion serves as an independent source of values divorced from government; religion can promote democracy and political accountability by enforcing values against which government conduct can be measured. He acknowledged that religion isn't the only source of private values, and reassured all that it shouldn't be. "However, what distinguishes religion from other cultural institutions is its focus on morality and ethics, as well its constitutionally mandated separation from government. Too, that religions focus on transcendent matters is something else to consider."

Professor Brownstein noted that religion has a communal element to it; often when it is grounded in a house of

worship. "This function of religion, pulling people out of their houses and joining them together for study, worship or charitable pursuits doesn't seem like anything extraordinary because it is so commonplace, but imagine a city without houses of worship." As well, religion is often grounded in tradition and connects people in a variety of ways. It is usually an intergenerational institution that operates in the long-term by passing on practices and beliefs.

"This purpose is a particularly salient one to developing constitutional doctrine," he said. "[In looking at religion], instrumental facets overlap with human dignity and human autonomy, thus the role religion plays in the development of values furthers both instrumental and dignitary interests." Simply, we, as humans, need groups; human dignity demands it, and religion can advance the person potential of individuals. This is not to say that all components of religion would be as rigorously protected. What would be protected is what would further instrumental and dignitary interests, like worship and charitable work. "More than individual religious practice, religious institutions are instrumental in these dignitary interests." He added, "Let me say here that I am not suggesting that the sphere of institutional autonomy be inviolate; no rights are absolute."

But the key issue for developing free exercise doctrine still remains: can courts distinguish between free exercise claims? "I suggest that distinguishing between institutional autonomy and that of an individual practice is one such doctrinal dividing line," he said.

In giving examples of the next facet—protecting religions from state regulatory interference—Professor Brownstein mentioned both LUPA and Title 7. "A free exercise regime committed to recognizing the value of the free exercise of religions should require the careful review of land use authorizations," he said. "Houses of worship are excluded from certain areas not because of the problems they cause, but because they don't contribute to sales tax, or attract sales." He believes religious schools, too, should be protected from the dependency on the state treasury and many regulatory factors. Of course he believes the state should be insuring that children should be getting the best education they can, but intrusion should be minimized.

In closing, Professor Brownstein used the aforementioned Catholic Charities case to test the "utility of my analysis so far." While he has no doubt that the Catholic Charities decision is an unpopular one (he called it a "counter-majoritarian position in today's culture"), he

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RELIGIOUS LAWYERING:

PROFESSOR RUSSELL PEARCE KEEPS HIS FAITH

IT CERTAINLY WASN'T DIVINE INTERVENTION THAT BROUGHT SO MANY CURIOUS SOULS TO CASE WESTERN RESERVE UNIVERSITY'S SCHOOL OF LAW'S INAUGURAL WILLIAM A. BRAHMS LECTURE ON LAW & RELIGION, IN THE SPRING OF 2004.

Rather it was the engaging Professor Russell G. Pearce and his ground-breaking speech "Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation."

"Not only has Professor Pearce contributed to the understanding of and advancement in the field of legal ethics, he is a nationally recognized leader in a relatively new field of scholarship called religious lawyering," began Professor Robert P. Lawry, director of the Center for Professional Ethics at Case Western Reserve University in introducing Russell Pearce. "Religious lawyering offers lawyers an opportunity to think about and work toward incorporating religious beliefs into their professional work. It's an attempt to help lawyers integrate who they are with what they do. Russell Pearce is clearly one of the voices we need to hear as we think about this large, complex topic."

"As a lawyer and law professor I aspire to weave God's torah into my work and to cling to God's commandments," began Professor Pearce. Although he acknowledged that this statement would make some uncomfortable, he, too, hoped it would open up the discussion wide enough to include all aspects of religious lawyering and justice, all "without undermining the basic values of liberal democracy."

When Professor Pearce became a law professor in 1990, he had not given much systematic thought to the connection between his Judaism and his law practice. "I had seen some vague connection to Judaism—wanting to fight poverty, wanting to be a civil rights lawyer; it was related to my obligation to be honest, to treat my co-workers with respect." While at Fordham, he ran into the scholarship of Professor Joseph Allegritti and Thomas

Schafer (considered the father of today's religious lawyering movement). He was transfixed by both. After he read Allegritti and Schafer, Professor Pearce "began to think more deeply about myself as a Jew."

But when he went looking for additional articles or research by other writers and scholars, he came up with little that he felt directly related to him. "All I could find were articles directed exclusively at orthodox Jewish audiences, or articles concerned with very narrow ethical issues." He added, "I decided that one day I would try to tackle the topic."

He soon found out that Professor Sanford Levinson had beaten him to it. Levinson had come to Fordham to present a paper on identifying Jewish lawyers. While Professor Levinson came to New York's Jesuit law school for a critique of his paper from a Catholic perspective—instead he found Professor Pearce. "I challenged him on the ground that his model excluded reform Judaism and a commitment to social justice," he remembered. "He invited me to write a response to be published with his article in *Cardozo Law Review*." These papers became the first comprehensive perspectives on Jewish lawyering to join the scholarly conversation begun by Shaffer and Allegritti.

Since then, however, the field has expanded dramatically. In 2004, Fordham created the Institute for Religion, Law and Lawyer's Work which promotes scholarship in the field and provides resources to religious lawyering groups. Professor Pearce finds this religious lawyering movement quite surprising. "To be blunt—religious lawyering is unprofessional," he admitted. However, the professor pointed out that prized religious values such as public service, civility and honesty are also highly regarded values of legal professionalism.

So, why do the two co-exist so unhappily in the minds of many?

"What's unprofessional is the very idea that a lawyer bring her religion into her work," he said. "Our work requires us to exclude all personal aspects of our self from our role as lawyers; including our morality and our religion. In order to function properly, the adversarial

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system requires that all parties receive equal representation.” But there are lawyers who see one’s religion as a fixed part of one’s life. These are the lawyers that make up the religious lawyering movement,” explained Professor Pearce. “The movement consists of lawyers who are already religious and are, for the first time, able to consider the relevance of their religion in their work.”

Professor Pearce believes this movement was brought on “by a crisis of professionalism.” Professor Pearce calls it a collapse of the business–profession dichotomy. “The dichotomy dates back to the *Federalist Papers* which argued that only an elite governing class could insure majority rule, promote public good, preserve the rule of law, and protect minority rights. The lawyers were the professionals who would serve this role,” he noted. “Even Alexis De Toqueville observed, ‘Lawyers are the de facto aristocracy of America.’”

Of course, some lawyers had always rejected this idea, and by the 1800s, a crisis arose—law had become a business. Lawyers needed self-regulation. Enter: the American Bar Association.

“Led by ‘the best men,’ the Bar would decide who could practice law; articulate ethical standards; and discipline violators. Professionalism, with the business–profession dichotomy, remained dominant until the 1960s. But after the 1960s, a crisis occurred,” he said. Lawyers had stopped believing they were a part of the professional governing class. “To make matters worse,” said Professor Pearce, “the continued reliance on the rhetoric of professionalism makes lawyers feel ashamed of their business and conduct. Many lawyers find this combination of a hired gun ideal and professionalism rhetoric to be unsatisfying.”

Some lawyers began to look elsewhere for answers. “Religion offers religious lawyers a tool they can use to answer the question: How can I be a good lawyer and a good person? And although the answers will differ, there will be answers,” he said. “Additionally, it transcends the dichotomy between the noble profession and the selfish businessperson. Religious lawyering can explain to lawyers why they are morally accountable in their role in

the governing class and why personal integrity and consideration of the public good must be part of client representation.”

Whatever good it may seem to serve, however, religious lawyering does mean lawyers must abandon moral neutrality, and they must engage their clients in conversations regarding the morality of their conduct. However, Professor Pearce believes all of this is possible without changing any of the ethics rules—after all, the ethics rules today “permit lawyers to bring all considerations to bear.” Professor Pearce is mindful of the discomfort this last thought brings about in most thinking people. He acknowledges that religious lawyering is not the sole answer to the crisis in professionalism, and that it has its obvious limits. In the Professor’s mind, there are three main issues at hand, to wit: 1) does religious lawyering really make a difference—what about all the religious people who do immoral things?; 2) Is religious lawyering unfair to clients?; 3) does religious lawyering poses a danger to liberal democracy?

He believes the first issue is easily resolved. “Religious lawyering can make a difference for those lawyers who ground their morality in their religion,” he said. The second issue, however, gets tricky. “When there are religious dimensions of an issue that might be relevant to the representation of a client, it would be one thing.” He added, “nevertheless, the Rules don’t expressly mention religion. Still, they refer generally to other non-legal factors that are relevant.” But if there is not relevance to a case, the issue becomes more difficult. “What if every time a client came into an office, a lawyer wanted to talk about faith?” he asked. “While I could find no specific rule that would prohibit a religious solicitation or a political solicitation in lawyer–client conversation, I would have a problem with prostelyzing to clients (as well as those other forms of solicitation) in general. In most attorney–client relationships, a power imbalance exists; the attorney is powerful and the client is vulnerable.”

And the third issue? The professor shared a story about a conference at a panel where a distinguished lawyer and former Supreme Court Justice from Texas proclaimed to

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AUTHOR DAVID CALLAHAN ASKS: *WHAT DOES OUR 'CHEATING CULTURE' SAY ABOUT US?*

THE CENTER FOR PROFESSIONAL ETHICS WAS PROUD TO CO-SPONSOR THE 2006 ACADEMIC INTEGRITY WEEK WHICH INCLUDED A KEYNOTE ADDRESS BY DAVID CALLAHAN, AUTHOR OF THE ACCLAIMED BOOK *THE CHEATING CULTURE*. THE BOOK, AND CALLAHAN'S SPEECH TO THE CASE COMMUNITY, TOUCHED ON MANY IMPORTANT POINTS ABOUT INTEGRITY, ACADEMIC OR OTHERWISE.

"This book has really touched a nerve," began Callahan. "There is quite a bit of cheating out there, and quite a bit of anxiety about the problems that come with cheating." However, he is optimistic that our society will change. "I believe things will get fairer, better and more honest. But I think it will be the next generation that will overturn the status quo," he added.

While he admits that academic integrity has never been a huge student cause, he sees widespread student cheating as being connected to "a much bigger crisis about fairness in American." In researching the book, "I learned a lot and learned things I wish I didn't know. I learned that the greed and dishonesty that we have seen in corporate America has been worse than anything we've seen in the country in a hundred years," he said.

It's cheating by everyone, too: athletes, business heads, and ordinary Americans, and unfortunately, young people, too.

"Kids are cutting corners and starting earlier," he said. "According to surveys, two-thirds to three-quarters of high school and university students say there has been cheating within the past year. Some blame new technologies for this new problem. But research suggests that new technology is not what is driving more cheating in the schools," he said.

Callahan explained, "These are 'normal people;' this is not a 'them' problem, this is an 'us' problem. Some of the people doing these things and cutting corners were the same people who could never imagine, say, shoplifting." Surprisingly, according to Callahan, this is happen-

ing in an era where Americans are emphasizing more personal responsibility in others areas. "It's like there are two sets of moral compasses; there's this one compass that guides people's behavior when it comes to sex or drugs or drunk driving, or violence; the other compass guides their actions when it comes to getting ahead academically, professionally, financially," he continued. "However, if you look at the polls, most people value honesty and integrity."

What is this disconnect all about? Callahan believes all of this cheating tells us important things about our current American life.

His book tells readers there are three great temptations in the cheating culture. "First of all, these days, the carrots for winners are a whole lot bigger than they used to be," he said. "It's not just financial rewards that we lavish on winners. We also give winners much more attention and praise." He noted that even the most privileged children in America—for example, the students at Horace Mann—are cheating. "There is no single reason why students cheat. But in this case, certainly one reason is the intense desire to be a winner. In the grand scheme of things, if you're a student at Horace Mann, you've already won at the game of life," he said. "And yet, there is still cheating."

Secondly, he says, things are tough out there, and people just want a comfortable and secure life. "But increasingly," he said, "that is not something one can take for granted, and more people are afraid of falling behind. We just don't look out for our fellow citizens like we once did. Middle class Americans, who should be feeling secure, are instead feeling anxious." Their children, too, are growing up around this anxiety. "As one college student said in explaining her cheating, 'good grades make the difference between going to medical school and being a janitor.' That's how a lot of people see the stakes. People see a choice, starting early on in life," he said.

The last issue, Callhan explained, is 'nobody's looking!' And that means in all aspects of life. "Surveys have found that forty-four percent of faculty did not take formal disciplinary action against students they knew were cheating. The IRS, which enforces the tax laws, fails to go after legions of tax cheats because it just doesn't have enough investigators. The Securities and Exchange Commission, which oversees Wall Street, had neither the authority nor resources during the '90s to stop the worst

Academic Integrity: Students Speak

Thanks to the hard work and good planning of Case's Academic Integrity Board, the Academic Integrity Week of 2006 provided many opportunities for students to discuss academic integrity with one another in various small and large group settings.

The first of these opportunities came directly after David Callahan's speech, when the students broke into small groups to meet with the author and share their own concerns. Those gathered discussed a variety of issues surrounding academic integrity. Some believe that the academic institution and its faculty should take more of a responsibility toward outlining what the university's policies are regarding cheating, plagiarism and academic integrity as a whole. Should each faculty member be made to outline the policy in his or her syllabus? Georgetown University was given as an example of an institution-wide effort that has seen success with its on-line academic integrity tutorial. The tutorial must be completed by each student before they can register for classes. Some of those who gathered wondered if cheating has worsened because of the over-investment some parents seem to have in the lives of their college-aged children. Thanks to the extreme cost of higher education these days, said one, "parents may have a greater stake in the outcome of their children's education."

Regardless of what external forces can help to nurture along "the cheating culture," those gathered heartily agreed that it was a students' own responsibility to stay honest and maintain his or her academic integrity. In reaction to a comment about college being too late in life to teach an individual integrity and ethics, a student responded that, in fact, college was the perfect time to learn these things as the academic environment is a learning environment. Often, college is the first time a young adult finds himself or herself on one's own—away from the pressures and expectations of a family. It is a time to think in ways you never have before. And lastly, a student reminded the group that study habits and integrity is something one will bring into the real world, the working world, with you. "At least in research," she said, "there can be serious problems if someone cheats or lies."

For more information on Case's commitment to academic integrity and Case's Academic Integrity Board, please visit: <http://studentaffairs.case.edu/office/integrity/>

corporate abuses since the Robber Baron Era. When cheaters go unpunished, it sends a terrible message to those who are honest. Sleeping watchdogs reinforce the message that life is unfair in another way, too. These days it is often the cheaters at the top of the food chain who get the least punishment."

So, unfortunately, there's a lot of bad news. However, Callahan doesn't believe the cheating culture has to be a permanent feature of our lives. "I'm optimistic that we can build a fairer and more honest society. We can change the dynamic we're in, and there are several ways to do this," he said, "One is to change the way our schools and our professions operate. The second is to try to change how society writ large operates; the third is to change how we operate and make personal choices. All three are important, and they are connected to each other."

This all ties in with academic integrity because it is a good cause to fight for, on campus, and there is a lot that can be done by any student or any faculty member. "There is a whole movement out there of people who are working to reduce cheating. And in many cases,

students are spearheading these efforts," he said. "They are taking ownership of the problem, and taking leadership. And guess what? When students take the lead on this problem, other students will follow."

He believes we need to create a new social contract, and in broad terms that means: first, anyone who works hard and plays by the rules should be able to feel secure; second, anyone who breaks the rules, rich or poor, should be held to the same standard of justice; and third, everyone must have a say in how the rules are made.

However, along with this new social contract, Callahan believes that we must look at ourselves in a new way. "We need to police ourselves and take responsibility for our integrity—we need to forget the shortcuts," he said. "According to psychologists, people are most happy when they use what one psychologist has called our 'signature strengths.' That is, when we do what we are best at, and what we are meant to do. We all have to live with ourselves; a life of integrity equals a life with fewer regrets. Lastly, the reason integrity should be important in our lives is that each of us plays a role in shaping the society we live in, and that our children will live in."

the panel the importance of his relationship with Jesus Christ. "A prominent New York judge walked out of the room and angrily said to me, 'This is your fault. You have created a nightmare.' When we began the Institute of Religion, Law and Lawyer's Work at Fordham, one of my friends on the faculty stopped speaking to me; a group of others went to the dean and demanded he end the funding immediately," he remembered.

There, too, are additional concerns. "The majority religion is more than ninety percent Christian," Professor Pearce said. "The fear that society will make decisions based upon religion might see minority religions suffering. And regarding non-believers? The fears may be even more well-founded. Many people fear that giving greater voice to religion will promote the right-wing agenda in the culture war."

However, Professor Pearce does not believe these are sufficient enough to reject religious lawyering outright. "Almost all political theorists do agree that in liberal democracy, citizens have the freedom to make personal, political decisions based on their religious convictions," he said. "Let's assume that the lawyer-client relationship is part of the public square; the debate implicates how religious lawyers discuss their religion, not whether they can appropriately ground their approach to lawyering in their religion. We are only able to maintain a liberal democracy because the religious people have concluded that their faith either requires liberal democracy, or are comfortable with it." Professor Pearce also reminded the group that religious people have traditionally been on the progressive and reactionary sides of social change; abolitionists, women's suffrage and civil rights movements were all products of religious fervor.

"We must strive together to manage those differences with the shared goal of the law," he concluded. "In this effort, religious lawyering is an asset and not a liability. In a day when many believe that law is a business and no longer a noble profession, too many lawyers do not see a reason to devote time and energy to promoting the public good—and religious lawyering could provide a powerful antidote."

said, "the point of protecting religion as a source of values isn't to suggest that any religion is necessarily superior to those of the government or the majority." He believes that society benefits from the "existence of the checking function of independent sources of moral authority."

So, said Professor Brownstein, "the Catholic Church position on contraceptives represents an alternative moral vision, and as such we should protect its ability to be true to that vision—against state regulations that undermine it. Here, the state could have easily organized and funded a separate insurance pool for employees from religiously exempt organizations so that all benefits would be taken care of, or perhaps Catholic Charities could have made contributions to the public good. Indeed, there may have been a win-win situation had the state been willing to look beyond."

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CASE WESTERN RESERVE UNIVERSITY

The Center for Professional Ethics
CASE School of Law
11075 East Boulevard
Cleveland, Ohio 44106-7148