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REPORT OF WORKING GROUP #8

Lisa A. Butler-Brust

Religious symbols displayed in courtrooms, law school classrooms, lawyer's offices, and those worn by attorneys were the subject of Work Group #8. Within each of these categories, the group identified the range of options by first setting out the all or nothing positions. Issues of free speech, the educational and societal import of cultural and historic symbols, and free exercise of one's religion were juxtaposed against separation of church and state, the implications of taking religious symbols for governmental use, and disenfranchisement of litigants by exclusion of historical/religious symbolism meaningful to them. Balancing legal and ethical issues with pragmatism, the group discarded as impractical both the notion of complete bleaching out of religious symbolism for public institutions and that of uninhibited free speech/free exercise of religion by attorneys in their work.

The Group discussed the issues surrounding the presence of religious symbols in courtrooms, law school classrooms, and lawyers' offices. The Group began by discussing the current controversy surrounding the judge in Alabama who has displayed a carving of the Ten Commandments over the bench in his courtroom and has refused to take it down, despite an order to do so from the Alabama Court of Appeals. The judge contends that the United States and its justice system were founded on the belief in God, and, therefore, the Ten Commandments are a source of our laws and should be appropriately symbolized in the courtroom. The Group thought that the biggest problem with this display was the discrimination that some litigants who appear before the judge may feel. A litigant who is a non-believer may feel at a disadvantage because of her religious beliefs or lack of religious beliefs when appearing before this judge who is supposed to carry out the law in a religiously impartial way.

Even if the judge insisted that his actions in the courtroom would remain impartial and that he would not discriminate based on a party's religious beliefs, this display of the Ten Commandments still presents problems. The judge argues that the Ten Commandments are part of American history, and this religious history is reflected in many of the traditions and rituals in a courtroom. For example, witnesses in the courtroom swear to God on a Bible to tell the truth. The Group distinguished between putting up new religious symbols and tolerating those that already exist. Putting up new religious symbols, as was done in this Alabama courtroom, is more objectionable than leaving those religious symbols that have been displayed or practiced for a long period of time. For example, painting over Moses and the other religious symbols in the United States Supreme Court would be objectionable. A complete "bleaching out" of religion, that is taking

down all religious symbols in public spaces, was opposed by most members of the Group. Removal of long standing religious symbols is as offensive to believers as putting up new religious symbols is to non-believers.

The Group also criticized this approach of allowing religious symbols to be displayed, so long as they have been displayed for a period of time and are generally viewed as traditional. One specific criticism was that this approach is a type of "adverse possession" rule for determining whether a religious symbol is Constitutional—if it has been there long enough, then it is not inherently religious. This approach is unfair to religious sects that have not been as prevalent in the United States as Christianity and Judaism. For example, under this approach religious symbols of the Islam faith would never be permitted to exist in public space, while Christian and Jewish symbols would be permitted simply because these faiths have been more prevalent in American society in the past. This is disadvantageous to Muslims who would never be able to create a religious tradition in this country. Additionally, the theory that religious symbols can somehow be secularized over time as a tradition or secularized because they are part of a larger non-religious display may be offensive to some faiths. For example, some in the Jewish faith may be disturbed by the concept that a menorah can be secularized by being displayed alongside a Christmas tree.

Another discussion was whether lawyers should wear religious garb or display religious symbols when they are practicing law. The Group generally agreed that wearing religious garb or displaying religious symbols in front of clients was acceptable and the lawyer's choice. One member of the Group noted that the law sometimes constrains this choice. For example, Sikh lawyers carry knives as part of their religion, yet a Sikh lawyer would not be allowed to carry this religious symbol in a courtroom. The Group also generally agreed that the courtroom was a special setting and perhaps a lawyer should not be permitted to wear religious garb or display religious symbols when trying a case before a jury. Jurors may import an added level of integrity to a lawyer who wears religious garb or displays religious symbols. As officers of the court, lawyers should not be able to manipulate their perceived integrity through religious garb or symbols. The Group suggested uniforms for lawyers in court to prevent this from happening. Defendants, however, should be able to wear whatever they like, because they are not officers of the court.

The Group felt that it would be inappropriate for law school professors to wear religious garb or display religious symbols in the classroom. As teachers, they occupy a more influential role towards students than that of a lawyer towards a client. In addition, a client has a choice in selecting a lawyer to represent her, while a law student can not always choose her professors. The Group expressed varying opinions as to whether religious garb or symbols were appropriate

outside the classroom, for example worn or displayed in a professor's office at the law school. Generally, religious symbols in a professor's office were considered more appropriate than in the classroom. Those members of the Group that felt that a professor's office was more of a personal space than a public space had a higher tolerance for the display of religious symbols in a professor's office.

In summary, the Group acknowledged that a complete "bleaching out" of all religious symbols was as unacceptable as allowing lawyers to convey whatever religious message they wanted in all legal settings. The Group, however, found it difficult to draw a line that distinguished when religious symbols were appropriate and when they were not. Such a line depends on various factors, including: the setting in which the symbol is displayed, e.g., courtroom, classroom, or office; the length of time that the symbol has been displayed, i.e., has it existed for many decades, as in the mural in the Supreme Court, or has a judge brought it into the courtroom recently; and the context of the particular display, i.e., is it part of a larger non-religious display or is it primarily meant to convey a religious message.

Notes & Observations