

1998

## Agenda: Religious Symbols in the Legal Workplace and Courtroom: Group #8

---

### Recommended Citation

*Agenda: Religious Symbols in the Legal Workplace and Courtroom: Group #8*, 66 Fordham L. Rev. 1637 (1998).

Available at: <http://ir.lawnet.fordham.edu/flr/vol66/iss4/54>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

## **AGENDA:**

### **RELIGIOUS SYMBOLS IN THE LEGAL WORKPLACE AND COURTROOM**

#### **Group #8**

Agenda Question: What does the subject of religious symbols in the legal workplace and courtroom have to say to—

- Teaching
- Scholarship
- Bar Activity
- Adjudication
- Congregational Programs

We felt that the subject divided easily into four discussion areas:

- I. Nature and role of symbols
- II. Implication of symbols for the individual in the legal process
- III. Implication of symbols for legal institutions
- IV. Programmatic suggestions for faith community activities and programs

#### **I. NATURE AND ROLE OF SYMBOLS**

##### **GENERAL CONSIDERATIONS**

- (1) Definition and purpose of symbols
  - Symbols include actions in addition to objects
  - Symbols could be identified as conveying additional meaning to the beholder (more information than just the item itself)
- (2) Symbols can be viewed both positively and negatively
  - Reinforcing stereotypical assumptions
  - Educating and sensitizing about societal values

##### **AGENDA QUESTIONS**

- (1) Considering the gradations from private space to public space
  - Home
  - Office (law firm and law school)
  - Judges' chambers

Comment—What is court-appointed?—having religious symbols in office may be an Establishment Clause issue—because client has to be in office and has no choice. Cannot just choose another lawyer

- (2) Need to understand the research regarding the impact of symbols, particularly on jurors
- (3) Is the removal of long standing symbols a harmful process—worthy of social/political capital?
  - Is the status quo the base line—this is a concern to allow status quo to be the baseline
  - Neutrality can not be the status quo
  - When a religious activity is disallowed—may be neutral to others not of that religion, but is not neutral to those practicing that religion
  - Be pluralistic versus being neutral—when religion is to recruit others. If disallow, then are condemning that religion to fail from the beginning.

## II. IMPLICATION OF SYMBOLS FOR INDIVIDUALS

### GENERAL CONSIDERATIONS

- (1) The impact of symbolism depends on the individual's role. So one would distinguish between
  - Lawyers
  - Witnesses
  - Parties
  - Judges
  - Law professors

Comment—should also focus on community's view of the symbol and not just the individual's role.
- (2) For witnesses and parties: the issue seemed more to be the negative inferences that could be drawn from their religious garb and ways to neutralize negative inferences.
- (3) For lawyers: religious symbols were seen as a potential means for influencing courts and jurors about the veracity of their position.
- (4) For judges: their role would be as gatekeeper to prevent both positive and negative inferences from being drawn from religious garb through voir dire, jury instructions, and general demeanor. They should also be mindful of the impact of institutional symbols on litigants, lawyers, and jurors.
- (5) For law professors: the issue of religious symbols hinge upon the dichotomous views of herself as both a positive role model and as representative of the legal system.

### AGENDA QUESTIONS

- (1) For witnesses and parties: educational bar activities would be important so that attorneys could better advise parties and witnesses.

- (2) For lawyers: should there be a distinction between religious garb that is discretionary versus that which is mandatory?
- (3) For law professors: in fulfilling their roles are they making the classroom accessible to all students or exclusionary through the use of religious symbols?
- (4) Is it appropriate for the professor to display his religious identity in the classroom context?
- (5) For judges: a scholarship activity would be to look at whether "bleaching out" or a disclosure model serves better to achieve fairness.
- (6) Another scholarship activity could be to investigate the minimization of individual attributes of lawyers and judges by using uniforms as other legal systems do.

### III. IMPLICATION OF SYMBOLS FOR LEGAL INSTITUTIONS GENERAL CONSIDERATIONS

- (1) The specific function undertaken might affect the appropriateness of religious symbols
- (2) Individual communities might display different standards, based upon community size and necessity, e.g., religious institution is the only place large enough to hold a community function
- (3) There may be different obligations on private institutions, e.g., private law schools may be exempt from these considerations

#### AGENDA QUESTIONS

- (1) Whether the distinction between jury versus non-jury court processes is meaningful as it relates to religious symbols
- (2) Whether it is possible for formerly religious symbols to take on a more generic connotation over the passage of time
- (3) Whether the ceremonial nature of some symbols transcends discussions about religion, e.g., "In God We Trust"

### IV. In addition, there were programmatic suggestions for faith community activities and programs

#### RECOMMENDED PROGRAMS MIGHT INCLUDE:

- (1) General education about how the legal system works (to various lay religious groups)
- (2) Positive and negative assumptions arising out of religious symbols
- (3) Educational programs on church/state issues

- (4) Counseling religious clients on effective and ineffective use of religious symbols in court activities

CORE ISSUES

- (1) Within faith community:
  - Struggle within the religious community
  - How to define a religious community
  - Debate within the tradition
- (2) Struggle between free exercise and establishment clause—can not favor religion but can not disadvantage religion as well
- (3) Is there such a thing as a neutral legal system; Is there such a thing as neutrality
  - What is the base line—is it the status quo
  - Does a court decide what is neutral—what if the Jewish community does not want the menorah to be considered in the neutral display
- (4) Offensive symbols—no offensiveness clause—but there is an establishment clause—that is why religious symbols do not fly
- (5) Solving the symbol problem through pluralism—is it a positive good or is it watering down the symbols
  - Is putting more symbols in a display watering down the religious meaning—is this what we want
  - Turning religious symbols into cultural symbols—is this what we want. Often upsetting to a religious community.
- (6) How to define a community—local versus national
  - There is a tension—if this community wants to run the community in this place—how can the ACLU come in and impose their values on us
  - Is the majority the US—federal law and the constitution
  - If give people the ability to organize themselves religiously—allow religious symbols on a local level—How to prevent that from evolving into wanting racial pockets, etc.
  - What is an acceptable religious symbol in one part of country may not be acceptable in another. But if can sell in Alabama, then how to prevent from being displayed in NY. The country is becoming increasingly national through technology etc. What goes on in Alabama will soon go on in Georgia.

- State's rights issue—state can stand up to federal government
- (7) Erosion of EC
- Swearing in the bible—ceremonial deism—we seem to agree that while the court has said that this does not violate the EC—it seems to clearly violate it though
  - EC has been eroded by these things—pass from religious to cultural
  - But Judeo-Christian only—other religions have to catch up
  - Christmas tree has become a cultural symbol
  - Constant pressure on the part of people to put up more religious symbols

*Notes & Observations*