



# NLA BRIEF

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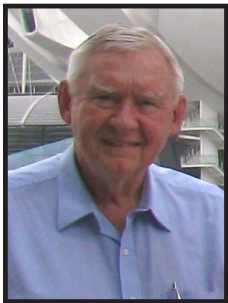
## Happy Birthday, America!

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men,...That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it." —Declaration of Independence; July 4, 1776



## Member Spotlight: Phil S. Walker

MEMBERS



After serving the National Lawyers Association (NLA) as a much-respected board member for at least a decade, long-time NLA member Phil S. Walker recently decided to leave that position as he feels the group "needs new

blood." But don't worry; he remains a member in excellent standing and has no plans to leave the organization anytime soon.

What's changed? A new chapter in life has begun. Nowadays, Phil is trying to relax a bit more with his wife Helen, his bride of five decades and the mother of their six children. "I'm married to a woman who's made me very happy over the years," he says with a smile in his voice. The couple lives in West Hartford, Connecticut, a 22-sq.-mile town of 63,000 people (ranked by CNN Money as the 55th best small city in America), and enjoys an active leisure life.

Subsequent to earning a B.A. (cum laude) from the University of Notre Dame in 1954, and a law degree from Yale Law School in 1960, this talented trial lawyer of 48 years began and ended his amazing career at the Hartford law office of Day Pitney LLP. Phil retired full-time from its ranks on January 1, 2004, as a partner, and still works there as of Counsel.

While it's impossible to list his many professional accomplishments here, certainly one major highlight was Phil's election as a Fellow of the American College of Trial Lawyers in 1981 and his service as Connecticut State Chair for the College. His trial lawyer practice included commercial and securities litigation, as well as the handling of products liability claims for international clients, and representing physicians in licensing and hospital privileges matters. He served as past chair of Day Pitney's Trial Section, and has invested time as a lecturer, law school teacher, conference panelist and author. For example, he co-wrote *Handbook on Alternatives for Dispute Resolution*, published by American College of Trial Lawyers in 1991.

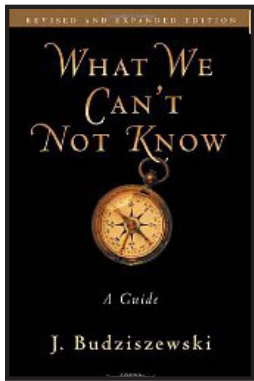
Looking back, did he make the right decision to follow his chosen career path? "Oh yes!" said Phil. "I was in it during very interesting times. I enjoyed practicing law, as well as the people I tried cases with, and the clients." At his law firm (at one time the largest in Connecticut) it was "vital" that all the lawyers exhibited high

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# NLA Media Nook



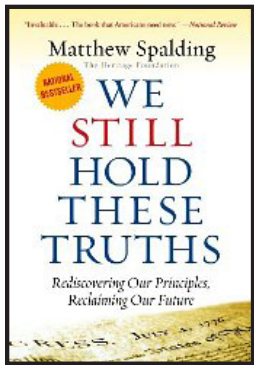
***What We Can't Not Know: A Guide* | J. Budziszewski | \$17.95 | Ignatius Press**

“In this new revised edition of his groundbreaking work, Professor J. Budziszewski questions the modern assumption that moral truths are unknowable. With clear and logical arguments he rehabilitates the natural law tradition and restores confidence in a moral code based upon human nature.

“*What We Can't Not Know* explains the rational foundation of what we all really know to be right and wrong and shows how that founda-

tion has been kicked out from under western society. Having gone through stages of atheism and nihilism in his own search for truth, Budziszewski understands the philosophical and personal roots of moral relativism. With wisdom born of both experience and rigorous intellectual inquiry, he offers a firm foothold to those who are attempting either to understand or to defend the reasonableness of traditional morality.

“While natural law bridges the chasms that can be caused by religious and philosophical differences, Budziszewski believes that natural law theory has entered a new phase, in which theology will again have pride of place. While religious belief might appear to hamper the search for common ground, Budziszewski demonstrates that it is not an obstacle, but a pathway to apprehending universal norms of behavior.” —*Amazon.com*



***We Still Hold These Truths: Rediscovering Our Principles, Reclaiming Our Future* | Matthew Spalding | \$18 | ISI Books**

“The future of liberty depends on renewing America’s principles...In the midst of frenzied efforts to remake our nation—of endless government initiatives involved in virtually every aspect of our daily lives—Americans are increasingly concerned: How did we get so far off track? And how can we get America back on course? Matthew Spalding answers these ques-

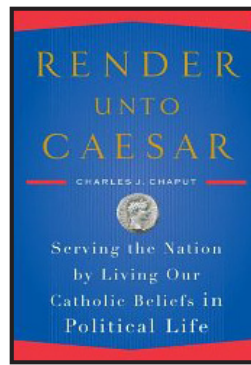
tions by looking to the timeless principles and practical wisdom that have been the source of America’s monumental success.

“Spalding, an expert in American political history at The Heritage Foundation, the esteemed research and educational institution, calls for a great renewal of these unchanging principles—and a new appreciation of their preeminent status in our nation’s life. In *We Still Hold These Truths* [he] explains and brings to life 10 core principles that define us as a nation and inspire us as a people—liberty and equality, natural rights and the consent of the governed, private property and religious freedom, the rule of law and constitutionalism, all culminating in self-government at home and independence in the world. His enlightening and engaging tour through America’s founding not only recalls the deep roots of our ‘first principles’ in Western civilization but also reveals their enduring lessons for today.

“*We Still Hold These Truths* also offers a bracingly fresh analysis of how and why we have lost our bearings as a nation. Spalding masterfully examines the progressive assault on the Founders’ principles that began more than a century ago and that continues—indeed, is accelerating—in our time. Modern political leaders and cultural elites have all too readily abandoned the principles to which America is dedicated; even more troubling is how readily we all let it happen.

“Do we still hold these truths? Before we can rededicate our country to the core principles that made America the most prosperous, the strongest, and the freest nation in history, we must rediscover them ourselves. They must become again, as Thomas Jefferson said, ‘an expression of the American mind.’ In a world of moral confusion, and of arbitrary and unlimited government, America’s principles are our best access to permanent truths and the best ground from which to question the current direction of our nation. Upon this sure foundation, Spalding lays out a strategy to reclaim our future, and to secure the blessings of liberty to ourselves and our posterity.” —*Amazon.com*

“A clear and compelling case for America’s founding principles as an enduring source of real, practical guidance for today, explaining how we got so far off track and laying out how to get our nation back on course.” —*William J. Bennett, bestselling author and nationally syndicated radio host*



***Render Unto Caesar: Serving the Nation by Living Our Catholic Beliefs in Political Life* | Charles J. Chaput, Archbishop of Denver | \$14 | Doubleday Religion**

“Few topics in recent years have ignited as much public debate as the balance between religion and politics. Does religious thought have any place in political discourse? Do religious believers have the right to turn their values into political action? What does it truly mean to have a separation of church and

state? The very heart of these important questions is here addressed by one of the leading voices on the topic, Charles J. Chaput, Archbishop of Denver.

“While American society has ample room for believers and nonbelievers alike, Chaput argues, our public life must be considered within the context of its Christian roots. American democracy does not ask its citizens to put aside their deeply held moral and religious beliefs for the sake of public policy. In fact, it requires exactly the opposite.

“As the nation’s founders knew very well, people are fallible. The majority of voters, as history has shown again and again, can be uninformed, misinformed, biased, or simply wrong. Thus, to survive, American democracy depends on an engaged citizenry—people of character, including religious believers, fighting for their beliefs in the public square—respectfully but vigorously, and without apology. Anything less is bad citizenship and a form of theft from the nation’s health. Or as the author suggests: Good manners are not an excuse for political cowardice.

“American Catholics and other persons of goodwill are part of a struggle for our nation’s future, says Chaput. Our choices, including our political choices, matter. Catholics need to take an active, vocal, and morally consistent role in public debate. We can’t claim to personally believe in the sanctity of the human person, and then act in our public policies as if we don’t. We can’t separate our private convictions from our public actions without diminishing both. In the words of the author, ‘How we act works backward on our convictions, making them stronger or smothering them under a snowfall of alibis.’” —*Amazon.com*

“At a time when the ‘faith and values’ vote has never been more important, Archbishop Charles Chaput deftly explores the intersection of morality, reason, and politics. This isn’t just a book for Catholics, but for anyone who cares about the state of America’s soul...” —*John L. Allen Jr., NCR and CNN senior Vatican correspondent*

# NLA Member's Work Is Behind Pro-Life Victory of 88 Notre Dame Protestors

Did you hear the news of a high-profile, pro-life legal victory? This past May, all charges were dropped against those 88 protestors arrested at Notre Dame University two years ago.

What you might not know is that NLA board member Tom Brejcha is president and chief counsel of The Thomas More Society (TMS). This Chicago-based public interest law firm provided the legal defense for the "ND88" (the name the media gave the group), and is responsible for the successful resolution of the high-profile debacle.

St. Joseph County Prosecutor Michael Dvorak decided to drop the charges after an agreement was reached by the university and the defendants. Dvorak said that although he's confident the charges would have held up, he decided to drop them because the Catholic university wanted to move forward.

"It was a long hard battle...but finally it came out okay," Brejcha told the *NLA Brief*. "The charges never should have been brought in the first place." The bottom line, for him, is that the university "is a potentially strong ally that's worth fighting for." He said institutions like Notre Dame are greatly needed to "back us up" as think tanks for pro-life initiatives and to "develop pro-life resources in an organized,

systematic way."

Sometimes, Brejcha noted, "it takes a kick in the pants, a nicer approach-- or both methods" for Catholic institutions build upon and/or re-discover their Catholic roots.

The trouble started when Notre Dame invited President Barack Obama to speak at Notre Dame's 2009 commencement. Obama strongly supports abortion rights and embryonic stem-cell research—two anti-life agendas diametrically opposed to by Catholics. That invitation prompted dozens of pro-life advocates to peacefully protest at the school. All told, in the weeks leading up to and during the President's appearance, 91 people were arrested. Three of them opted to be represented by the American Center for Law and Justice; the remainder went with TMS.

"This is a big step forward and a victory for the pro-life cause," Brejcha said in May when the agreement was publicly announced.



Tom Brejcha

He pointed out the positive steps Notre Dame has taken in the pro-life arena since the arrests. Those include "successive visits" (in 2010 and 2011) made by University President John Jenkins, C.S.C., and other campus leaders to the March for Life in Washington, D.C., to mark the anniversary of *Roe v. Wade*; and the creation of "new and significant pro-life initiatives" on the school's campus.

Brejcha also said that while those who share pro-life convictions "may differ on tactics and approaches...they best serve their sacred cause when they work together to secure the common good for all human beings, born and unborn alike, rather than carrying on as courtroom antagonists."

Most of the lawyers involved in the case were Notre Dame alumni, reported the *Chicago Daily Law Bulletin*. For example, Brejcha got his bachelor's degree from there, while Peter Breen, (TMS executive director and legal counsel) is a graduate of the Notre Dame Law School.

*The Thomas More Society is a not-for-profit, public interest law firm dedicated to fighting for the rights and dignity of all human life. Call (312) 782-1680 or email info@thomasmoresociety.org for more information.*

## "Why I Work for the Legal Aid Society"

By Andrew J. Schatkin

**Editor's Note: This originally appeared in the book *Essays on the Christian Worldview and Others Political, Literary, and Philosophical*, published by Hamilton Books, a member of The Rowman & Littleman Publishing Group ([www.hamiltonbooks.com](http://www.hamiltonbooks.com); 800.462.6420). Reprinted with permission.**

I work for the Legal Aid Society, Criminal Defense Division. Daily I wend my way through the Criminal Courts of the Borough of Queens on behalf of indigent defendants charged with the most horrendous crimes: rape, attempted murder, sale and possession of drugs. All these are the meat and drink of my day.

My clients are poor and helpless. They are the societal underclass, mostly black and Hispanic. Many will plead guilty to a lesser criminal charge, fearful of the consequences of trial if found guilty.

It seems that I am fighting a losing battle as

an advocate of the poor. The District Attorney, as advocate of the People of the State of New York, is against me and sometimes it seems that the Judge is not my friend. Yet I persevere with a will.

My parents, my friends, my acquaintances ask me—why do you represent this "guilty" underclass? Why be the lawyer and friend to these suckers on the wheel of society, these men and women who think nothing of robbing, pillaging, and destroying the property and person of their neighbors and fellow citizens of the commonwealth?

Sometimes the answer is not easy to give. Certainly, I gain no substantial financial rewards for my efforts. I am lucky if the public, my friends and even my family tolerate or even respect my commitment. My sister, a University Professor of Music, has often said to me she would much prefer if I were a prosecutor send-

ing the "guilty" to jail and so ridding society, for a time, of these blood-suckers and destroyers of temporal peace and tranquility.

"It is the way of civilized man to support the widows, orphans and poor in their need and affliction."

My uncle, a Doctor, who phones me often, asks me how I can let a seemingly guilty client go free on a legal technicality. A Sixth Grader in Nassau County elementary school asked me, after I had spoken to the class on my work as a defense lawyer, if I would actually represent a client whom I knew for a fact was guilty?

The answer to all these questions is not easy for the comfortable middle-class man or woman secure financially and privileged with a job, personal and financial security, who has never been homeless, never without a skill, and never without a job or the secure emotional backing of a loving family. *(Continued on page 7)*

# The Law of Law-Giving

By Msgr. Edward Buelt

When Moses recalls for the people how on Mount Sinai the Lord God gave them the law, he reminds them that at the time they said, “Today we have seen that God may speak to someone and the person may still live... For who is there of all flesh that has heard the voice of the living God speaking out of fire, as we have, and remained alive.... Then tell us everything that the Lord our God tells you, and we will listen and do it” (Dt. 5:24-27). In recalling this, Moses taught God’s people, and he teaches us, three essential elements of life and law.

First, Moses teaches us that the giving of law is an act of speaking, that is, it involves interlocutors: parties that speak and parties that listen. Law, then, communicates something, more specifically it communicates someone. In the case of the Torah, what it communicates is life, staying alive, living, even, more specifically, the life of the Lord God. The Lord God’s law, the Torah, communicated the terms of the covenant which the Lord God established with his chosen people: a covenant that established an abiding, unbroken, even intimate relationship between the parties.

All law, divine and positive, is to communicate something, that is, life, and even moreso to communicate someone. Law is the communication of a relationship between the lawgiver and the law-receiver so that the former may give itself to the later and the later, receiving the former, may know life and live.

If law does not communicate life and living, if it fails to understand that what it is establishing between the parties of the law is a relationship, a commitment and self-giving of the one to the other, than it is not good law. It fails precisely as law precisely because it fails to communicate life.

Second, Moses teaches us that law is communicated as from fire. Fire has many effects. It consumes. It gathers. It warms. It purifies. It gives light. And in the Bible fire even speaks and leads. Indeed the word “Torah” means not law but instruction,

*“Law is to instruct, purify, lead and speak.”*

lesson, teaching. And those who heeded the instruction of the law were blessed, indeed “the most blessed of people, with neither sterility nor barrenness among you or your livestock” (Dt. 7:14); they were blessed with community, life and fertility.

That the Lord God gives his law in fire means that the law is to accomplish all that fire accom-

plishes. The law should consume that which it communicates and yet, as the burning bush, reveal what it communicates, namely, God and life. The law is to gather the law-receivers into one and warm them, providing safe haven. It purifies what it communicates, even moreso it purifies the one to whom it communicates. Law should illuminate, speak and lead.

Finally, the law is given on Mount Sinai and it is given on a specific day: “today.” Furthermore, the people desired to hear everything that the Lord God that day had laid down as law so as to heed and act. There is a union of place (on a mountain top from which the law is brought down to the people), time (today, the present, this moment in time), and law (not laws, but “everything” that the Lord God has spoken). God chose his people and freed them. He gave them the law after they were freed but before he brought them home to the land he had promised to give them.

In other words, he gave his law as if to foreigners, strangers, exiles—even “illegal aliens.” The Lord God gave it to them not so that they could occupy the Promised Land but that they could live freely even in the desert, and then eventually on the land he was giving to them. The law itself is the Promised Land which they could occupy and off of which they could live, even before crossing the Jordan River and taking possession of the physical land that the Lord God has promised them. He did not hold out the Promised Land from his people for 40 years. On Mount Sinai in the law he gave it to them and over 40 years in the desert he taught it to them.

Moreover, the Lord God called his chosen people to be a light to the nations. They were to

be so, however, and to live that “chosenness” not by occupying certain lands on earth. Rather they were to

live his law, to live their “chosenness,” to be the light to the nations while they were still foreigners, aliens, sojourners in a stranger’s land.

The law led them, as the fire led them at night, to be the light that the Lord God was extending to the nations who lived in darkness. By

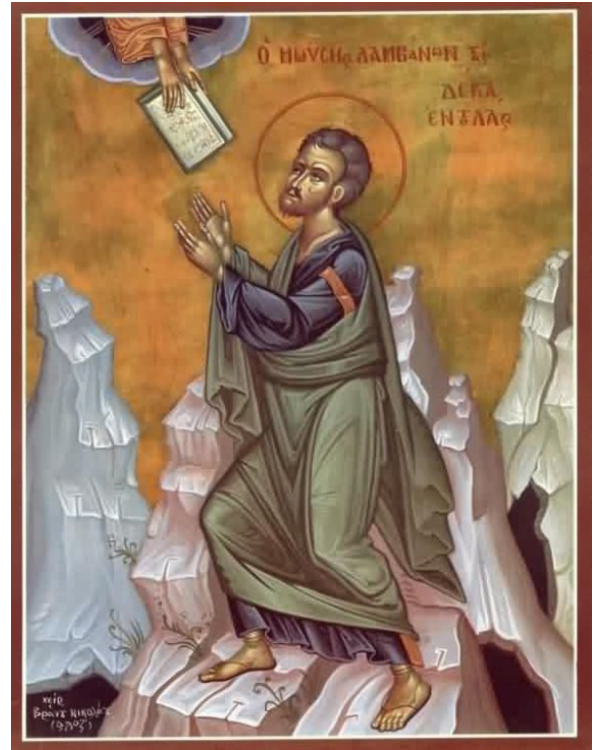


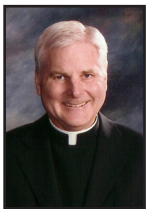
Photo courtesy of www.orthodoxphotos.com

living the law, a law that gave life and communicated God himself, all the nations of the earth would come to see what a great God was the God of Abraham, Isaac, and Jacob, the God of Moses and of Israel, the Lord God.

Moses and the Torah remain the paradigm of all law-giving and of all law. Law is to communicate fertility, life and living. Law is to instruct, purify, lead and speak. Law proclaims freedom even while the law-receiver remains as in exile and so proclaims the goodness of the lawgiver.

A nation of laws is great, therefore, not because it has laws that order social living, but because it has a law-giver who communicates a way of truthful living that is a light for all to see.

Since 1998, Msgr. Edward Buelt has served as the founding pastor of Our Lady of Loreto Parish near Denver. He earned a B.A. degree from St. Thomas Theological Seminary and a Bachelor in Sacred Theology degree from the Gregorian University in Rome, and was awarded the License in Canon Law (J.C.L.) from the Catholic University of America. After serving in various administrative positions for the Archdiocese of Denver, he was nominated Vice President for Logistics and organized the 1993 World Youth Day event in Denver. In 1996 Pope John Paul II named him an honorary prelate, and that same year through 1997 he served in the Pontifical Council for the Laity as secretary to Archbishop (now Cardinal) J. Francis Stafford. His book, *A New Friendship: The Spirituality and Ministry of the Deacon*, was published in March 2011 by Liturgical Press.



# America's Atheocracy

By James D. Conley

**Editor's Note:** This article is reprinted by permission of *First Things*, a publication of The Institute on Religion and Public Life. It originally appeared July 4, 2011, on its website, [www.firstthings.com](http://www.firstthings.com)

G. K. Chesterton said famously that America is “a nation with the soul of a church.” And he believed the Declaration of Independence formed the substance of our national soul.

But as we celebrate this Fourth of July, we need to recognize that some of the deepest problems in our public life can be traced to our collective neglect of America's great founding document.

The Declaration establishes our common self-identity as Americans. It tells us that we are one nation under God, a people who believe that all men and women have God-given rights. It tells us that government exists for no other purpose than to defend and promote these rights. All this we find in the Declaration's preamble, which still has the power to stir us.

America's founders never intended to establish a religious government, let alone a theocracy. In fact, just the opposite. They specifically disallowed any state-sanctioned religion. Yet the government they did establish was founded on theistic, if not explicitly Christian, principles.

Many observers have identified a deep Christian influence in America's founding documents—including such luminaries as Chesterton, Dietrich Bonhoeffer, Jacques Maritain, John Courtney Murray, Martin Luther King Jr., and Blessed John Paul II.

Others see more the hand of the Enlightenment's philosophical Deism at work.

Whatever its precise Christian pedigree, it cannot be denied that our government was founded upon a belief that human rights come from God, not governments, and that the world is in the hands of what the Declaration called “Nature's God” and “the Supreme Judge of the World.”

It is true: the Constitution that America's founders would later draft makes no mention of God. It is also true that this Constitution denies full rights to slaves and women.

“America's founders never intended to establish a religious government, let alone a theocracy.”

But the Declaration's belief in the divine origin of the human person is everywhere presumed. And throughout American history, this belief has served as a goad to the conscience, inspiring reforms and renewal in almost every generation. It

has ensured that injustice, cowardice, and political expediency do not have to have the final word in our public affairs.

The Constitution and Declaration together form the “great wells of democracy” that express “the most sacred values in our Judaeo-Christian heritage,” King wrote in his Letter from the Birmingham Jail.

America's founders also shared a belief that religion mattered—not only for the private welfare of individuals but also for the commonweal. Charles Carroll, the Declaration's only Catholic signatory, put it succinctly in a letter to James McHenry, a signer of the Constitution:

Without morals a republic cannot subsist any length of time; they therefore who are decrying the Christian religion, whose morality is so sublime & pure....are undermining the solid foundation of morals, the best security for the duration of free governments.

Unfortunately, in our day, those “decrying the Christian religion” have seized the captain's seat in America—in the academy, the media, the government and courts. The result is a kind of publicly enforced religious indifferentism, or what recent Popes have called “practical atheism.” The Constitution insists that no religious test shall ever be required for public office. But our society, in effect, now imposes an “irreligious test.” To take part in civic life, Americans must first agree to think and act as if they have no religious convictions or motivations.

America today is becoming what I call an atheocracy—a society that is actively hostile to religious faith and religious believers.

An atheocracy is a dangerous place, both morally and spiritually. Cut off from the religious moorings expressed in the Declaration, we risk becoming a nation without a soul, a people with no common purpose apart from material pursuits. Worse, as Chesterton well understood, without belief in a Creator, our democracy has no compelling reason for defending human rights:

The Declaration of Independence dogmatically bases all rights on the fact that God created all men equal....There is no basis for democracy except in a dogma about the divine origin of man....Every other basis is a sort of sentimental confusion....always vain for the vital purpose of constraining the tyrant.

Our atheocracy has rejected what Chesterton called the dogmatic basis of American identity and liberties. An atheocracy has no ultimate truths to guide it and no inviolable ethical principles by which to direct political activity. Hence,

it has no foundation upon which to establish justice, secure true freedom or to constrain tyrants.

We see the consequences of this atheocratic mindset everywhere. We see it most clearly in the case of legalized abortion. Denying the divine origins of the human person, our government has withdrawn the law's protection from unborn children in the womb—the most absolutely innocent and defenseless members of our human family.

The legal extermination of the unborn is only the most egregious offense against God's law. In fact, there is apparently no area of life over which our atheocratic government does not feel omniscient—that government knows best.

This is dramatically clear in the movement to establish homosexual unions as an alternative kind of family. Under pressure from powerful special interests who manipulate the language of “rights” and “freedom” in ways that contradict “the laws of Nature's God,” our atheocratic government now deems itself competent to rewrite the God-given definitions of marriage and the family.

These are sobering thoughts as our nation celebrates the anniversary of its independence on July 4, 1776. Yet there is a way forward.

We need to restore a government based on theism and natural law. We need to restore the original integral relationship between the Constitution and the Declaration of Independence. Until recently in our history, this connection was taken for granted. If the Constitution was the letter of the law, the Declaration was regarded as the spirit.

In 1841, defending African men on trial for rebelling against slavetraders who had abducted them, John Quincy Adams said: “In the Declaration of Independence, the Laws of Nature are announced and appealed to as identical with the laws of Nature's God—and as the foundation of all obligatory human laws.” The Supreme Court's ruling in the case, made famous by the Steven Spielberg film, *Amistad*, was an important milestone in the abolition of slavery.

America's future depends today, as it always has, on the choices that faithful citizens will make. God—not government—is the only sure guarantee of human rights and the blessings of our liberty. We need to live as if we believe that. For only a people who believe these truths to be self-evident can build a society worthy of men and women created by God.

*James D. Conley, S.T.L., is the Auxiliary Bishop of the Archdiocese of Denver.*

# The Bar Exam and the Natural Law

By Brian Potts

In America, one must generally pass a state-specific bar examination before practicing law. What do you suppose is the most common substantive word in preparation materials for the bar examinations--and in law school texts and lectures, for that matter?

In a cynical mood, an examinee might answer "exception," as in: The general rule is that a defendant accused of negligence is held to a reasonable person standard of care, but the exception to this rule is that a defendant's physical disabilities can relieve him of liability; however,

*"A positive law's validity and justness depend on its correspondence with the natural law."*

the exception to this exception is that if a defendant knows of his physical disabilities, then he is held to the standard of care of a reasonable person with those physical disabilities.

Some exceptions swallow the exceptions to the rule. In truth, the most ubiquitous substantive word is likely exactly what we should expect it to be: "reasonable."

This fact is a great testament to the natural law foundation of our human-made laws. Even in the example detailed above, "reasonable" shines through as the basic guiding light.

Natural law is the discernment of right and wrong by unaided reason applied to facts. A precept—or rule of the natural law—depends

for its validity and justness not on divine revelation or human declaration, but simply on the fact that it is reasonable. Indeed, a positive law's validity and justness depend on its correspondence with the natural law.

Positivism, to the contrary, generally holds a human-made law to be valid and just simply if it is made by a human with the power to enforce it. Sheer will, not universal reason, rules.

Bar exam preparation materials belie positivism, and indicate our human-made laws are based upon the natural law. In broad and

fundamental fashion, examinees are reminded that: an offer exists when a reasonable person in the position of the

offeree would believe that his assent creates a contract; the Constitution protects us against unreasonable searches and seizures; a reasonable suspicion is sufficient grounds for a Terry stop; the government must prove a movie has no serious value judged by a reasonable person standard before the government can ban a movie as obscene; service of process is constitutional if it is reasonably calculated to apprise interested parties of the litigation; a process server must use reasonable diligence in serving process; long-arm personal jurisdiction constitutionally extends to people who have a reasonable expectation they might be sued in a particular state; the physical area protected by laws against

trespass includes the ground and reasonable distances above and below the ground; an action for false imprisonment will not lie if there was a reasonable means of escape; the tort of assault requires a reasonable apprehension of an imminent battery; the owner of a servient estate can choose the location of an implied easement by necessity so long as the location is a reasonable one; and so on.

The word "reasonable" permeates our human-made laws. Even when the word is not used, of course, our laws are generally reasonable.

Occasionally the preparation materials refer to a "law" which is unreasonable. These exceptional instances, or anomalies, prove the general rule that our laws are reasonable. They often arose from strange historical circumstances, or from activists pushing misguided agendas.

Legislators, judges and attorneys engage in vigorous efforts to change the anomalies, if they are significant enough to be worth the effort.

A simple, comforting thought, the general reasonableness of our laws....Maybe it even provides a bit of solace to the examinees preparing for the upcoming tests.

*NLA member Brian Potts, an associate attorney with the law firm of Brown & James, P.C. in Belleville, IL, specializes in civil litigation defense. He has tried to make the best of preparing for complete bar exams in two states.*



## RELIGIOUS FREEDOM

# Fed Court Dismisses Suit Over National Day of Prayer

The 7th U.S. Circuit Court of Appeals tossed out a ruling that the National Day of Prayer (NDP) is unconstitutional, and ordered that a lawsuit against it be dismissed. The court overturned the April 2010 ruling by U.S. District Judge Barbara Crabb that NDP violates the Establishment Clause of the U.S. Constitution. "A feeling of alienation cannot suffice as injury," said the appeals court.

In an opinion written by Chief Judge Frank Easterbrook, the court noted that even though the National Day of Prayer proclamation speaks to all citizens, no one is obliged to pray "any more than a person would be obliged to hand over his money if the President asked all citizens to support the Red

Cross or other charities." Furthermore, the court said the proclamation is a request, not a demand.

The opinion cited President Abraham Lincoln's second inaugural address, which



mentions prayer three times and God seven times. Easterbrook wrote that that address "is chiseled in stone at the Lincoln Memorial on the National Mall. An argument that the prominence of these words injures every citizen, and that the Judicial Branch could order them to be blotted out, would be dismissed as preposterous."

Kevin Theriot, senior counsel for the Alliance Defense Fund, said the 7th Circuit "has clearly understood that the Freedom From Religion Foundation simply had no legal standing to attack the federal statute setting a day for the National Day of Prayer simply because the group is offended by religion." —*Information derived from CitizenLink.com, the AP and other sources*

## “Why I Work for the Legal Aid Society” *(continued from page 3)*

Yet, I gladly represent the poor and accused, knowing first that I have been given so much and they have so little. Poverty, ignorance, and unhappiness are the lot of these societal victims. They are the last to be hired at the lowest wages and the first to be fired. They live in a background of fathers who have fled family support obligations, alcoholism, sexual promiscuity and drug abuse. They are the high school dropouts who look for work and cannot find it, and then drift to the streets. They are the ones society has left behind and forgotten.

Yet, somehow they are terribly important. Should we abandon and should I abandon the defense of the poor, albeit criminally accused, I diminish myself as a man and our free society lessens itself.



The day you or I or any man or woman turns his back on the vilest and poorest we are men

without chests and women without hearts. It is in all of the religions, all of the faiths: Judaism, Islam, Buddhism, Confucianism, and Christianity. Our duty to the poorest and most baseless is all the greater. It is all the same. It is the way of civilized man to support the widows, orphans and poor in their need and affliction. Justice and mercy demand no more and no less.

The time that we as a society and I as a Member of the Bar turn our backs on the defense of the vilest, poorest and most reprehensible of the criminally accused, we abandon not only our obvious constitutional responsibilities as citizens of a free and democratic society, but our moral and ethical responsibilities as feeling, loving and fully human persons.

No man or woman is an island. We are all part of the Main. “Every man’s death diminishes me.” So said John Donne the 17th-century poet.

The day I abandon the poorest, the most indefensible is the day I become less than a man and less than a lawyer. It is only the poor who sleep in the subways. It is only the mentally ill who sleep in the streets. It is only the jobless who drift on the city pavement.

I defend the indigent criminally accused not because I want to but because I have to. The corporations and companies have their counsel. I choose to defend not in the tradition of fees but of human and societal justice to represent the poor. Let our city be on note that they day I or my brothers and sisters of the bar abandon this responsibility is the day of reckoning for us all.



*NLA member Andrew J. Schatkin handles a wide array of national and international cases through his law office based in Jericho, NY. His legal expertise includes child custody, child support, employment, family, and international law matters. Schatkin holds a law degree from Villanova University, a Certificate in International Law from the Hague in the Netherlands, and a Diploma in International Human Rights from Strasbourg, France. Visit [www.schatkin.com](http://www.schatkin.com).*



## Pro-Life Legal Scholarship Competition Announced for Law Students

Massachusetts Citizens for Life (MCFL) announces its Pro-life Legal Scholarship Competition will recognize outstanding legal scholarship published by students in law journals through a cash award of \$750 provided to the author(s) of the winning entry. The Competition rewards innovative writing and legal research that focuses on issues relevant to the pro-life movement or future judicial decision-making on abortion or life-related issues.

**Entry Requirements:** Any student-authored paper on a pro-life topic that is published, scheduled, or accepted for publication in a law journal between January 1, 2011, and November 30, 2011, may be submitted. For the purposes of this competition, a law journal includes any official law review or journal at an ABA-accredited law school or publication of the American Bar Association that is available on the Westlaw and LexisNexis legal research databases.

**Eligibility:** Any law student or graduate student enrolled in law school at the time of entry is eligible. If an entry involves multiple authors, all authors must be eligible and join the entry.

**Deadline and submission requirements:** Only electronic copies of entries are accepted. Entries must be emailed by November 30, 2011, to [legalcontest@masscitizensforlife.org](mailto:legalcontest@masscitizensforlife.org). Entries must include a MS Word or PDF version of the paper along with a cover letter (which may be in the body of the e-mail) detailing the author’s school, expect-

ed date of graduation, and when and where the paper was published or will be published. Entries that have not yet been published should include documentation reflecting that the author has received an offer of publication.

**Copyright and Publicity:** Neither the Competition nor MCFL claims any rights in the entries or final published papers. The winner agrees to provide a short biographical entry and photo to be used by the Competition.

**Announcement of Winner:** The winner will be announced on or before January 2012. If the winning entry has multiple authors, the award will be distributed pro rata to the authors. The Competition and MCFL, however, reserve the right not to make an award.

For more information on the sponsoring group, visit [www.masscitizensforlife.org](http://www.masscitizensforlife.org).



# NY Bishops Say Gay “Marriage” Law Could be Used Against Churches

By Kevin J. Jones

**Editor's Note: This was originally published June 27, 2011, by Catholic News Agency/EWTN News. Reprinted with permission.**

The New York legislature's passage of a gay “marriage” bill will undermine families and will enable efforts to sanction those who preach the true nature of marriage, the state's Catholic bishops said June 24.

The bishops of New York said they were “deeply disappointed and troubled” by the legislature's passage of the bill on [Friday], June 24, by a 33-29 vote.

“We worry that both marriage and the family will be undermined by this tragic presumption of government in passing this legislation that attempts to redefine these cornerstones of civilization,” they said.

The definition of marriage “cannot change,” they explained, “though we realize that our beliefs about the nature of marriage will continue to be ridiculed, and that some will even now attempt to enact government sanctions against churches and religious organizations that preach these timeless truths.”

The bishops said society must regain “a true understanding of the meaning and place of marriage, as revealed by God, grounded in nature, and respected by America's foundational principles.”

One Democratic senator opposed the bill



said the state has “finally torn down the barrier that has prevented same-sex couples from exercising the freedom to marry and from receiving the fundamental protections that so many couples and families take for granted.”

The Republican-controlled Senate could have prevented the vote but chose not to. Several wealthy Republican donors had also funded a campaign to pass the legislation.

In a separate statement, Bishop Nicholas DiMarzio of Brooklyn said Gov. Cuomo and the state legislature have “deconstructed the most important institution in human history.” He said Gov. Cuomo “has opened a new front in the culture wars that are tearing at the fabric of our nation.”

“Republicans and Democrats equally share responsibility for this ruinous legislation and we as Catholics should hold all accountable for their actions,” he added.

and four Republicans voted for it. Similar legislation had failed in a 2009 vote by a vote of 38-24.

Gov. Andrew Cuomo, a Catholic and a Democrat, signed the bill into law on [the Friday the bill was passed]. He

In protest of the decision and the “corrupt political process in New York State,” Bishop DiMarzio said he has asked all Catholic schools to refuse any distinction or honors granted by the governor or any member of the legislature who voted to support the legislation. He has also asked all pastors and school principals not to invite any state legislator to speak or be present at any parish or school celebration.

The bishop said that the governor and the legislature have “demonized people of faith” and “identified them as bigots and prejudiced.”

“It is mystifying that this bill would be passed on the last day of an extended session under the cover of darkness,” he said.

“That there was virtually no public debate on the issue and that the entire matter was concluded in just over thirty-minutes late on a Friday evening is disgraceful,” the bishop added in an editorial in the *New York Daily News*.

An amendment to the gay “marriage” bill granted some religious freedom protections to religious groups, but not to those working in wedding-related industries.

New York Catholic Conference director Dennis Poust told EWTN News June 15 that if the bill passed “there is very little that can be done” since New York does not have a system of voter initiatives and referenda like California and some other states.

## Member Spotlight: Phil S. Walker *(continued from page 1)*

ethical and moral values. “We knew anything we said or did was going to reflect positively or negatively on the firm.”

On the whole, most lawyers he dealt with during his long career were ethical. “If they said something to me I took them at their word—and that was fine. However, if I found out later that what they said was not true, that was okay, too. I learned something about them, and took that into account during future dealings.”

His enjoyment of meeting and working with like-minded, ethical lawyers led him to the NLA. Like many other “old-timers,” he joined around 1994; a year after it was established. “I was curious about the NLA after I read a news story about these ABA lawyers who had left that group as they were concerned

about its pro-choice endorsement; I and many others didn't think that was the role of a bar association. I attended one of NLA's first meetings, and have been fairly active ever since.”

Phil says that for lawyers who care about life issues, the NLA is “a very important organization where, hopefully, they can make a difference” Over the years, the networking opportunities “couldn't have been better,” he adds. “Some of my very best friends are those whom I've met and worked with through NLA. They're just super people; people whose values I share. I'm greatly impressed by their knowledge and ability as lawyers, as well as their ethical and moral stands. These lawyers stand for something—and as a member, I want to stand with them.”

What's in the future for NLA? “I think

growth is the big thing; not only growth in membership but in the number of members who are active in the organization. There is a lot of opportunity to serve NLA in various ways on committees and through projects.”

Phil fondly recalls one of his projects that put him before law students. “I told them about NLA's existence, and encouraged them to join if they shared our same values.” He's especially proud of NLA's “Declaration of Independence Project,” a program comprised of four age-appropriate videos/CDs referencing the foundational documents of our nation and the positions of the Founding Fathers.

“It would be a loss for me to not be with NLA,” summed up Phil. “And if the Good Lord permits me, I'll continue to be a member for many more years.”

## Marriage Law Digest Case Summary Highlights

The following information was selected from the May 2011 issue of The Marriage Law Digest, edited by William C. Duncan. It is jointly published by the Marriage Law Foundation ([www.marriagelawfoundation.org](http://www.marriagelawfoundation.org)), and the Institute for Marriage and Public Policy (202.216.9430).

### — CASE SUMMARIES —

**IN THE INTEREST OF A.F.J., Docket Number 63919-6, Washington Court of Appeals, May 16, 2011 (de facto parenthood in foster care).**

A pregnant woman began living with a same-sex partner. After the child was born, he was removed from the mother because of the mother's drug addiction but was later returned to the partner's care, and she eventually became the child's foster parent. The state sought termination of the mother's parental rights and the foster parent sought custody.

The court found the mother fit but that the foster parent was a de facto parent and ordered her to pay child support and have joint custody. The appeals court held there was no reason that a foster parent couldn't be a de facto parent since the latter status is determined on a case-specific basis.

While foster parents are usually not de facto parents because foster parenting is a temporary status, but in this instance, there was a parent-child relationship between the foster parent and the child before the foster relationship began and the foster parent has no other statutory remedy to preserve her relationship with the child.

**IN RE SOMERS, Case No. 10-38296, U.S. Bankruptcy Court, Southern District of New York, May 4, 2011 (application of DOMA in bankruptcy petition).**

A same-sex couple married in Vermont sought bankruptcy protection jointly and the U.S. Trustee asked for their petition to be dismissed, arguing the joint petition was improper because of the Defense of Marriage Act's definition of marriage as the union of a man and a woman.

The bankruptcy court declined to dismiss the petition because it held dismissal was not required and because there was an "extenuating circumstance" in the case—the fact that the Department of Justice "acting under the

instruction of the Attorney General and the President of the United States argues that "DOMA may not be constitutionally applied to same-sex couples" and has stopped defending the law in cases pending in this Circuit."

Thus, the Trustee "has failed to convince the Court that dismissal is in the best interest of all parties."

**ROMER V. FREIE, Case C-147/08, European Court of Justice, May 10, 2011 (discrimination complaint regarding differential retirement pension for employees in life partnerships and marriages).**

A Labor Court in Hamburg asked the EU Court of Justice to decide whether an employment benefit scheme that results in differential treatment of married couples and couples in life partnerships violates an EU directive prohibit sexual orientation discrimination in employment.

The court noted "the marital status of persons falls within the competence of the Member States but EU law governs employment discrimination. Here the retirement benefit aims to provide, on retirement, a replacement income which is deemed to benefit the recipient, but also, indirectly the persons who live with him.

Since life partnership is like marriage in the duties it imposes on the members of the couple, the two groups are comparable and deserve equal treatment under the directive. Since the challenged policy treated marriage (defined as involving opposite-sex couples) one way and life partnerships (same-sex couples) another, the court concluded the policy constituted sexual orientation discrimination.

**J.A.S. V. BUSHELMAN, 2010-SC-000045-MR, Kentucky Supreme Court, May 19, 2011 (paternity of child born as result of adultery).**

The biological father of a child conceived through adultery sought a court determination of paternity.

The trial court found "the marital relationship' had ceased more than 10 months prior to the baby's birth" because the wife "broke the monogamous marital bond and began the intimate sexual and secret relationship." Thus, the



biological father could seek a paternity determination. The court of appeals agreed.

The supreme court held Kentucky statutes do not bar the claim here because that "would excuse a man from his paternal obligation simply because his lover remained married to her husband."

The court held the presumption of paternity, that the husband of a mother is the father, is rebuttable and DNA evidence meets the standard for rebuttal. The court concluded that in the statutes, the phrase "child born out of wedlock" can include a child born to a mother if the husband was not the father.

One dissenting opinion noted the legislature had not adopted the majority's definition of a child born out of wedlock even though that definition had earlier been proposed by the drafters of the Uniform Act on Paternity. The dissenter believed "the legislature should undertake that broad policy debate."

Two other judges offered a "vigorous" dissent and urged "that only partners to marriage have the standing to question the legitimacy of children born during their marriage. Interlopers cannot use their own adulterous behavior as a license to invade and disrupt the matrimonial circle."

They charged the majority's rule "surrender[s]" the institution of marriage "to the funeral pyre of modern convenience and unanchored values."

# Fascinating Facts About the Declaration of Independence\*

- \* There is something written on the back of the Declaration of Independence, but it isn't a secret map or code. Instead, there are a few handwritten words that say, "Original Declaration of Independence/dated 4th July 1776." No one knows who wrote this, but it was probably added as a label when the document was rolled up for storage many years ago.
- \* Once the Declaration of Independence had been written and signed, printer John Dunlap was asked to make about 200 copies to be distributed throughout the colonies. Today, the "Dunlap Broadside" are extremely rare and valuable. In 1989, someone discovered a previously unknown Dunlap Broadside. It was sold for over \$8 million in 2000. There are only 26 known surviving Dunlap Broadside today.
- \* Although Thomas Jefferson is often called the "author" of the Declaration of Independence, he wasn't the only person who contributed important ideas. Jefferson was a member of a five-person committee appointed by the Continental Congress to write the Declaration. The committee included Jefferson, Benjamin Franklin, John Adams, Robert Livingston, and Roger Sherman.
- \* Robert Livingston, one of the members of the committee who wrote the Declaration of Independence, never signed it. He believed that it was too soon to declare independence and therefore refused to sign.
- \* One of the most widely held misconceptions about the Declaration of Independence is that it was signed on July 4, 1776. In fact, independence was formally declared on July 2, 1776, a date that John Adams believed would be "the most memorable epocha in the history of America." On July 4, 1776, Congress approved the final text of the Declaration. It wasn't signed until August 2, 1776.
- \* After Jefferson wrote his first draft of the Declaration, the other members of the Declaration committee and the Continental Congress made 86 changes to Jefferson's draft, including shortening the overall length by more than a fourth.
- \* When writing the first draft of the Declaration, Jefferson primarily drew upon two sources: his own draft of a preamble to the Virginia Constitution, and George Mason's draft of Virginia's Declaration of Rights.

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## NLA MEMBER NEWS

### Congratulations to...

Tom Brejcha, NLA Board of Directors member and president of The Thomas More Center, for the legal victory involving the "Notre Dame 88" pro-life protestors,

Mark Rohlena, NLA Board of Directors member, and his wife Danielle, upon the birth of their daughter, Genevieve (May 18),

Phil Walker, upon his retirement from the NLA Board of Directors, and for his years of selfless service to our organization (see his profile on page 1).

Do you have any member news to share? If so, e-mail to Lisa Bastian at [bastianpr@aol.com](mailto:bastianpr@aol.com) (subject line: NLA News).

## NLA Editor Wins Gold Award for Gardasil Story

NLA Brief Editor Lisa Bastian won a Gold Award in the Hermes Creative Awards 2011 competition; an international contest for creative professionals working in traditional and emerging media.

Her winning entry was "One Less 'Yes' for Gardasil," an investigative story about the dangers of the Gardasil STD (sexually transmitted disease) vaccine. It appeared in the November 2009 issue of *Celebrate Life*, the national pro-life magazine published by American Life League.

Lisa owns Bastian Public Relations in San Antonio, TX. Visit [www.bastianpr.com](http://www.bastianpr.com).

## ARE YOUR NLA DUES CURRENT?

If not, join today at one of the full membership levels (\$200 and above) and receive our new membership perk: a one year's subscription to *Human Life Review*, the country's premier pro-life journal.



## NLA BRIEF

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\* = NLA past president.

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