



NLA BRIEF

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President's Message

Nanotechnology: A Future Legal Tsunami?

Lately in the legal field's insurance coverage world there is a growing buzz about nanotechnology. The plaintiffs' bar is always looking for the next asbestos or other type of claim that will enable it to strike at manufacturers, employers and their insurers. That's why insurers and manufacturers as well as employers with foresight should be looking down the road to try and limit their exposure and liability, and potential harm to workers and users of their products.

No one knows for sure whether the threat of future nanotechnology claims will be a bust (like the threat of "Y2K" remediation claims) or whether it will turn into a health and physical nightmare for workers and product users, and a fiscal nightmare for employers, manufacturers and insurers. Thus, in this world of rapidly changing technologies, thoughtful employers, manufacturers and insurers should at least be aware of the threat of nanotechnology claims, and study if and how they should be avoiding or minimizing same.

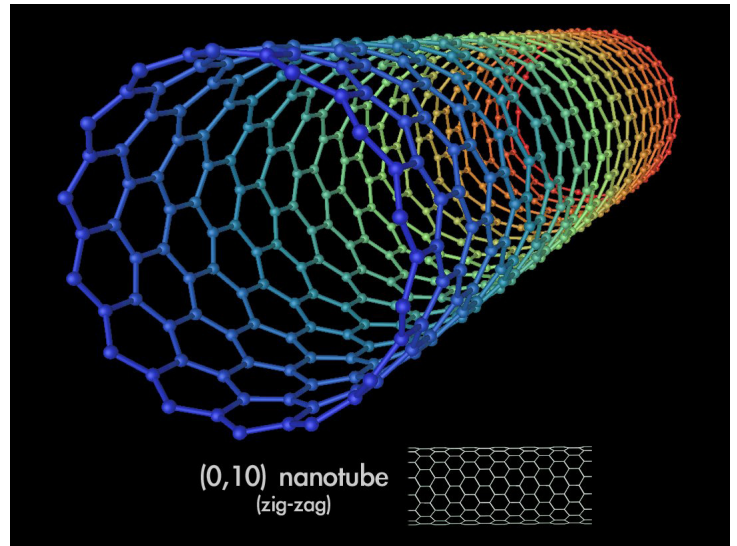
What Is Nanotechnology?

Before going further, it would be helpful to explain a little about nanotechnology. Basically, it's the control and use of matter at dimensions less than 1 micron and more often between approximately 1 and 100 nanometers. The prefix

"nano" means "one billionth" and a nanometer is one-billionth of a meter. A sheet of paper is about 100,000 nanometers, or 1 millimeter thick.

Nano particles, nanotubes and nano films are different types of nano materials (their names reflect their individual shapes and dimensions). For example, nanotubes are seamless cylinders of hexagonal carbon networks which are 50,000 times thinner than a human hair, yet 300 times stronger than steel (and weigh six times less than that alloy). They are being developed for use in adhesives, coatings and polymers, and provide thermal and electrically conductive features that make polymers more resistant against temperatures, harsh chemicals, corrosive environments, extreme pressures and abrasions.

Generally speaking, manufactured products are made from molecules, and the properties of those products depend on how manufacturers ar-



(0,10) nanotube (zig-zag)

Model of common carbon nanotube

Image by Michael Ströck, use by permission from Wikimedia Commons

range those molecules. While manufacturing methods are presently considered to be very crude at the molecular level, they're now employing nanotechnology in over 200 consumer products (e.g., sunglasses, sunscreens, cosmetics, textiles and TVs). For example, nano materials add strength to composite materials used to make lightweight tennis rackets, baseball bats and bicycles. Opticians use nano coatings on eyeglasses to make them

(Continued on page 4)

A Primer on the Natural Law

By Professor Charles E. Rice

The Declaration of Independence rested its claims on "self evident truth" and "the Laws of Nature and of Nature's God." It proclaimed that men "are endowed by their Creator with certain unalienable rights." In short, it claims that God, rather than the State, is the source of rights.

The laws of God are imprinted in man through the natural law. Everything has a nature built into it by its maker. Our maker has built into mankind a nature to follow in order to achieve our final end of eternal happiness with God. The law of our nature can be known, as Thomas Aquinas put it, by "the light of natural reason, whereby we discern what is good and what is evil." The Ten Commandments are specifications of the natural law.

Before and after Aquinas, the natural law was

affirmed by Aristotle, Cicero, Catholic teaching and even the Protestant reformers. "There is no real discontinuity," said Professor John T. McNeill of Union Theological Seminary, "between the teaching of the Reformers and that of their predecessors with respect to natural law. Not one of the leaders of the Reformation assails the principle." J. of Religion (1946).

In 1772, George Mason argued against a slavery statute, contending that "All acts of legislature apparently contrary to natural right and justice are, in our laws, and must be in the nature of things, considered as void. The laws of nature are the laws of God; Whose authority can be superseded by no power on earth." *Rob-in v. Hardaway, (1772).* *(Continued on page 7)*

NATURAL LAW

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Questions for Ms. Kagan, Supreme Court Nominee

By Mary Meehan

Wouldn't you like to be a member of the U.S. Senate Judiciary Committee during its confirmation hearings for Elena Kagan? Wouldn't you like to send some questions her way?

President Obama's second nominee to the Supreme Court, although quite intelligent and competent, has no experience as a judge at any level. Her main work has been in policy, politics, and legal education. She has a troubling record of work for politicians who support abortion and *Roe v. Wade*. She also clerked for the late Justice Thurgood Marshall, who aggressively supported both *Roe* and public funding of abortion.

Questions in confirmation hearings tend to be too long-winded. What we need, instead, are brief questions that go to the heart of a matter.

If I were on the Judiciary Committee, here are questions I would ask Ms. Kagan about: 1) the Declaration of Independence, 2) *stare decisis*, and 3) *Roe v. Wade*. The questions are followed by a brief comment for her consideration.

1. The first document in the U.S. Code is our Declaration of Independence. What bearing, if any, does it have on constitutional interpretation?

2. Should the Declaration's reference to the "unalienable" rights of life, liberty and the pursuit of happiness influence Supreme Court decisions?

3. Justice William O. Douglas once said that a judge "remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it." [Douglas, *Stare Decisis*, 49 Colum. L. Rev. 735, 736 (1949)]. Do you agree with that approach?

4. Referring to the doctrine of *stare decisis*, Justice Louis Brandeis wrote that "in cases involving the Federal Constitution, where correction through legislative action is practically impossible,

this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning..." [Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-08 (1932) (Brandeis, J., dissenting)]. What do you think of the Brandeis approach?

5. Some scholars suggest that, even if a Supreme Court decision is wrong, it should not be overruled unless it is plainly unworkable or has

"Some people wonder why the Supreme Court treats corporations—but not unborn children—as persons under the Fourteenth Amendment. Could you please explain its reasoning?"

warped a whole area of law. But suppose it has done great injustice to an entire class of human beings? I'm thinking here of cases such as *Dred Scott v. Sandford*, *Plessy v. Ferguson*, *Buck v. Bell*, and *Korematsu v. United States*. Isn't deep injustice an even better reason to overrule a bad decision?

6. In confirmation hearings last year for now-Justice Sonia Sotomayor, Sen. Russell Feingold asked her about *Korematsu* and whether a judge has "a duty to resist the kind of wartime fears" that "likely played a role in" that decision. She responded: "A judge should never rule from fear. A judge should rule from law and the Constitution." Do you agree with her statement? Should it also apply to fear of criticism from longtime friends and colleagues, media stars and the Washington establishment?

7. In *Roe v. Wade*, the Supreme Court did not require appointment of a guardian ad litem to

represent the unborn, even though their lives were at stake in that case. There were, however, such guardians for the unborn in some other abortion cases of that era. If the Supreme Court revisits *Roe*, should there be one?

8. Some people wonder why the Supreme Court treats corporations—but not unborn children—as persons under the Fourteenth Amendment. Could you please explain its reasoning?

9. Are you aware of historical records uncovered by Sir John H. Baker, a leading British legal scholar, that suggest *Roe's* account of the common law on abortion is deeply flawed? If the Court does revisit *Roe*, would you be willing to consider those records?

10. Under *Roe*, born human beings have rights and unborn human beings do not. Some people would like to put anyone with a serious disability down on that lower level with the unborn. Who's next? Are we headed for a system in which those who have the most legal protection for their rights will be those who need it least—the healthy, wealthy and powerful? While those who lack power are left to fend for themselves?

11. Despite your prior commitment and work on one side of the abortion issue, could you give both sides in abortion cases a full and fair hearing and an unbiased judgment? Or are your views on the issue so strong that you should consider recusal in such cases?

12. Would you select and instruct law clerks with an eye toward achieving a fair hearing and unbiased judgment in all cases? Would you even consider having at least one conservative or originalist clerk to counterbalance liberal clerks?

13. Gianna Jessen was born in an abortion clinic after a saline abortion failed to kill her. She has cerebral palsy as a result of the abortion, but is happy to be alive. At a 1996 congressional hearing, she said: "The best thing I can show you to defend life is my life. It has been a great gift." I have no question to ask about her, Ms. Kagan. I just urge you to keep her in mind.

Mary Meehan, a Maryland-based writer and speaker on life issues, has done much research on Supreme Court confirmation hearings. She received a Wilberforce Award from NLA in 2008.



Kagan: An Activist With an Agenda Against the Unborn?

By Mary Harned

Following President Obama's nomination of Elena Kagan to the Supreme Court, many quickly concluded she was a consensus—or stealth—nominee who would sail through the confirmation process.

Not so fast. Kagan has never been a judge, and leaves no judicial opinions to scrutinize. However, her judicial philosophy is ascertain-

able. From the perspective of one who believes justices should be true to the Constitution and not create legal doctrine out of whole cloth (i.e., a "constitutional right" to abortion), her philosophy is deeply troubling.

Kagan has stated that her "judicial hero" is former Israeli Supreme Court judge, Aharon Barak. This unabashed (Continued on page 6)

JUDICIARY

Behind the Scenes at NLA

The CEO gives this report on several changes since Mario's resignation.

On the communications front, the *NLA Brief* has a refreshed professional look thanks to an updated logo from Design of the Times, Inc. (Grand Rapids, MI), editorial assistance from Bastian Public Relations (San Antonio, TX), and a new layout design from our printer, Service Printing and Graphics (Kansas City, MO).

Scott Hall with JMS Associates (Denver, CO) relocated our Web site to a new server and new platform to make it easier to update content. (We warmly invite your suggestions as we work to improve the Web site over the next few months.) In addition to serving as Web master, JMS will provide many other association management support services to NLA, too.

We've accomplished quite a lot on the operations side as well. For example, we registered to do business in Colorado (our

new mailing address is in Denver); added *Human Life Review* as a membership benefit; named registered agents in Colorado and Missouri; and filed IRS Form 990 with the assistance of Steve Thurmon, a Missouri CPA.

Geneva Knight (Ft. Worth, TX) continues as NLA's accountant. She helped us close bank accounts in Missouri, open new ones in Colorado, and terminate old contracts for computer, phone and fax services (except for the 800 number). Presently Geneva is revamping NLA's member database. You can help her with that project simply by taking a minute to answer the survey question found on our Web site (www.nla.org). In the process, you'll be giving us your e-mail address. We need "good" e-mail addresses from all members before we can launch online CLE programs in the future, and embark on other exciting programs.

Considering all the transition activities

after Mario's resignation and passing, NLA will not attempt to host its annual conference this summer.

Thank you again for your patience during NLA's transition months.

—Rebecca Messall, NLA CEO

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.

Member Spotlight: Col. Ronald D. Ray



NLA member Colonel Ronald D. Ray, USMCR (Ret.), loves his family, his country and the military. And although this practicing attorney in Kentucky and highly decorated combat veteran

of the Vietnam War is no longer fighting enemies on foreign soil, he's still engaged in significant battles with possibly more far-reaching consequences.

These days he's fighting for the virtue (some would say "soul") of the Armed Forces as well as the United States. To that end, he established the "First Principles" organization (www.firstprinciplespress.org) to promote U.S. history as a key source for understanding the foundations of American law, civil government and public institutions. To sum up, its mission

is to educate a generation ignorant of the country's history as being founded as "One Nation Under God" with an official motto of "In God We Trust."

First Principles wants to restore America via three educational campaigns. The first teaches U.S. history from uncensored primary source documents, and in doing so, reveals the Christian foundation of American law and civil government.

The second attempts to restore lost legal protections in state laws for marriage, women and children. And the third aims to defend and restore prayer as well as the enforcement of the Exemplary Conduct Code for all branches of America's Armed Forces, contained in 10 U.S.C. §§ 3583 (Army), 5947 (Marines & Navy) 8583 (Air Force).

"I take a controversy and bring to bear the founding principles of our country," explains Col. Ray, a member of NLA's board of directors since 2007, and a 2008 Wilberforce Award recipient.

In the culture war, this retired Marine has walked the battlefield many times as a leader and patriot. He served as a Deputy Assist. Secretary of Defense during

"The phrase 'changing law' is an oxymoron."

the Reagan Administration; and was appointed by President Bush to serve on the American Battle Monuments Commission (1990-1994) and on the 1992 Presidential Commission on the Assignment of Women in the Armed Forces. From 1990-1994, he served as Military (Continued on page 7)

Nanotechnology *(continued from page 1)*

easier to clean and harder to scratch, and nano ceramics are used in some dental products.

Nanotechnology has the potential to create many new materials with a vast range of applications in medicine, electronics, pharmaceuticals, biomaterials and energy production. When processed into a bulk material, nano particles can influence the bulk mechanical properties of the material (such as stiffness or elasticity). Nano particles also have found potential in the medical field for delivering drugs to specific cells. For instance, it is reported that nanotech-enabled sensors could possibly be able to "smell" cancer, and that gold nano particles are being developed to detect the early stages of Alzheimer's disease. Nanotechnology also may help reproduce or repair damaged human tissue.

What Are the Concerns?

With all these potentially positive applications, what are the concerns? A few press reports have called nanotechnology and nano particles the "asbestos of the future." Indeed, researchers injecting nanotubes into the abdomens of mice have induced lesions similar to those that appear on the outer lining of the lungs after the inhalation of asbestos.

Since nano particles can penetrate the skin, there are concerns about whether the use of nano particles in cosmetics creates a risk to the cosmetics user. Unlike most larger-sized particles, some nano particles can gain access to the blood stream via inhalation, ingestion or absorption through the skin, and possibly infiltrate organs and the brain, heart, liver and kidneys. A March 2004 study conducted by an environmental toxicologist found extensive brain damage to fish exposed to nano particles for a period of just 48 hours. With all that said, "it's important to understand that the non-reabsorbable nano particles are likely the cause of toxicity problems," says Joe McDonough, Ph.D., Director of Microencapsulation & Nanomaterials at Southwest Research Institute in San Antonio.

There have been reports of industrial workers in China developing shortness of breath, pleural effusion and pericardial effusion as a result of exposure to nano particles—two of whom reportedly died as a result of ensuing respiratory failure. German regulators reported 77 cases of severe respiratory complaints in a period of one week arising from the use of a cleansing product known as "Magic Nano."

Coverage Opportunity or Coverage Exclusion?

Putting aside the human costs, to injured

workers and users of nanotechnologies, if indeed they prove to have deleterious physical side effects, nanotechnology could be a tremendous boon to the plaintiff's bar if nanotechnology turns out to be another asbestos. The defense bar would also "win" by having a whole host of new claims to defend. Insurers are already concerned. Some apparently view it as a business opportunity and are developing and selling coverage for nanotechnology risks. Others are already drafting and employing nanotechnology exclusions to curtail or eliminate the exposure to such risks.

For example, Lexington Insurance Company, a Chartis company (the former AIG), announced in 2010 that it was introducing a "Lex Nano ShieldSM" which it described as "an integrated insurance product and array of risk management services designed for firms whose principle business is manufacturing nano particles or nano materials, or using them in their processes." The Lexington nanotechnology coverage includes general liability, product liability, product pollution legal liability, and product recall liability exposure coverage. Additionally, Lexington's policy provides first party coverage if a product containing nano particles or nano materials is recalled from the market for safety reasons.

Other insurers are moving to limit or exclude nanotechnology risks. For example, in 2008, Continental Western Insurance Company issued a nano-specific commercial insurance exclusion. Continental's "background on nanotubes" document reportedly stated this policy behind its exclusion: "The intent of this exclusion is to remove coverage for the, as of yet, unknown and unknowable risks created by products and processes that involve nanotubes. The exclusion is being added to make you and your customers explicitly aware of our intent not to cover injury and/or damage arising from nanotubes, as used in products and processes. * * *"

This exclusion, which went into effect November 15, 2008, modified commercial general liability, business owners, business auto, garage and motor carrier coverage to preclude liabilities related to nanotechnology and nanotubes.

The Insurance Services Office ("ISO") already has created a "nanotubes and nano technology exclusion" endorsement: Form CW 33 69 06 08. That exclusion precludes coverage for claims arising out of nanotechnology. It says "This insurance does not apply to:

1. "Bodily injury," "property damage" or "personal and advertising injury" related to the actual, alleged or threatened presence of or exposure to "nanotubes" or "nanotechnology" in any form, or to harmful substances emanating from "nano-

tubes" or "nanotechnology." This includes the use of, consumption of, ingestion of, inhalation of, absorption of, contact with, existence of, presence of, proliferation of, discharge of, dispersal of, seepage of, migration of, release of, escape of, or exposure to "nanotubes" or "nanotechnology". Such injury from or exposure to "nanotubes" or "nanotechnology" also includes, but is not limited to:

a. The existence, storage, handling or transportation of "nanotubes" or "nanotechnology"; * * *

d. Any structures, manufacturing processes or products containing "nanotubes" or "nanotechnology"; * * *

f. Any product manufactured, sold, handled or distributed by or on behalf of the insured which contains "nanotubes" or "nanotechnology"; * * *."

Don't Ignore the Issue

For the foreseeable future, the use of nano materials will continue to increase. A January 2008 report from Lloyd's of London on nanotechnology risks and opportunities estimates that 15 percent of all products will contain nanotechnology by the year 2014. Last year alone, revenues for nanotechnology and nano materials in consumer products were nearly \$1545 million, according to a May 2010 report by Future Markets, Inc.

At this juncture, it remains to be seen whether this exciting new technology, which may change the way we live and have tremendous health benefits, will also have a downside for consumers, property owners and workers. This said downside also could be a boon to the plaintiff's bar and defense bar, while creating tremendous challenges for insurers.

However, one thing is certain: This issue will not go away and can only be ignored at its peril. Smart businesses, including manufacturers, employers, law firms and insurers, should be studying this issue and be prepared to deal with it.

NLA President John G. Farnan is an attorney with the Cleveland law firm of Weston Hurd LLP, and specializes in Litigation and Appeals.



¹ Oberdorster, Gunter (July, 2005). "Nanotoxicology: An Emerging Discipline Evolving From Studies of Ultrafine Particles" environmental health perspectives 113(7): 823-39.

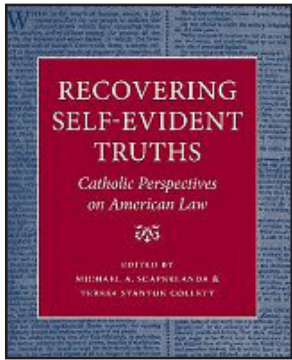
² Song, Y., LiX., DuX, Exposure to Nano particles is related to pleural effusion, pulmonary fibrosis and granuloma, Eur. Respir. J. 2009 Sep.: 34-559-67.

³ Nanotechnology cleanser recalled for chest pains, hospitalizations, 15 Mealey's emerg. toxic torts 21 (April 7, 2006).

⁴ *Nanotechnology Law Report* (September 24, 2008), www.nanolawreport.com.

NLA Bookshelf

***Recovering Self-Evident Truths: Catholic Perspectives on American Law* | Michael A. Scaperlanda & Teresa Stanton Collett | \$39.95 | Catholic University of America Press**



Forward by Cardinal Francis George, Archbishop of Chicago. “This book presents an engaging collection of essays exploring “catholic” and “Catholic” perspectives on American law—catholic in their claims of universal truths, and Catholic in their grounding in the teachings of the Roman Catholic Church. What emerges is a model of human freedom and flourishing that has its foundation in the transcendent vocation of each and every human person.

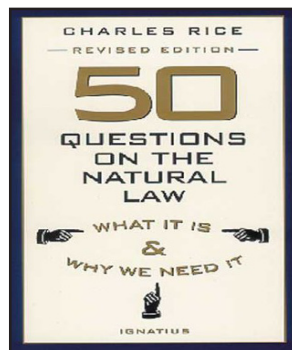
“The 2000-year-old Catholic Church played a pivotal role in the formation of the Western legal culture. Does it have anything of relevance left to offer that culture in the 21st century? The contributors to *Recovering Self-Evident Truths* answer with a resounding ‘yes.’

“The opening essays present the guiding premises of the volume as a whole: Human persons must be respected by governments and law because their objective dignity arises from being made in the image and likeness of God. Reasoning from these premises, the next set of essays situates the person within community, exploring the implications for the American legal system of taking seriously Catholic understanding of subsidiarity, solidarity, the common good, and the relationship between freedom and truth. The next set of essays concludes the foundational material by engaging dominant secular political and legal theory from a Catholic perspective.

“With the foundation set, the essays in the second half of the book explore eight specific substantive areas of the law—Contract Law, Property Law, Tort Law, Criminal Law, Labor Law, Family Law, Immigration Law and International Law—through a Catholic lens.

“*Recovering Self-Evident Truths* is particularly timely: a majority of the justices on the United States Supreme Court are Catholic; Catholics represent a pivotal voting demographic in the American political landscape; and the issue of religion and religious values in the public square is hotly debated as some warn against a creeping theocracy. This book demonstrates that religiously founded values can serve to provide constructive proposals for building a more just society.” —*Amazon.com review*

***50 Questions on the Natural Law: What It Is and Why We Need It* | Charles E. Rice | \$19.95 | Ignatius Press**



“Charles Rice, professor of the jurisprudence of St. Thomas Aquinas for the last 20 years at Notre Dame Law School, presents a very readable book on the natural law as seen through the teachings of Aquinas and their foundations in reason and Revelation.

“Reflecting on the most persistent questions asked by his students over the years, Rice shows how the natural law works and how it is rooted in the nature of

the human person whose Creator provided this law as a sure and knowable guide for man to achieve his end of eternal happiness.

“This book presents the teachings of the Catholic Church in her role as arbiter of the applications of the natural law on issues involving the right to live, bioethics, the family and the economy. Charles Rice has produced a firmly grounded and accessible handbook which touches on the most important topics regarding natural law that will benefit readers of all backgrounds. From the editor of the *American Journal of Jurisprudence* comes a clear, well-crafted exposition of a natural law jurisprudence and its relevance for a society that seems to have lost its moral compass.” —*Jude Dougherty, Catholic University of America*

***The Future of Euthanasia and Assisted Suicide* | Neil M. Gorsuch | \$24.95 | Princeton University Press**



“Gorsuch reviews the case law and the range of ethical and legal issues surrounding assisted suicide and offers a strong argument against legalization of these practices, even as he considers both positions in the debate.” —*Law & Social Inquiry*

“For those who need insight into the part played by legislators and courts of justice in recent euthanasia discussions, Neil M. Gorsuch’s book...is an excellent source....[C]omprehensive and well argued.” —*Theo A. Boer, Journal of Religious Ethics*

“Neil M. Gorsuch builds a powerful moral and legal argument against [assisted suicide’s] legalization, one based on a principle that has largely been overlooked in the debate—the idea that human life is intrinsically valuable and that intentional killing is wrong.” —*New Oxford Review*

“Gorsuch’s book is an exceptional contribution to a debate that is both significant and topical. Every reader, whether or not ultimately persuaded by his arguments, will emerge better equipped to tackle the profound questions surrounding euthanasia and assisted suicide. It is essential reading for advocates and opponents alike.” —*Wendy E. Hiscox, Studies in Christian Ethics*

Online Survey...

Elect or Appoint Judges?

Through September, NLA invites you to voice your opinion in our latest members-only online survey. Access it by logging on www.nla.org/survey. We’ll share survey results in a future issue of *NLA Brief* and on our Web site.

An Activist With an Agenda *(continued from page 2)*

judicial activist who has stated that to interpret law, “The judge may give a statute a new meaning, a dynamic meaning, that seeks to bridge the gap between law and life’s changing reality....” He has also criticized the U.S. Supreme Court’s methodology for interpreting our Constitution.

Kagan called the jurisprudence of Justice Thurgood Marshall, for whom she clerked, “a thing of glory.” Marshall stated that as a judge, “You do what you think is right and let the law catch up.” One idea he thought was “right” was to “constitutionally” require taxpayer funding for abortion. In his dissent in *Beal v. Doe*, Marshall argued that funding for abortion was necessary under the Fourteenth Amendment.

"Elena Kagan is no friend to the unborn, and her admiration for judicial activists raises a significant concern. . . ."

Does Kagan agree with her mentor that taxpayer funding for abortion is something the law needs to catch up on? She has openly criticized the Supreme Court decision in *Rust v. Sullivan*—where the Court upheld the constitutionality of HHS regulations that prohibit Title X funds from being “used in programs where abortion

is a method of family planning”—as contrary to the First Amendment because the federal government was funding speech that promotes childbirth while prohibiting funding for speech that promotes abortion.

In contrast, the Supreme Court held that the government may “make a value judgment favoring childbirth over abortion, and...implement that judgment by the allocation of public funds.”

What’s more, in a memo from Kagan to Marshall, she wrote that a circuit court decision mandating taxpayer funding for abortions for inmates was “well-intentioned,” but wrongly decided.

However, she recommended Marshall not

review the case because “this case is likely to become the vehicle that this Court uses to create some very bad law on abortion.” What “bad law” was Kagan concerned about—that the Court would go even farther in dialing back the court-created right

to abortion?

Kagan’s hostility towards the regulation of abortion was further demonstrated while she worked in the White House. She recommended that President Clinton support a phony compromise to the Partial-Birth Abortion Ban Act of 1997, in spite of her implied belief that the

ban was unconstitutional.

If Kagan believed that the phony compromise, with its broad exceptions that would have allowed every abortion, was unconstitutional, she would certainly be hostile to more restrictive (and effective) legislation like the partial-birth abortion ban upheld by the Court in *Gonzales v. Carhart*.

When advising Clinton on possible responses to new cloning technology, Kagan recommended that he offer a bill that allowed the creation of cloned embryos for research purposes. Using embryos “for research” means killing human beings in the earliest stage of development. By endorsing such practices, Kagan demonstrated her disrespect for unborn human life.

Elena Kagan is no friend to the unborn, and her admiration for judicial activists raises a significant concern that she will impose her personal beliefs on America from its highest Court. It is time for us to stop buying that Kagan is a consensus nominee, and demand that our Senators oppose her nomination.

Mary Harned is Staff Counsel with Americans United for Life (AUL). Before joining AUL, she served as Chief Counsel to Senator Tom Coburn where she advised him during the confirmation hearings for Chief Justice John Roberts and Justice Samuel Alito.



Col. Ronald D. Ray *(continued from page 3)*

Historian and Deputy Director of Field Operations for the U.S. Marine Corps Historical Center, Washington, D.C. Not long afterwards, Col. Ray provided legal counsel to Michael New, the Army Specialist who refused to wear a U.N. uniform and serve under a foreign commander in 1995. The next year, the young man was court martialled and dishonorably discharged for his brave action.

Activism runs in the family. Eunice Ray supports her husband’s efforts as founder/national coordinator of “RSVP America” (or, “Restoring Social Virtue and Purity to America”). This grassroots movement teaches the public, media, legislators, educators and activists about the devastating

impact of Dr. Alfred Kinsey’s fraudulent science in the history of the Model Penal Code and Supreme Court decisions, including *Roe v. Wade*.

“If anything happens in politics, someone planned it that way,” he notes. “Look at how the liberal elites began to enforce the notion of evolving law, as opposed to a fixed law, and of a Constitution that changes over time and in various circumstances to follow the latest philosophy fads....The phrase ‘changing law’ is an oxymoron as again, law is fixed...and remains so no matter what the language [of a particular nation].”

America’s first principles were built upon five documents of liberty which,

in turn, provided America’s foundation, stresses Col. Ray. And that foundation “acknowledges a Creator, laws of nature and nature’s God; ideas that [still] form our government and our legal code. Our founders had a firm reliance upon Divine Providence.”

Col. Ray continues to write and speak on a wide range of national security, historical and Constitutional issues. Not surprisingly, he is a sought-after guest on many national TV news shows, including “Fox and Friends,” “ABC World News Tonight,” “Crossfire” and “The Today Show.”

NLA thanks him for his service to our country, and to our organization.

-Lisa A. Bastian, CBC

A Primer on the Natural Law *(continued from page 1)*

Today, Mason would not be confirmed by the Senate for the federal bench. Neither would William Blackstone, the great Protestant commentator on the common law, who said, “This law of nature being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other.” Commentaries (Lewis ed.), I, 31. In this vein, Blackstone was repeating the existing common law tradition, as previously expressed in 1610 by the great jurist, Sir Edward Coke.

The “law of nature” was, according to Coke, “that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction and this is *lex aeterna*, the moral law, called also the law of nature. And by this law, written with the finger of God in the heart of man, were the people of God a long time governed before the law was written by Moses, who was the first reporter or writer of law in the world.”

The first, self-evident principle of the natural law is, in Aquinas’ words, that “good is to be done and promoted, and evil is to be avoided.” The good is that which is in accord with the nature of the subject. It is good to feed gasoline to a car, but not to a man. And it is not good to steal or murder, because such acts are contrary to the natural human inclination to live in community. We can affirm through reason the objective rightness or wrongness of acts, but we generally have neither the right nor the ability to judge subjective

culpability. To be culpable, one must know the act is wrong and still choose to do it.

The natural law is a standard for human law as well as for conduct. Martin Luther King, Jr., in his *“Letter from a Birmingham Jail,”* said: “An unjust law is a code that is out of harmony with the moral law.” As Aquinas put it, if a human law “deflects from the law of nature,” it is unjust and “is no longer a law but a perversion of law.” We may be obliged to obey an unjust law “to avoid scandal or disturbance,” but a law that is unjust because it would compel one to violate the divine law must never be obeyed.

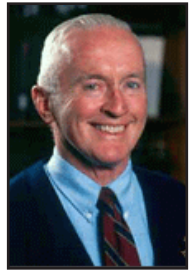
People may disagree on applications of the natural law. But if you and I disagree on the morality, say, of abortion, we cannot both be right. “If,” said Aquinas, “we consider one action in the moral order, it is impossible for it to be morally both good and evil.” But who am I to say conclusively on my own that you are wrong? An authoritative interpreter is needed.

Catholicism addresses social matters “on the basis of reason and natural law” so as to “help form consciences in political life.” Benedict XVI, *God is Love*, no. 28(a). The alternative to an objective and knowable moral order is what Benedict has called a “dictatorship of relativism,” including legal positivism in which a law of any content is valid if it is enacted by the prescribed procedures and is effective.

In legal positivism, a law cannot reasonably be criticized as unjust in the way Martin Luther King Jr. criticized racist laws. As Hans Kelsen, the leading positivist of the 20th century, put it, “Justice is an irrational ideal,” and thus, reason and natural law are set aside. During that same century, the United States Supreme Court departed from the premise of the Declaration of Independence—and centuries of development of the law of nature and nature’s God by Judaism, Catholicism and Protestantism alike—to pursue judicial policy promoting a secular consensus.

Today, the law of God, if it is acknowledged at all, is widely regarded as irrelevant to practical problems of government as well as to private life. A return to the natural law is essential for the recovery of reason in a culture that has lost not only its faith, but also its mind.

NLA advisory board member Charles E. Rice is an American legal scholar, Catholic apologist, and Professor Emeritus at the Notre Dame Law School (his areas of specialization are Constitutional Law and Jurisprudence). Professor Rice also is the author of numerous books, including 50 Questions on the Natural Law.



Missing Millions at Planned Parenthood

From time to time, some people lose track of hundreds of dollars due to mistakes made in their checkbooks. Planned Parenthood Federation of America (PPFA) has a more outrageously serious accounting problem, according to a recent *Washington Times* article (June 18, 2010).

Author Rita Diller, national director of Stop Planned Parenthood (STOPP), says that “a new report from the U.S. Government Accountability Office on federal tax money funneled into Planned Parenthood and similar organizations raises more questions than it answers about the nation’s largest abortion chain.”

PPFA audits show the organization “spent

just \$657.1 million between 2002 and 2008 from federal government grants and programs,” she continues, “but the abortion behemoth’s own annual reports show that it took in \$2.3 billion from government grants and programs during the same time period.”

Asks Diller: “Is there no end to the amount of our hard-earned tax dollars that will be poured down the bottomless pit known as Planned Parenthood to quench this social-engineering agency’s thirst for sexualizing our children, stealing their souls and dumping the mutilated bodies of our children’s children into our nation’s waste bins?”



Celebrate “Constitution Day” in September

“Constitution Day” was established in 2004 as part of the Omnibus spending bill of 2004. The law requires all federally funded schools to provide educational programs about the U.S. Constitution on Sept. 17, the date the Constitution was signed in 1787. Some schools and groups have decided to extend the fun by celebrating “Constitution Week” from Sept. 17-21.

What can you do to participate? Consider making time to read from one of the Charters of Freedom (the Constitution, Declaration of Independence, Bill of Rights) or funding projects which distribute free copies of them. In your community, volunteer at a grade school to read one of the many fine books on the Constitution written for children.

At the very least, be a noble citizen and do a good deed for someone!

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NLA



Freedom Charters Online Resource

Now it's easy to access the history—and actual text—of the Declaration of Independence, the Constitution, and the Bill of Rights all from one source. Simply visit the “The Charters of Freedom: A New World is at Hand” Web site (www.archives.gov/exhibits/charters),

created by The National Archives and Records Administration, to tap into an historical treasure trove rich with commentaries and images focused on these foundational documents.

New NE Law Permits Suits Against Abortionists for Psychological Injury

A new Nebraska law allowing women to sue abortionists for negligent pre-abortion screenings and counseling goes into effect July 15. It's the first U.S. law to remove the requirement that a woman must prove psychological injuries from an abortion were a result of a physical injury. (Visit <http://bit.ly/NE-law> for more info.)

The idea for the bill originated with a 1985 article written by Feminists for Life according to Dr. David Reardon, author of several studies linking abortion to increased rates of depression, suicide and similar tragedies. He also is director of the Elliot Institute, a post-abortion research, education and advocacy organization (www.afterabortion.org). It claims up to 64 percent of women feel pressured by others to have an abortion. Dr. Reardon received an NLA Wilberforce Award in 2009.



NLA BRIEF

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