Law school rocks!!

Faculty, administration, and students alike showcase their musical talents and social prowess as the Spring semester rolls on.

See Page 7

Photo by Bryce Pagter

Photo by Lauren Crecelius

ALSO

Prof: some keys to Bar prep
See Page 6

Law Review Symposium: Financial Regulations FTW?
See Pages 4-5
THANK you for picking up the 3rd edition of this year’s The Courier and our first edition of the spring semester. We are opening the new year by highlighting events around the law school, such as Barrister’s Ball, the Religion of the Law Symposium, the Alan Gura event, and the Law Review Symposium. In addition, we are very grateful to have a guest article from Professor Mainiero regarding the 2010 Bar passage rate.

As the Editor-in-Chief of The Courier, I understand that the opinions we share with you have the potential to create conflict. It is never our intention to insult or injure the feelings of our readers. Our publication strives for an open conversation and the opportunity to express opinions that are often unpopular. We welcome discourse and understand how important it is to foster respectful debates. At our core, we attempt to be the voice of the Chapman law student community, and hope that everyone who picks up each issue can find something thought-provoking within its pages.

In our last issue, some students found one article in particular controversial for the author’s review of a recent student debate. No one at The Courier, myself included, ever intends to disparage or hurt the feelings of any fellow Chapman students. We apologize for any harm felt by those students in regards to the article, and at the same time we wish to convey our support to our staff members and this opportunity to express their opinions.

The Courier is always looking for more writers and are always happy to receive a “Letter to the Editor” from those of you who wish to respond to our articles (see the guidelines in the staff box below). We understand that our readership is vital to the success of The Courier and hope you will continue to support our growing publication.

Amber Hurley
It seems that – arguably – just about every so-called "hot-button" issue in U.S. discourse has a common component that either side might reach a tenuous agreement on. Take abortion, for instance. No matter how extreme both sides of the debate may be, either party usually agrees that we should cut down on the rate of unwanted pregnancies by unable mothers-to-be. Granted, that ostensibly neutral ground usually stands as a launching pad for diametrically opposed views as to how we should achieve that goal, but even so, the fact remains that there are usually pseudo-fundamental principles over which we can put down defenses and at least assume the position of working together.

Public health, in general, is one of those baseline concepts around which consensus is pretty easily built. We all want clean water, we all want pothole free roads, we all want playgrounds that aren’t full of dirty needles and razor blades, etc. To explain this, you’ll have to bear with me as we trot through a refresher on introductory political philosophy.

Public health is less contentious than say – I don’t know – healthcare reform, because it goes back to the concept of the public good (i.e., within a state where popular sovereignty is the name of the game, we agree to establish and support, to the best of our ability, a livable public space for the polis). Americans loooove the idea of the public good in part because we are very, very attached to that critical distinction between the private and public spheres. Keeping the public space happy and healthy is something that we are all essentially for, so long as our private space is still our own personal kingdom. In other words, public health equals public sphere which we are willing to regulate; healthcare equals private sphere which we get prickly about.

Now, that’s not to suggest that there isn’t a thorny disagreement about when and how and to what extent regulation should take place, and what constitutes the public and the private. That’s because, overall, the American discourse largely hinges on the notion of positive versus negative liberty and rights to navigate these surmountable choppy waters.

Negative liberty – which some radical thinkers like to argue does not exist – is the kind of liberty that most agree on because it is posited to protect your natural rights against another’s intrusion through legal recourse. Think of it as “freedom from” interference by others (freedom from being murdered with no recompense, freedom from someone squatting in your home while you go to Cabo for two weeks – that kind of stuff). Negative liberty operates on the assumption that you are incorporated into a society only minimally and that you get to enjoy protections from anyone trying to – ahem – tread on you. This may go without saying, but negative liberty doesn’t give a lick about whether or not you are healthy.

Positive liberty is where everyone gets their feathers ruffled because positive liberty is “freedom to.” Positive liberty recognizes that you ARE incorporated, fully and wholly, into a society that may sometimes attempt to structurally deprive you of things that it seems to give to others.

Where negative liberty is concerned with external interference, positive liberty is concerned with internal interference. Yes, dear reader, positive liberty is significantly squishier than negative liberty. Positive liberty is concerned with attaining the highest

see Schmeal healthcare, page 10
In light of the recent financial crisis and the U.S. response, the Chapman Law Review selected a very timely subject for its 2011 Law Review Symposium, entitled From Wall Street to Main Street: The Future of Financial Regulation. The event began with an energetic welcome dinner and speech by Andrew Lowenthal, President of Porterfield & Lowenthal, who critiqued the Federal Reserve Board and stressed the need for transparency and accountability in financial markets. Lowenthal probed the irony of large Wall Street banks – normally advocates of laissez-faire economics – lining up to receive massive amounts of government (i.e. taxpayer) money during the bail-outs. He asked, “What has happened to us, the American Public, which precludes us from being able to imagine a world in which Goldman-Sachs doesn’t exist?” In spite of this troubling outlook, Lowenthal ended his speech with an optimistic assessment of the American people’s ability to “come to their senses” and urged those students in the audience to consider careers in public service.

The following day, four panels addressed the daunting Dodd-Frank Wall Street Reform and Consumer Protection Act, a 2,300 plus page-long bill that President Obama signed on July 21, 2010. Chapman Professor Timothy Canova opened the day by stating that “it is important that we don’t let Congress – Democrats and Republicans alike – off the hook” for failing to enact robust enough legislation to combat years of deregulatory policies. Canova also advocated for greater “financial literacy” among the public as well as the need for “leadership at all levels … to educate and prod people to get interested in these issues and stay interested in these issues,” and to avoid relying solely on the experts.

Chapman Professor Anthony T. Caso introduced the first panel of speakers addressing the Dodd Frank Act, stating the panel would “explore what the [Dodd-Frank Act] is intended to do and whether our panelists expect it to succeed.” Chapman Professor Kurt Eggert moderated a panel on rulemaking and administrative agencies and participated in the third panel regarding credit rating agencies. Adjunct Professor and Partner at Allen Matkins, Keith P. Bishop, moderated the last panel of the day on “Re-Writing the Rules of Corporate Governance.” At lunch, keynote speaker Steven Schwarcz, Professor of Law and Business at Duke University, discussed ways of monitoring and alleviating systemic financial risk with “Ex Ante Versus Ex Post Financial Regulation.”

Schwarcz, who is hailed as one of the founders of securitization and who wrote the seminal textbook on the subject, cast doubt on the ability of regulation to prevent financial meltdowns. He argued, essentially, that because today’s financial products and the markets on which those products are bought and sold are so incredibly complex, it is impossible to regulate those entities in an efficacious manner. Instead, he and his colleague, Professor Iman Anabtawi of UCLA (who also spoke at the symposium), have engaged in research designed to test the feasibility of “ex post” financial regulation. Rather than prevent crises, such “ex post” regulation would, for example, enable countries such as Greece, whose entire economies have hit a crisis point, to salvage their financial infrastructure by repackaging sovereign debt. Schwarcz’ speech – which questioned the very ability of the average American citizen to understand complex financial matters – was essentially the polar opposite of Lowenthal’s speech the prior evening. This contrast between the two speakers’ views provided a helpful bird’s eye view of the bigger picture of financial regulation. The panel presentations then helped to fill in this picture with specific details about the Dodd-Frank Act and its potential for reshaping the financial landscape.

At the end of the conference, the overall consensus seemed to be that Dodd-Frank included a few worthwhile and necessary provisions, but ultimately missed a golden opportunity to create greater protections. In the words of Loyola University Chicago School of Law Professor Steven Ramirez, the Act failed to get at the root of the “underlying problems,” which “are still intact.” According to Rosalind Tyson, the Regional Director for the Los Angeles office of the U.S. Securities and Exchange Commission (SEC), some of the more productive measures include the new and expanded whistleblower rules and the “investment advisor provisions,” which require hedge funds with $150 million or more in assets under management to register with the SEC by July 2011. Tyson predicted that these provisions would help to foster greater transparency both in publicly held corporations and in private equity funds. Another panelist, Reza Dibadj, Professor at the University of San Francisco School of Law, questioned the actual impact of such disclosure requirements and observed that another “very impressive provision” mandating the use of clearing houses for particular exchange-rate swaps, also fell short because “it only applies to standardized contracts not to customized contracts” which could lead to an increase in customized contracts, thereby allowing financial institutes to avoid the clearing houses altogether.

Former visiting Chapman Professor W.H. (Joe) Knight, Jr. commented on the letdown from the “too big to fail” provision and the loopholes of the Volcker rule, limiting banks’ proprietary trading, due to the pressures of Wall Street on lawmakers. Professor Knight concluded, “We have learned nothing from prior financial crises over the last eight centuries, and we seem destined and doomed to continue our boom and bust behaviors.”
to repeat our boom and bust behaviors.” Other panelists discussed the need for greater reform of credit rating agencies and the issuer pays model.

While Dodd-Frank might have missed the mark where it mattered most, the Chapman Law Review did not. As Editor-in-Chief, Hannah Elisha noted in her opening remarks, “the Chapman Law Review is committed to publishing timely, relevant, and insightful academic work, and we’re also committed to stimulating important academic and legal dialogue through our annual symposium.” Thanks to the hard work of the Chapman Law Review, particularly Senior Symposium Editor Jennifer Fry, the symposium brought together an impressive group of academic and professional minds to lead a productive discussion of the pertinent issues surrounding financial regulation in America. The Law Review was very gratified to have a robust turn-out of more than 185 people at the Symposium.

At the conclusion of the Symposium, the speakers and those who attended the event joined Chapman students, staff and faculty at a reception that was co-hosted by Chapman’s Public Interest Law Foundation (PILF). PILF held its annual Silent Auction during the reception, which featured a live jazz band of Chapman undergraduate musicians, led by Professor Albert Alva, who also played bass in the ensemble. All of the proceeds raised at the auction were put toward grants for Chapman students pursuing an internship in the public interest sector over the summer. The auction was a great success and raised around $8,000 as a result of the generous donations from professors, students, and local businesses. A special thanks is due to Professor Dowling for emceeing the Live Auction where Professor Noyes’ highly coveted poker party went for over $1,000. Among other interesting auction items were tickets to Disneyland and the Anaheim Angels, lunches and dinners with various professors, martinis and manicures with Dean Kacer, Mike King’s offer to stilt-walk and juggle at an event, ski and surf lessons with Kyle Murray’s family members, and a beautifully hand-knit pillow by librarian Isa Lang. Thank you to all the donors!

Podcasts of the four panels of the Chapman Law Review Symposium can be accessed at http://chapman.edu/law/, under the bottom-left section, Webcasts.
How to raise our own Bar

Mario Mainero
Visiting Associate Professor of Academic Achievement

I was asked by the Chapman Law Courier to write a column regarding the drop in Chapman’s bar passage rate last July, after several years of improvement. While it is true that the pass rate dropped from 81% to 70%, and that is cause for serious concern, we should remind ourselves that it remains at a higher level than was true for much of Chapman’s history.

Different people will point to a number of reasons for the decline last year: a slight decline in entrance qualifications for that particular class; the availability of BarBri (and everyone else’s) online access and the tendency of students to watch at home—and to only watch what they felt like watching for only as long as they felt like watching it; and perhaps a sense of complacency once we first exceeded the 80% level.

Rather than focus on what happened, we can learn from this experience and focus on what all of us—but particularly you students who must take the California Bar Exam—can do to raise Chapman’s bar pass rate consistently above 80%, or even 85%, in the future.

Preparation for the bar exam begins in the first year, so a couple of my suggestions are centered around what to do beginning in your first year, and that you should continue to do throughout law school.

Actively Learn in Each Class
I notice in Select Topics that many students do not understand, or are no longer familiar with, significant and often-tested topics in many bar subjects. Approach each subject knowing that you will need to know it well in another year or two or three. Be prepared every day, participate, and internalize each subject so that bar review is just that—a review.

Don’t Miss Class
Don’t treat the attendance rules as a maximum number of classes to miss, out of respect for your hard-working and dedicated professors, your fellow students, and yourselves. Only miss class for a true emergency, because each day class may cover a bar-tested concept, and someone else’s notes are a poor substitute for your own experience.

Take Practice Essays Before Exams
Research unsurprisingly shows that taking multiple practice exams before the real thing improves results. Before you take final exams in your courses, take practice exams and get professional feedback—from your professors, from Professor Faulkner, and from me.

Take Select Topics and Legal Analysis Workshop if possible
These courses are offered as a final review before graduation and bar study. Take advantage of them—even though they represent a significant amount of work. Research shows that it takes an average of 750 hours to adequately prepare for the bar exam. The time spent writing in those courses will help you immensely when you take the bar exam.

Don’t substitute your opinion on bar studying for that of professionals
Last summer, students used the availability of online access to make poor choices on how to study—but the bar exam is not a good time to self-study. Instead, do all the work you are told to do.

GO TO ALL THE BAR CLASSES—bar study requires the discipline and focus of regular classes according to a schedule. Thus, don’t miss any classes for any reason—most subjects are covered only once. Don’t skip over parts of the lectures—the hypo you skip will be the one on the exam. Fully participate in the supplemental program by coming to the twice a week MBE review and submitting enough essays for 24-hour turnaround critique. For nine weeks, everything should take a back seat to bar study. Too often, students miss practice exams, classes, and study time because of other commitments. For just this one nine-week period, don’t make other commitments.

We have arranged that, for those of you taking BarBri, only Chapman students will be taking BarBri here, and we have worked out a special BarBri schedule at Chapman that aligns perfectly with our supplemental program. True, it will require actual attendance rather than online access, but please trust us that this is the best approach for success on the bar. For those taking other bar review courses, we are doing our best to reduce time conflicts, but talk to us throughout the process if you have conflict or timing concerns.

We will do whatever it takes to help you succeed. All you have to do is ask.
A band with foundations at Chapman Law blew the roof off the House of Blues in Anaheim during an evening showcase on February 8.

Meet George Hartline and the Harmless Doves, a group that Hartline, a Chapman Law 2L, slowly cobbled together since moving to California from Alabama in 2005, that seems to draw influence from the Dave Matthews Band with its folksy rock rhythms and earnest lyrics.

With Hartline on lead vocals and guitar, 2L Jason Hensley on vocals, and 3L Tim Cully on harmonica, and friends Steve Denning on drums, Paul Bouyear on bass, Zach Pagter on lead guitar, and Karlie McEntee on violin, the group wowed a crowd filled with familiar Chapman Law faces with a set of six original songs written by Hartline.

Among the crowd watching the group were representatives from Acropolis Records and Wright Records, whom Hartline spoke with after his set. Hartline plans on recording two new tracks with the current band lineup in March and April with Lewis Richards, the producer for “Lay Me Down” by the Dirty Heads.

Hartline, who has previously played at the House of Blues in Anaheim and in Hollywood, plans to play again at the House of Blues in Anaheim in March. However, fans that can’t wait for his next performance can download Hartline’s live album from iTunes, and can find him at http://georgehartline.bandzoogle.com.

Barrister’s Ball: Slumpbusters rock w/Dean, students

Barrister’s Ball 2011 was a dining and dancing engagement to be remembered. The Grove in Anaheim hosted about 400 Chapman Law students and guests on the evening of February 4th, with a bountiful buffet, full bar, and music.

Professor David Finley’s band opened the event and played two sets.

“In 2009 I suggested that the SBA consider adding live music to the Barrister’s Ball and they fully endorsed this idea, with my band kicking off the party each of the last three years,” Finley said. "It's always a pleasant surprise to see how positively the students respond to our classic rock lineup, especially since most of our songs were written before they were even born! But we do our part in getting everyone out on the dance floor and warmed up for the rave that follows when the DJ plugs in.”

Dean Scott Howe made a special appearance with Finley’s band again this year, to the crowd’s excitement, and 2Ls Bobby Waltman and George Hartline joined in on some songs as well.

Student Bar Association Events Chair and 3L Regina Rivera said SBA planned everything from the venue and menu to the DJ and decorations. She added that SBA listened to students’ past concerns about cost or distance to the venue and the organization worked hard to make the 2011 Barrister’s Ball more cost-efficient and accessible, while still being a fun and exciting event for students.

“Students should participate because it is the biggest social event of the year for Chapman students,” Rivera said. “It is a time to cut loose, dance and just have fun, not to mention do something a little different.”

First-time Barrister’s Ball attendees and, Nicole Arbagey and Britni Falter, both 1Ls, agreed that their favorite part of the event was mingling with Chapman professors and faculty as well as with their friends.

“My favorite part was watching Dean Kacer dance to Pink’s ‘Raise Your Glass,’” Falter added.
Six Degrees of STRESS
When the course load gets a little bit heavier, 1Ls lace up and keep running

Lauren Crecelius  
Junior Editor

Panic mode is back and in full effect. A familiar feeling indeed. We thought we were so busy last semester; we thought we didn’t have a single extra moment to spare. Oh how little did we know. Add a sixth class to that full schedule, and while you’re at it, add another small group meeting. Don’t forget to buy a few more books too. Oh, and then go find a summer internship. My wall calendar is screaming at me with reminders and notes of all the studying, classes, job fairs, and due dates approaching. Pencil in a few minutes of beating my head against the wall, and my calendar is officially the fullest it has ever been.

It was off-putting to notice there is a little extra space in class this semester. I’m shaken but standing, however, and I intend to continue the good fight. Despite the hardships, I am resolute against becoming an empty chair and a whispered conversation. The 2.8 GPA curve is a cruel mistress, and anyone who receives a B+ or a C+ is plagued by the two most agonizing words in the English language, “what if?” I have had many a “what if” moment in reflecting on the events of December. Taylor Swift’s song “Back to December” is much more meaningful if you think she’s talking about finals instead of lost love.

But all is not lost! Spring Semester is a chance to make up for the sins of the past semester. Not only do I strategize about improving my own grades, but I also look around at the shining faces in my track and contemplate, “How am I going to do better than more of these people this time?” Law school is like a hungry bear chasing all of us, and you must avoid being the slowest runner.

Taylor Swift’s song “Back to December” is much more meaningful if you think she’s talking about finals instead of lost love.

Law school is like a hungry bear chasing all of us, and you must avoid being the slowest runner.

I expressed this gloomy metaphor to my friend Nate, but he disagreed with me. He said the point is to be as prepared as possible. “If your shoelaces aren’t tied together, you’ll be able to run a lot faster,” he sagely advised. The sentiment cheered me and provided a much more positive metaphor to consider (though I do still picture law school as a petrifying bear).

I am hopeful for this semester. While panic and stress are hard to avoid, this semester also brings some good things to look forward to, including a whole week of spring break. Also, though the work load has increased, the addition of criminal law to the schedule has provided the most interesting and sometimes entertaining cases of all the classes. Anyone who’s read the Ray Brent Marsh case or the Thomas Laseter case can attest to immediately Google-ing the facts to see if the cases are real. Oh they are real all right. Even the Law and Order writers would be surprised. Spring Semester also promises a step closer to the sweetest dream of them all: gainful employment. One day, job market, one day. So my advice to you, fellow 1Ls, is keep your chin up and make this semester your own. Oh, and don’t forget to tie your running shoes.

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Get 5% off when you present your Chapman Student ID
The legal clubs at Chapman Law School serve an important function for students by expanding the possibilities of our legal education. Each club promotes its agenda through events and meetings with relatively few requirements. For the most part, they are relatively informal due to the pressure of the law school curriculum. I have enjoyed the clubs I was a part of and became more involved with both the Animal Law Society and the Second Amendment Club this year. I love animals and I love guns. With the exception of one day where both clubs had a meeting scheduled, these loves have never conspired against me.

Both clubs hold events this year where significant attorneys in their respective fields were invited to speak on campus. The events were well attended and took a good deal of organizational effort on the part of the club officers. The Animal Law Society invited a local attorney who practices on the cutting edge of animal law. The speaker for the Second Amendment event was the actual attorney who recently won major legal victories in the advancement of gun owner rights. These events were awesome for a law student that is interested in those respective fields and the officers of each club had the chance to build rapport with the speakers.

By bringing exciting and varied guests to the Law School, clubs give students an incredible opportunity to interact with leaders in their fields of law. Last year I brushed shoulders with a United States congressman going to lunch with the officers of another club after just speaking at their event. The officers of these clubs work within a minimal budget and put on events that benefit the entire school. These events better the reputation of the school by exposing the name to a wider audience of visiting academics and professionals. The students benefit by being in close contact with these people, and they benefit the clubs themselves by giving an opportunity for the officers and members of the clubs to build relationships that can help build or even launch their careers as new lawyers.

Chapman Law School provides an incredible number of opportunities for a law student to further build the foundation for their legal career. While students still need to take their own personal initiative in the pursuit of their career goals, the clubs at Chapman Law School have the potential to be a powerful vehicle for this goal.

At this moment, however, each club has a limited annual budget that is based on Student Bar Association contributions and whatever fundraising the club does on its own. This does not allow for the type of growth and consistency that is needed for the clubs at the law school to be powerful established groups that students can use to further or establish their careers. The clubs need individual endowment accounts to receive outside donations and build recurring revenue streams. This will give them the power to independently put on events that will bring more academic and professional talent to Chapman Law School.

An endowment fund is an investment fund set up by an institution in which regular withdrawals from the invested capital are used for ongoing operations or other specified purposes. Nonprofits, universities, hospitals and churches often use endowment funds. They are funded by donations, which are tax deductible for donors. If the clubs at Chapman Law School were to have a set of requirements they had to meet to set up an endowment fund, they would be able to accept donations from charitable alumni and other interested parties. Withdrawals could be restricted to be the interest or a portion of the interest generated from the fund itself, insuring the fund would be perpetual. Over time donations would pile up resulting in an annual income for the club to use to plan events and conduct other club activities. Clubs could build up sizeable funds that would generate annual operational incomes beyond what they have access to now.

The added budget from interest income would also make the clubs more powerful, as the events they could put on would generate more prestige and potential for connections in the professional world. This would mean that membership in the clubs would be more serious, and officer duties would be taken more seriously. Officer voting could become highly competitive. This increase in competition would work to make the clubs a far more attractive team. Because my friends, colleagues, Chapmen and Chapwomen - We are in this to win this.

I don't remember exactly what Gandhi said, but what I heard was, 'Be the change you wish to see in Chapman.' (Gandhi, University College London, Law Degree 1891.)
Second Amendment Assoc. hosts Alan Gura

Courtney Eskew
Staff Writer

The debate on gun-control is a topic that has been largely ignored by the national media in recent years. This issue has generated more attention recently due to the tragic shooting in Tucson just last month. Chapman Law School has a high level of interest in the issue of Second Amendment rights. This fact was demonstrated by the high turn-out and enthusiastic audience participation at a recent on-campus speech by Alan Gura hosted by the Chapman Second Amendment Association and co-sponsored by the Chapman Federalist Society.

Mr. Gura has been instrumental in shaping modern Second Amendment jurisprudence. He is best known for his work as lead counsel on two recent Supreme Court cases dealing with the constitutionality of local gun-control laws. In District of Columbia v. Heller, Gura successfully argued that a Washington D.C. handgun ban violated the individual right to keep and bear arms protected by the Second Amendment. In 2010, Mr. Gura was lead counsel in McDonald v. City of Chicago, where the Supreme Court held that the Fourteenth Amendment fully incorporates the Second Amendment, applying it to state and local governments.

The event was an engaging look at the modern evolution of the Second Amendment with a focus on the changes we can anticipate in gun laws over the coming years. Gura’s speaking style was relaxed, confident, and articulate, and he presented complex constitutional concepts in a clear, rational manner.

Gura began with a quick primer on the different types of judicial standards of review, and then clarified, “Heller was not a standard of review case—the Constitution just literally bans this type of statute [which prohibits] the ability to use gun in self-defense.” Then, he got into some finer details, focusing in on the “presumptively lawful” limitations to gun ownership. “Here, the First Amendment provides a good framework with the time, place, & manner test,” Gura commented.

When it comes to government restrictions on access to guns, for example through concealed-carry licensing standards or background checks, Gura argued that courts should use a strict level of scrutiny. For example, in response to questions about statutes that limit gun access to the mentally handicapped, Gura agreed that states have a compelling interest to prevent mentally handicapped people from purchasing weapons. “However,” he cautioned, “the broader the state goes, the more substantive and suspect the law becomes. Then, you also have a less compelling state interest.”

A few audience members had questions about the shoot-

**Schmealthcare, from page 2**

state of being that an individual can possibly achieve, which in turn means that the basic conditions for that achievement should be met. For positive liberty, then, access to affordable and sufficient education, employment opportunities, and healthcare are essential conditions for the individual to truly thrive.

These two concepts are cerebral and distinct on paper but are practical and intertwined in practice. To paraphrase the Bard, a political theory by any other name is still as beguiling for building consensus. Whether we say it or not, we will battle over what kind of liberty we want to value and protect as a society when we talk about healthcare reform.

This public-private, positive-negative dichotomy is magnified by a system where there is an additional and vicious conflict between the free market and regulation. Healthcare is directly in the middle of that storm as it has been in the domain of the market, and therefore, in the domain of the private – in the hearts and minds of Americans. That fact is what makes our debate so particularly circular. We begin with the presumption that health is a commodity. The mandate provision of the Patient Protection and Affordable Care Act (PPACA) is making its way through the courts because it half-heartedly rivals that presumption and proposes that health is more than a commodity but less than a right. Because of situating the question of healthcare in that ideological no-man’s-land, the decision of the Supreme Court as to the constitutionality of the mandate is a non sequitur to actually facilitating the understanding of this issue and developing a solution to it.

If we continue to argue about health from different plateaus, then rest assured that near the two shall meet, near the costs shall recede, and near the services shall expand.

** Clubs, from page 9**

more powerful force in the academic experience at Chapman Law School.

While it is true that the idea of donations being made to the law school clubs may seem farfetched, an endowment fund makes it possible even if donations start out slow. Just the idea that the clubs could begin to collect donations would start the ball rolling. Alumni could donate to the clubs that are involved with the causes they support in an effort to expand their professional careers, with the potential for symposiums and events to be serious networking opportunities.

The job market is highly competitive and the reality is that students must do the majority of networking and relationship development to sow the seeds for their potential careers. By empowering the law school clubs, Chapman Law School would further the beginnings of students’ careers by expanding the number of options for students to explore the fields of law that interest them. And those students would build connections along the way.
Religion and law symposium suggests worries

Jon Mason
Senior Editor

“The Constitution’s guarantee of free exercise of religion is under attack and religious persons should unite in a non-partisan coalition to defend it,” said constitutional scholar and religious leader Elder Dallin H. Oaks at Chapman’s Memorial Hall on February 4.

Oaks, a high-ranking leader in the Church of Jesus Christ of Latter-day Saints, whose background includes high-profile positions such as professor of constitutional law at the University of Chicago Law School, Chairman of the Board of Directors for PBS, president of Brigham Young University, and justice of the Utah Supreme Court, addressed a crowd of nearly 800 attending Chapman Law’s Seventh Annual Religion and the Law Symposium.

Stating a concern about what some see as an increasing marginalization of religious viewpoints in the public square, Oaks cited modern scholars and examples from American history to argue that religious teachings and organizations “are valuable and important to our free society and therefore deserving of special legal protection.” Acknowledging a decline in both formal religious observance and a belief in a personal God who defines right from wrong, Oaks opined that the foundations of our society and constitution are strongly rooted in principles of morality and the belief in a higher power. Thus, the loss of the influence of religion in our public life will seriously jeopardize our freedoms.

Oaks asserted, “in our nation’s founding and in our constitutional order, religious freedom and its associated First Amendment freedoms of speech and press are the motivating and dominating civil liberties and civil rights.” In that light, Oaks also spoke out against laws and official actions that he sees as having caused erosion to the fundamental freedom of the free exercise of religion.

While recognizing some leeway for the government to ensure the health and safety of its citizens despite the Free Exercise Clause, Oaks argued that recent trends show a concerted effort to minimize and erode the separate and distinct role of religion that the First Amendment guarantees. He also quoted University of Utah Law Professor Amos Guiora, who has advanced the proposition that because some citizens are prone to religious extremism, “religious speech can no longer hide behind the shield of freedom of expression.”

Oaks then related several examples of those who, though exercising their First Amendment freedom of speech and free exercise rights, have been subject to penalties for speaking out against controversial subjects such as same-sex marriage. Such government actions, Oaks explained, risk violating the constitutionally enumerated fundamental right to freely exercise one’s religion by essentially re-labeling the right as a mere “belief liberty interest.”

Continuing his analysis of these trends, Oaks quoted Chapman Law’s own Hugh Hewitt, explaining that, “There is a growing anti-religious bigotry in the United States... For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as if it is somehow threatening.”

Ultimately, Oaks suggested that society must not discount religious voices and allow them equal access to the public square. While explicitly rejecting a call for a new “moral majority” or an affiliation “with any current political movement, tea party or other,” Oaks called for a group of concerned citizens to unite in coalitions and protect religious freedom.

OPINION: How much law is too much law?

Lindsay Sullivan
Staff Writer

Do you ever find yourself supporting an argument to which you’re not really committed? Somehow you slow-rolled your way into a position and found yourself bound to that stance. Many times moral quandaries are the focus of arguments where you’ll find someone clutching to his or her position with white knuckles, either too entrenched or too self-righteous to let go. These individuals cry out to the legislature to fix their moral dilemmas, but is it the legislature’s place to fix these issues?

I recently attended a speaker panel on legislating morality. The panelists were Dean Erwin Chemerinsky and Ronald Talm, Esq the former legal director of the OC Chapter of the ACLU. Our very own Professor Darmer moderated the event. The event was hosted by Planned Parenthood and centered on the controversial legislations of Prop 8 and abortion rights.

Dean Chemerinsky led his argument by saying, “inevitably all legislation is based on morality.”

I’d like you to pause a moment and think about that statement.

That’s not what I recall hearing in my Con Law class this year. I’m learning that our government is one of enumerated powers, a principle that is meant to reassure me that I have fundamental rights which the government may not be tread upon. In support of his contention, Chemerinsky referenced murder laws, civil rules, murder, marijuana, prohibition, and prostitution...all examples of legislated morality.

But whose definition of morality? Joining in the discussion, Mr. Talm added that, most often, his studies revealed that whether or not a judge upholds a “morality legislation” law boils down to the judge’s morals. It is interesting to note that we ask judges to be non-partisan but never to leave their morals at the door.

So I ask you, when do you feel a law infringes on your personal freedom? How old are you when it first impacts you? Is it when you are forced to use a car-seat until you are 5? When it requires you to wear a seat belt or a helmet as you ride your bike? How about allowing freedom of choice or restricting the freedom of choice? The choice to give birth or not? The choice to marry whom you choose? Why are rules addressing these choices necessary? Is it when you are living together in an increasingly global society is not easy. Does the government exist to facilitate our co-existence, like Mom and Dad stepping in when you and your siblings have an argument?

The panel did not come to any great conclusion. I had no epiphany. I did not even find it particularly persuasive, so much as thought-provoking. So, now I challenge you: the next time you turn to the legislature or a judicial decision for a moral mandate to act a certain way consider this: the fewer conflicts the government decides for you, the more freedom of choice you have.
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