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Message from the Chair
by Chuck Cole 1

CAL members can look forward to two more excellent programs in 2005.

First, we will be gathering at the ABA Annual Meeting this summer in Chicago. On Friday night, August 5, we are invited to dinner with the judges of the Appellate Judges Conference. Saturday morning, August 6, CAL will be sponsoring what should be a provocative program on statutory interpretation. A central question will be whether there is a need for an ALI Restatement to guide the courts in that task. Panelists will include Abner Mikva, former Chief Judge of the D.C. Circuit; Justice Robert P. Young, Jr. of the Michigan Supreme Court; Gary O'Connor, who has written an article advocating a Restatement; and Prof. Saikrishna Prakash of the University of San Diego Law School, who has written in opposition to mandatory rules of interpretation. Prof. Timothy Terrell, from Emory Law School, will moderate. After the panel, CAL will hold its annual meeting and election. Then we will all adjourn for an informal lunch. Ben Cooper has been organizing this event. Contact him at bcooper@steptoe.com for more details.

Second, CAL members will soon be invited to another terrific multi-day program. It will take place in San Francisco from Thursday, September 28 through the evening of Saturday, Oct 1, with Sunday as a "free" or "flyback" day. As is our tradition, many of the panels and social events will be held jointly with various judges' groups. We will likely be staying at the Stanford Court Hotel, on top of Nob Hill, with a panoramic view of the city. Our Program Committee, under the leadership of Sharon Freytag, is currently organizing the specific events. So save these dates and pass on any of your ideas for panels or speakers to Sharon at Sharon.Freytag@haynesboone.com.

Finally, our Executive Board is working out a solution to the problem of the CAL listserve. Some members want to be able to communicate easily with all of their colleagues. Others want minimal interruptions during the course of the day. As an operating entity, CAL needs to be able to send information to the maximum number of its members. We discussed this at our last meeting and think we have a plan that could satisfy everyone. Our hope is that we can create a new and separate listserve for those CAL members who want to participate in an electronic community. They will need to "opt-in" to this dialogue listserve. Then the current CAL listserve—which we hope reaches everyone—would be reserved for notices about events and similar mail. So expect to hear more about new CAL's listserve shortly.

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CAL Sponsors Group Swearing in at the U.S. Supreme Court

In November 2004, CAL joined with Appellate Judges Conference for a three-day conference sponsored by the Appellate Judges Education Institute and the Southern Methodist University Dedman School of Law. Through the efforts of our CAL volunteers, we are able to share this sampling from the conference proceedings.

Reports:

- CAL Day at the Supreme Court
- CAL Lawyers Receive Expert Oral Argument Advice from Seasoned Supreme Court Litigators
CAL Day at the Supreme Court
by Harold R. Rauzi

Seven CAL members—Carrie Legus, Cheryl Nield, Harold Rauzi, Christine Samsel, Michael Shea, Renee Snow and John Stanton—were admitted before the bar of the United States Supreme Court on Monday, January 10, 2005. Jerrold Ganzfried, of Howrey Simon Arnold and White (and CAL's Program Committee), presented the motion for admission. Because Chief Justice Rehnquist was absent, Justice Stevens, who as senior justice was presiding, granted the motion, and the Clerk then swore in the new members. The ceremony complete, the Court proceeded to hear the day's arguments.

With the basic reporting (who, what, where, when) out of the way, I will share my thoughts as one who took part in the admission ceremony. Why not just "mail it in," send your application to the clerk's office, and receive your admission certificate by return mail, as most do? Why take the time and incur the expense of a trip to Washington for a five-minute ceremony?

For me (a confessed appeals nerd), VIP seating at both of that day's arguments, alone, made the trip worthwhile. By luck-of-the-draw, the first case we sat in on was an original jurisdiction matter, a rare exception to the Court's appellate jurisdiction. Because in the second case the Respondent's argument was divided, between the two cases, we had the opportunity to observe five advocates for whom that courtroom was familiar terrain, including the Acting Solicitor General, a former Solicitor General, one present, and two former Assistants to the Solicitor General.

For me, it was great fun. CAL's leadership plans to sponsor group admissions annually, I encourage members to participate.

The Clerk of the Supreme Court, William K. Suter and his staff were not only professional, but friendly.

Thank you, Jerry Ganzfried, for organizing the ceremony and the luncheon/panel discussion that followed. (Lincoln Davies's report on the panel discussion also appears in this issue of Appellate Issues.)

It was a memorable, educational and enjoyable day. Again, I encourage CAL members to take advantage of future group admissions opportunities.

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CAL Lawyers Receive Expert Oral Argument Advice from Seasoned Supreme Court Litigators
by Lincoln L. Davies

They may not have had the chance to spar with Justice Scalia or Justice Ginsburg, but it was the next best thing. On January 10, following the Supreme Court swearing in ceremony, members of Council of Appellate Lawyers and others gathered at the offices of Howrey Simon Arnold & White, and were reminded that, while doing something yourself is always the best way to learn, listening to those who have done it more often than you is a close second. CAL convened a panel of star Supreme Court advocates to share their experience—and advice—in practicing before the high court: Jerrold Ganzfried of Howrey as moderator, with Donald Ayer of Jones Day, Edwin Kneedler of the Solicitor General's office, and Richard Lazarus of Georgetown University Law Center as panelists.

The discussion was set apart by what is becoming the hallmark of CAL events—a refusal to be another run-of-the-mill, yawn-at-will legal seminar. Instead, the panelists offered real-world insights, honed through their more than 130 collective Supreme Court oral arguments, into appearing before the justices. Donald Ayer spoke about how to prepare for an argument. He explained that while an effective advocate will immerse herself in preparation just as she would in any appellate case, in the Supreme Court this immersion should usually last "for ten days or so" and will need to be broad enough to prepare the lawyer to field questions that might range from the topography of the Arizona roads to the construction of a statutory provision not directly implicated below. The purpose of this preparation, Ayer explained, should not be just to know the case thoroughly, but to be able to convey it in easily understandable, encapsulated terms. "Walking through an outline is not going to work in the Supreme Court," Ayer said. "What you want are sound bites that you can deliver well."

Professor Lazarus, who discussed using moot courts, also emphasized the importance of being able to quickly deliver the core of your argument in the high court. "You have to frontload your argument and deliver it in no more than ten seconds," explained Lazarus. Lazarus also gave practical tips for moot courts, based on his experience in directing a moot court program at Georgetown that provides practice runs for counsel in approximately two-thirds of the cases before the Court. The effective moot should usually last about an hour or two, take place about a week but no less than two days before the argument, and use lawyers who have experience appearing before the Court, rather than experts in the substantive area or law professors. "Most law professors are generally worthless for the moot court," Lazarus said because such experts tend to focus on the arcane, while the Court tends to seek the big picture.

The final panelist was Edwin Kneedler, who spoke on the argument itself. Mr. Kneedler stressed that the best style for delivering a Supreme Court argument is a conversational tone that the advocate is personally comfortable with, though Kneedler advised that telling jokes "almost never works" with the justices. Kneedler also explained that it is imperative in the argument that the advocate is "as familiar as possible" with any statutes involved in the case, that he knows the procedural posture of the case "inside and out," and that he always keep in mind "what's really at stake."

The consensus among those who attended the panel was that it was time well spent. The panelists not only provided a rare opportunity to receive expert advice on appearing before
the Supreme Court, but gave tips that translate to oral argument in any court. "Suggestions like moving your eyes to another justice in order to switch gears or avoid losing time on a judge you know you can't win is not the kind of pointer you get everyday," said Chuck Cole, current CAL Chair, after attending the event. "This was sophisticated stuff."

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Reports from the Council of Appellate Lawyers and Appellate Judges Summit
In November 2004, CAL joined with Appellate Judges Conference for a three-day conference sponsored by the Appellate Judges Education Institute and the Southern Methodist University Dedman School of Law. Through the efforts of our CAL volunteers, we are able to share this sampling from the conference proceedings.

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What Corporate Clients Want
by Denise A. Brogna

A panel made up of Paul Hoferer, Vice President and General Counsel for the Burlington Northern & Santa Fe Railway Company, Theodore Horton-Billard, Division Head for Farmers Insurance Group, Judy C. Norris, Vice President & Senior Corporate Counsel for Blockbuster, Inc., and Peter Myers, Senior Vice President & Group Counsel for Affiliated Computer Services, Inc., discussed what their corporations look for when hiring appellate counsel.

Each corporate client's needs are unique, however, the panelist agreed on some general principles: corporate counsel often look for appellate counsel at the very beginning litigation, they will retain appellate counsel to provide immediate help to trial counsel in order to preserve the record. In smaller cases, however, corporate counsel may wait until the need for appellate counsel arises. Corporate counsel are continually mindful of the "David v. Goliath" syndrome. The size of the retained firm, or prominence of the individual lawyer, may depend on the size of the firm on the other side, or reputation of opposing counsel handling the case.

Corporate counsel must feel comfortable with the lawyer they hire, and there must be a good mix with existing trial counsel. Sometimes, it is the individual lawyer who draws the attention of the corporate client. Some corporate counsel are comfortable using appellate practitioners within the same firm as the retained trial counsel. They also make it a practice to use local counsel whenever possible. However, national firms are used when addressing national or global issues.

Corporate counsel consider the practical or political ramifications that litigation will have, not only on the corporation itself, but also on the industry as a whole. Corporate counsel look for lawyers who are able to manipulate the presentation of the case in a way most favorably to the corporate client's area of practice within a particular jurisdiction. As a result, they desire specialists who know the judicial panels within each applicable region, who are able to tailor the briefs to suit the particular needs and agendas of sitting justices.

Corporate counsel must decide quickly who to hire. Telephone calls and letters received after the case is in the paper are too late. Therefore, you must establish your contacts in advance. Attend meetings and conferences where corporate counsel are present and introduce yourself. Follow up personal introductions with letters and phone calls.

Corporate counsel sometimes request proposals for representation. When they do, they are looking for lawyers in the particular community who meet their needs, who are customer-service oriented, and who are capable business partners to help them manage the litigation and its impact on the business. Corporate counsel look for firms that can deliver service in a pinch or time crunch. They want honest, straightforward appraisals of the merits of the case and proposed plans of action, with information on all potential adverse ramifications of certain actions and a cost benefit analysis.

Corporate counsel are more likely to employ outside counsel that have knowledge of corporate employment policies, and corporate political or social business outlook. They appreciate outside counsel who have researched the case and potential issues well ahead of the initial interview. They want lawyers who are able, based upon experience, to give
statistical probability for prospective court rulings and an explanation of how the judicial panel hearing the case may decide it. Lawyers who are knowledgeable about trends in law and apply them to applicable facts that affect the corporation will be retained.

Once retained, there is an expectation that outside appellate counsel will be able to prepare a budget of the potential cost of litigation, and deliver timely status reports. Corporate counsel are looking for a team approach. Some are very hands-on and require extensive care and feeding. They expect outside counsel to deliver draft briefs well in advance of due dates and to participate in moot court rehearsals of oral arguments. Corporate counsel would also like to be notified of any extension or other procedural requests well in advance of their making just in case such a request may have an overall corporate or business impact.

Intercorporate communications, issues of press communications, global issues and institutional issues necessitate regular reports. However, all status reports and communication should be short, clear and precise.

On the other hand, corporate counsel fire outside counsel who fail to follow direction, who submit poor quality legal work, who have frequent billing disputes, who have inadequate reporting, who take cases from adverse corporate clients, who breach the chain of command, who fail to return e-mails or phone calls, who fail to give drafts of briefs well ahead of time, who are poor communicators, and who do not get the results the client expects.

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Attendees at the Council of Appellate Lawyers' Conference in Dallas, Texas, were treated to an outstanding presentation by practitioners Mike A. Hatchell, David E. Keltner, and Mary Massaron Ross on the craft of appellate advocacy. Participating in a panel discussion moderated by Professor William V. Dorsaneo III of the SMU Dedman School of Law, the panelists' remarks covered a wide range of practical tips that will be of interest to appellate attorneys of every experience level.

Mr. Hatchell began by noting that the decision to appeal may well be the most critical choice made in the appellate process. To make that determination, appellate counsel must have a thorough knowledge of the record "the way the appellate court is going to see it" (i.e., on paper, not in the context of live testimony); consider appellate expense, including post-judgment interest, attorney fees, bond costs, and the like; and make a reasoned judgment as to what the applicable law is likely to be at the time the case will be decided, rather than what the law is at the time the appeal is filed.

Once the decision to appeal has been finalized, strategizing can begin. This process initially involves analysis of three distinct questions. First, can the appellant surmount the "Four Pillars of Affirmance"? These Pillars are the preliminary hurdles that work against every appeal: (1) preservation of error; (2) standards of review; (3) the harmless error rule; and (4) statutory law and stare decisis.

Second, can the appellant satisfy the burden of persuasion? In other words, what does the appellant have to do to persuade the reviewing court to look past the Four Pillars of Affirmance? For example, in a case involving the erroneous admission of parol evidence, the burden of persuasion may involve convincing the court that the admission was sufficiently prejudicial so as to potentially alter the outcome of the trial court proceeding.

Third, what are the underlying policies and values that support the position the appellant advocates? It is necessary to demonstrate that the outcome the appellant desires is not only logically correct, but furthers a policy or value that is important to the court or its jurisprudence and must be vindicated against competing policies and values. In other words, the court must feel compelled to right a wrong. An example of a policy that must be vindicated is the enforceability of contracts.

Mr. Keltner then discussed the importance of framing the issues on appeal before pen is ever set to paper. In his words, "those who start something without knowing where they are going will not know when they get there." Mr. Keltner identified three forms of questions presented that the appellate advocate should consider. First is the "point of error" question, e.g., "Did the trial court err in overruling defendant's motion for JNOV because..." The benefit of framing the issues with this kind of question is that the question itself immediately assuages any concerns regarding preservation, and it quickly informs a busy court of the appeal's focus.

The second type of question is the "whether" statement, e.g., "Whether the rule in Smith v. Jones means X." Although this type of statement fails to suggest to the court what the answer should be (generally a recommended practice), it may be helpful when an appellant seeks...
Leaves of discretionary leave, where a broad issue presented increases the likelihood that leave will be granted.

The third question type is the so-called "deep issue" question, advocated by legal writing expert Brian Garner. Such a question essentially provides the court with the entire appeal in a nutshell, then asks questions with self-evident answers. There are two dangers, however, to the deep issue approach. The question can be turned against the appellant if the appellee successfully demonstrates that one of the question's foundational points is faulty. And if the question is too long or too wordy, the court may not bother to read it. When drafting a deep issue question, then, recall Abraham Lincoln's famous introduction to a lengthy piece of correspondence: "Please forgive the long letter. I didn't have time to write a short one."

Ms. Massaron Ross addressed the attendees regarding briefing and summary of argument. With respect to briefing, she first emphasized the need to choose strong words and to organize them well, stressing the importance of good grammar to facilitate comprehension. For brief writers "stuck" in a writing rut, she recommended the outstanding writing treatises that Garner and Wydick have authored.

Ms. Massaron Ross next focused on the importance of a forceful, logical argument. Writing such an argument involves devotion not only to classical styles of rhetoric, but also to a thorough understanding of the jurisdiction's precedent to see what analytical tools the judges on the appeals court find persuasive. A brief based on public policy and legislative history may offend a textualist court, while a plain language argument may do little to move a court devoted to other interpretative theories.

Finally, Ms. Massaron Ross emphasized the importance of drafting a persuasive summary of the argument, even in jurisdictions where the court rules do not specifically provide for such a section. Many judges have told her that they read the summary argument first, before any other part of the brief, or last, just before oral argument, as a refresher. The purpose of the summary is not to reiterate the argument headings, but to provide a bird's-eye view of the argument, perhaps citing the major authority on each issue. The summary should highlight the theme of the brief and bring all of the brief's elements together.

The panel closed with a question and answer session. Some of the suggestions included the following:

- When analyzing a new appeal, start with the jury charge and the transcript of the closing arguments. These documents will present the case in microcosm.
- Wait to begin the process of leaving "no stone unturned" for useful appeal points until after developing a clear understanding of the point(s) of persuasion.
- In appeals involving an alleged evidentiary error, the prejudicial harm can often be shown simply by pointing out how the improperly admitted evidence was used in trial counsel's closing argument.
- Challenge yourself by asking, what if I lose on this point? Sometimes the answer will compel an alternate, but equally successful, outcome, or suggest synergies between seemingly unrelated points of argument.
- Permeate every section of the brief with the primary appeal themes and arguments, from the table of contents, to the questions presented, through the argument and conclusion.

Finally, the panel reiterated that every appeal, and every appellate attorney, is different. Adopt the strategies that work for you and meld them with your own, and you will find yourself a better practitioner of the craft of appellate advocacy.
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Supreme Court Review
by Debra J. McComas

Dean John Attanasio, Chief Judge Danny J. Boggs and Professor Alan B. Morrison closed Saturday's presentations with an overview of recent decisions from the United States Supreme Court. The report focused on opinions from four areas of the law: (1) employment; (2) criminal procedure; (3) campaign finance; and (4) rights of detainees.

In the employment context, Dean Attanasio reported on two significant decisions. The first, Pennsylvania State Police v. Suders, 124 S. Ct. 2342 (2004), provides that an employer may assert a failure to exhaust all remedies defense in a constructive discharge case only where tangible employment actions had occurred. In General Dynamics Land Systems Inc. v. Cline, 540 U.S. 581 (2004), the Court relied on "social history" to hold that the Age Discrimination Act did not apply to "young" employees under the age of 40.

Chief Judge Boggs reported on several cases involving criminal procedure, including Blakely v. Washington, 124 S. Ct. 2531 (2004). In Blakely, the Court narrowly construed a State's statutory maximum sentencing guidelines and held that a criminal defendant may not be sentenced beyond those statutory guidelines. The Court's opinion in Blakely has left many courts struggling with how to (or even whether to) apply the federal sentencing guidelines. Some courts, such as the Sixth Circuit Court of Appeals, have decided to continue to enforce the sentencing guidelines until expressly struck down by the Court. Other courts have encouraged district courts to issue two alternative sentences. On the first day of the current term, the Court heard two additional cases that many believe could resolve the issue. (N.B.: Since the seminar, the Supreme Court has decided United States v. Booker, 125 S.Ct. 738 (2005), holding parts of the sentencing guideline unconstitutional. Ed.)

Professor Morrison reported on cases involving campaign finance and the rights of detainees at Guantanamo Bay. In McConnell v. Federal Election Comm'n, 540 U.S. 93 (2003), the Court upheld as narrowly-tailored restrictions on campaign moneys not raised for a specific candidate ("soft money"), including money raised by state parties used to promote federal candidates. The Court further upheld narrowly-tailored restrictions on the use of issue-specific ads in the broadcast media that include a clearly identified federal candidate. Professor Morrison also reported on two cases involving detainees held by the United States at Guantanamo. In the first case, involving a non-U.S. citizen, the Court held that it had jurisdiction over the detainee, but declined to reach the question of the detainee's rights because that question had not yet been addressed by the lower courts. See Rasul v. Bush, 124 S. Ct. 2686 (2004). In the second case, involving a U.S. citizen, the Court held that a U.S. citizen had a due process right to notice of the factual basis for his classification as an enemy combatant and the right to a fair opportunity to rebut the government's assertions before a neutral decision maker. See Hamdi v. Rumsfeld, 124 S. Ct. 2633 (2004).

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Law and History
by George T. Patton, Jr.¹

Judge Robert H. Henry of the U.S. Court of Appeals for the Tenth Circuit introduced Classics Professor Dr. Rufus Fears of the University of Oklahoma, a student favorite, for a talk on law and history.

Dr. Fears began by reminding the audience of American soldiers on patrol in Iraq on the same ground that Ramses II invaded with Egyptians, Alexander the Great Macedonians, Julius Caesar Roman Centurions, Richard II Crusaders, Napoleon the French, and Lawrence of Arabia the British. The legacy of empire was connected to the spread of law. Throughout history, Dr. Fears noted that there had been two dominating superpowers: ancient Rome and the United States in the 21st century.

The Founders of the United States knew, studied and thought historically about classical Rome. They crafted a federal constitution based on the Roman foundation of executive and legislative branches with republican and democratic principles. They knew that Rome rose from a small city by the Tiber river to become a superpower that ruled the classical world. In the times of Julius Caesar and Augustus, the Roman Empire stretched from the moors of Scotland in the northwest to Iraq in the middle east, from Germany in the north to Africa in the south. This was an inspiration and aspiration for the sparsely populated 13 colonies on the eastern seaboard of the North American continent.

The Romans brought economic prosperity, social mobility, and a burst of creativity that laid the foundation for the next 1,000 years of history.

Roman law spread through the known world. These shared moral values first took root in classical Greece, but were adopted by the Romans and later transferred to European civilizations. With one Roman state, one legal system, one Latin language, one currency, and one law, the Romans transformed the many tribes of the one world into an empire, in which the law applied to all citizens of the Empire. The Founding Fathers adopted this principle staking a county on the principle that all people are created equal. Dr. Fears closed his introductory talk by asking: What will the legacy of the United States be?

In breakout session, Justice Denise Johnson of the Vermont Supreme Court asked Professor Fears to answer his own question. He started by noting that the surprising legacy of the Roman Empire was the spread of Christianity and Islam. As for the United States, he deferred saying it could not yet be known what this country's legacy will be. He hoped America would be the most magnanimous, peaceful, prosperous, and beneficial superpower of all time.

Professor Daniel Meador of the University of Virginia Law School asked why the Roman Empire declined. Dr. Fears said that different scholars over the years gave different answers. British historian Edward Gibbon concluded that Rome declined because it abandoned republican principles for imperial control. Others pointed to the Roman involvement in the Middle East resulting in military intervention and "nation-building," to use a modern phrase. Such efforts drained the treasury, depleted troops, and resulted in less focus on Europe. When the Persians swept into the Middle East in the 3rd Century A.D., the Romans learned the unfortunate lesson: "once you're in, you cannot get out."
Judge Frank Nebeker of the District of Columbia Court of Appeals asked whether Rome perceived that it was threatened. Dr. Fears noted that Roman technology was very high for its day making its Empire in the early years safe. He then answered a question about why the Eastern Empire outlasted the Western Empire.

Professor Fears transitioned into how the Founding Fathers thought historically. He pointed out that Thomas Jefferson thought history was the most important subject to study to understand man's nature.

One member of the audience asked about the Founding Fathers views on the separation of church and state. Dr. Fears said they would be surprised by some recent rulings, such as the one prohibiting prayer at the public high school football game. He also stated, however, that the Founding Fathers viewed the Constitution as a living document intended to change as each generation gave meaning to broadly written and general constitutional provisions.

Dr. Fears noted the differences between Roman law and the Common Law: (1) under Roman law, a criminal defendant is presumed guilty, while under the Common Law, the presumption is of innocence; (2) under Roman Law, a confession obtained by torture was considered more reliable than one not coerced, while under the Common Law, torture is assumed to lead to less reliable confessions. The importance of these Common Law ideas is that some of them found their way into the Declaration of Independence and the United States Constitution.

Professor Fears then turned to the self-restraint, constant elections, and openness to change of American leaders. Europeans were sure that George Washington would not step down as President after two terms, but he did. Most around the world in the 19th century would find it strange that in the middle of the Civil War, our country conducted an election and reelected President Lincoln.

In response to a question about what brings about an Empire's end, Dr. Fears said that all power tends to extend until it meets an equal and opposite force. He then discussed the Founders' idea of federalism and separation of power, providing checks and balances. The Federalist Papers show that the Founders knew how imperial reigns end and sought to create governmental structures to address inherent weaknesses.

Dr. Fears closed by discussing the independence of the judiciary as a great American contribution. Any citizen can walk into court to call the government to answer for wrongdoing. While the courts may sometime reach the wrong result (he used the *Dred Scott* case as an example), the people court amend the constitution if necessary.

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Law and Religion: Islamic Law / Women's Rights

by Hilaree A. Casada

At the November 2004 Council of Appellate Lawyers & Appellate Judges Summit, attendees participated in an innovative session entitled *Law and its Relation to Literature, Religion, Science and History*. In one of the breakout sessions, Professor Azizah Y. Al-Hibri of the T.C. Williams School of Law at the University of Richmond shared her insights into Islamic Law and its effect on women's rights.

Professor Al-Hibri's first task was to give the group a basic understanding of the dichotomy between law and religion in Islamic countries. She emphasized that balance permeates everything in Islam, as does an inherent trust of free will. She also explained that "Islamic Law" is at once secular and religious. The Qu'ran provides law that all Muslims must abide by. But state laws have been developed that are intended to codify the Qu'ranic law. Unfortunately, according to Professor Al-Hibri, many of these state laws relating to family law and women's rights do not reflect the teachings of the Qu'ran but are, instead, man-made laws that inject improper patriarchal standards into the laws of Muslim nations.

For example, the Qu'ran teaches that all human beings are inherently equal. According to Professor Al-Hibri, a plain reading of the Qu'ran leads to the conclusion that no man is superior to a woman simply because of his gender. It is her view that Muslim jurists have misinterpreted the Qu'ran in favor of a patriarchal assumption that men are superior to women. These assumptions have led to the oppression of women in many Muslim countries, often as a result of oppressive state laws.

One example discussed by Professor Al-Hibri relates to a woman's financial rights following a divorce. Professor Al-Hibri explained that when Muslims marry, they sign a marital contract. This is not a prenuptial agreement. Rather, it is a short, one-page contract that states that the couple's individual rights are defined by and should be interpreted under Islamic Law. Traditionally, under Islamic Law, women are given a marital gift at the time of marriage. This is a one-time financial payment. Once married, the Muslim woman is under no obligation to support her husband financially and she is allowed to keep her own bank accounts, money, and mind her own financial affairs separate from her husband. At the same time, the husband is still responsible for and obligated to support his wife financially. Upon divorce, the husband must give the wife a second gift "to soothe her."

All-male arbitration panels have begun undermining this law by ruling that the wife's marital gift is all she may take from the marriage and by ruling that the man has no further obligations to his wife or their children. According to Professor Al-Hibri, this has left many Muslim women and their children destitute because social welfare organizations do not exist in Muslim countries to assist these families. This is but one example of men defining the financial rights of Muslim women in contravention of the rights given women under the Qu'ran. Man-made laws have also re-defined the financial rights of Muslim women to own property, maintain separate bank accounts, and the like. The patriarchal overlay of modern Islamic Law also provides sanctuary for men who commit domestic violence. According to Professor Al-Hibri, the effects are far-reaching.

Professor Al-Hibri is the founder and executive director of Karamah: Muslim Women Lawyers for Human Rights. She suggested each participant visit the organization's website.
for additional materials on these issues. Karamah's website is [www.karamah.org](http://www.karamah.org).

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