

Two alternatives have emerged:

- (1) *Some states draw a distinction between hierarchical churches and congregational churches. Courts defer to the decision of the highest authority within hierarchical denominations; and,*
- (2) *Other states resolve these disputes based on neutral (non-theological) principles where possible. Ownership of property is determined based on the contents of documents (deeds, contracts, etc.) just as it would be resolved in non-religious property disputes.*

EACH THEORY RAISES PROBLEMS: Advocates of neutral principles argue that hierarchical deference shows an arbitrary preference for—an establishment of—one side of the dispute and question whether courts can squeeze the growing variety of religious faiths in the United States into hierarchical and congregational categories. Advocates of hierarchical deference argue that if we allow courts to decide church disputes, it will be the start of government interference in all sorts of religious affairs.

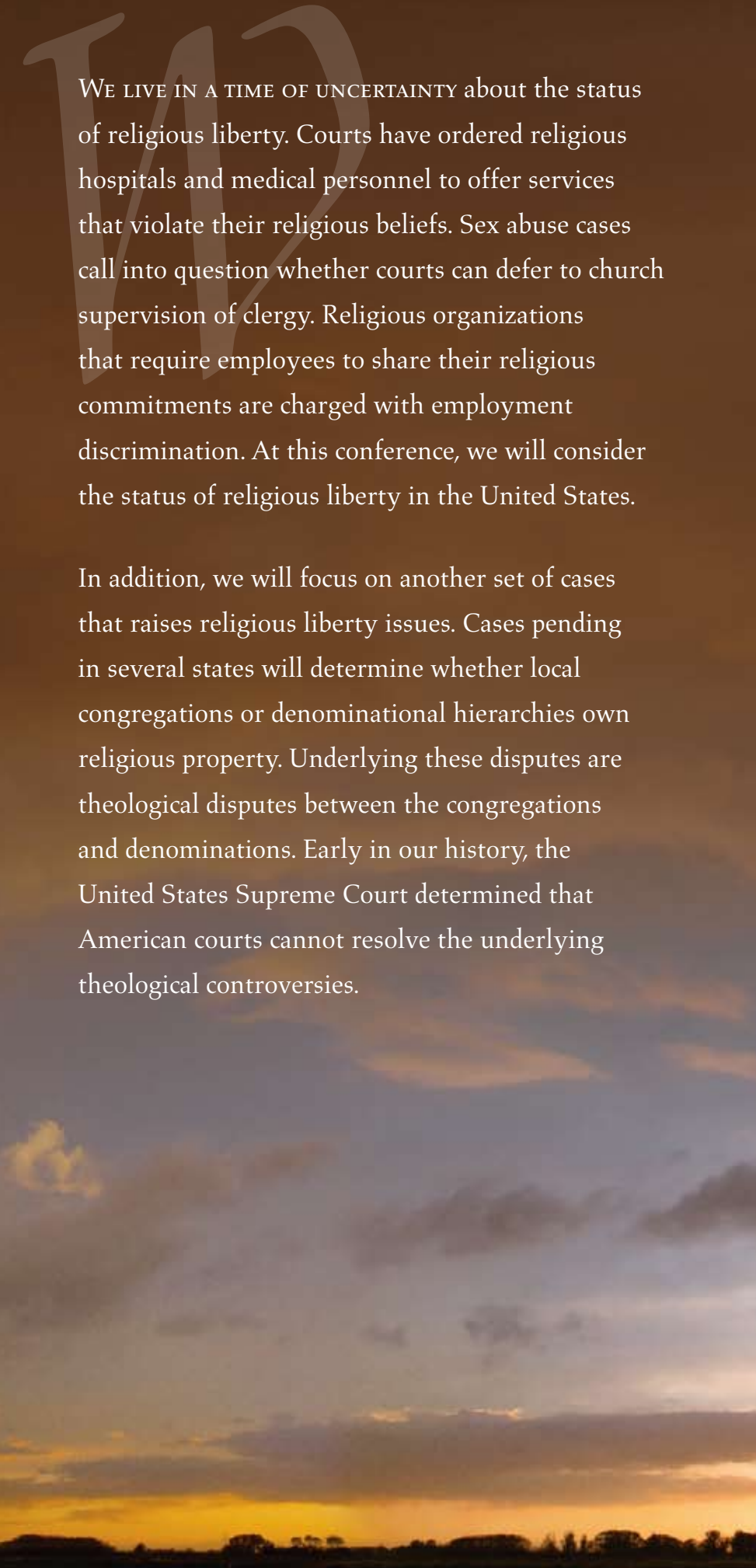
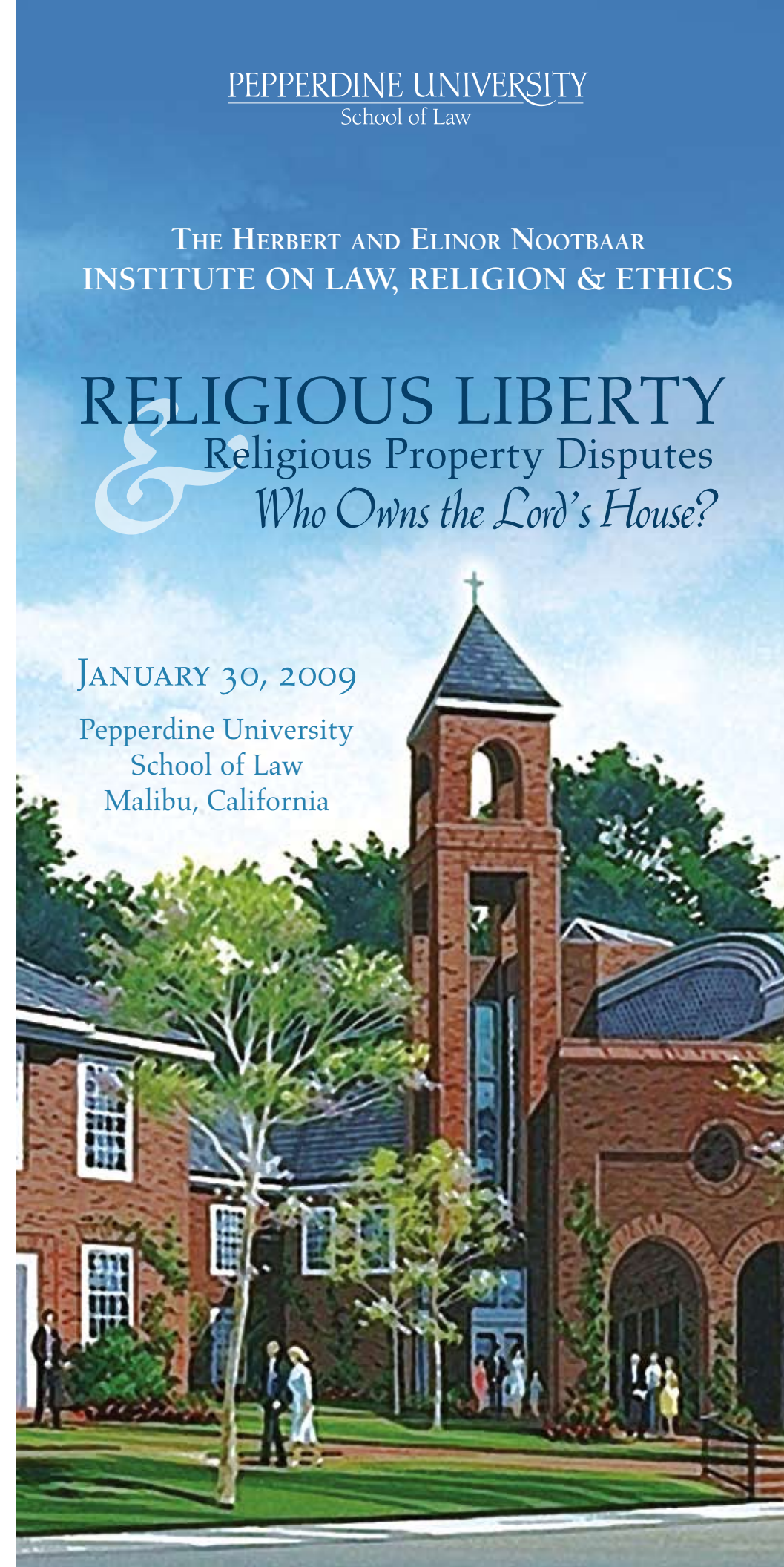
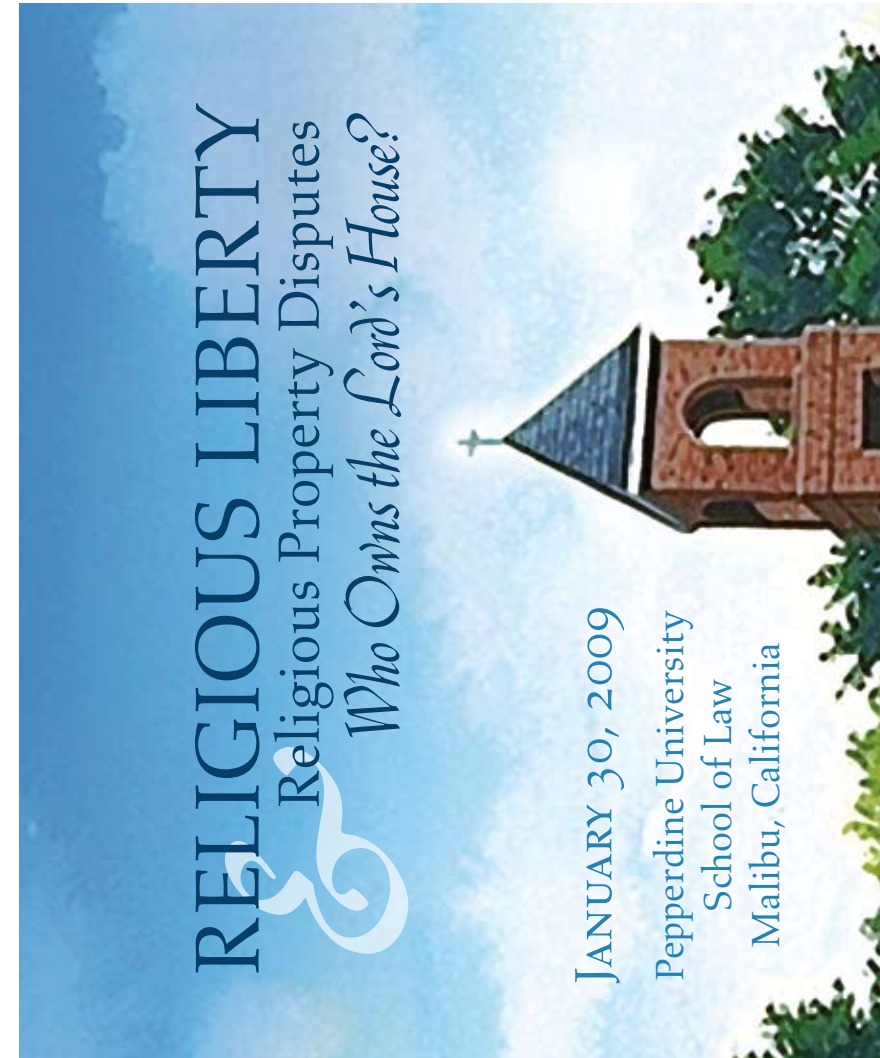
*Join us as we consider recent developments in church/state law and their implications for church property and other disputes.*

**ROBERT F. COCHRAN, JR.**  
*Louis D. Brandeis Professor of Law and  
Director, Herbert and Elinor Nootbaar  
Institute on Law, Religion, and Ethics*



PEPPERDINE UNIVERSITY  
School of Law

Nootbaar Institute  
on Law, Religion, and Ethics  
24255 Pacific Coast Highway  
Malibu, California 90263



WE LIVE IN A TIME OF UNCERTAINTY about the status of religious liberty. Courts have ordered religious hospitals and medical personnel to offer services that violate their religious beliefs. Sex abuse cases call into question whether courts can defer to church supervision of clergy. Religious organizations that require employees to share their religious commitments are charged with employment discrimination. At this conference, we will consider the status of religious liberty in the United States.

In addition, we will focus on another set of cases that raises religious liberty issues. Cases pending in several states will determine whether local congregations or denominational hierarchies own religious property. Underlying these disputes are theological disputes between the congregations and denominations. Early in our history, the United States Supreme Court determined that American courts cannot resolve the underlying theological controversies.

## Keynote Speaker

**KENT GREENAWALT** is University Professor at Columbia Law School. He is the author of *Religion and the Constitution*, Vols. 1 and 2 (Princeton University Press; 2006, 2008), as well as "Hands Off! Civil Court Involvement in Conflicts Over Religious Property," 98 *Colum. L. Rev.* 1843 (1998). He is a graduate of Columbia Law School and served as the law clerk to U.S. Supreme Court Justice John M. Harlan.

## Panelists and Commentators

**ROBERT F. COCHRAN, JR.**, is the Louis D. Brandeis Professor of Law and director of the Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics at Pepperdine. His books include *Faith and Law: How Religious Traditions from Calvinism to Islam View American Law* (NYU Press, 2008) and *Christian Perspectives on Legal Thought* (Yale Univ. Press, 2001) (with Michael McConnell and Angela Carmella).

**RICHARD W. GARNETT** is professor of law at Notre Dame Law School and served as a visiting professor in 2008 at the University of Chicago. He teaches and writes in the areas of law and religion and the First Amendment. He is a graduate of Yale Law School and clerked for U.S. Court of Appeals for the Eight Circuit Judge Richard S. Arnold and U.S. Supreme Court Chief Justice William H. Rehnquist.

**LESLIE GRIFFIN** holds the Larry and Joanne Doherty Chair at the University of Houston Law Center and is the author of *Law and Religion: Cases and Materials* (Foundation Press, 2006). She holds a law degree from Stanford and a Ph.D. in religious studies from Yale and clerked for Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit.

**STEFFEN N. JOHNSON** is a partner with Winston & Strawn, Washington, D.C., and serves as legal counsel in the Virginia church property cases for The Falls Church and Truro Anglican Church, local congregations that have withdrawn from the Episcopal Church. He is a law graduate of the University of Minnesota and clerked for Judge Donald P. Lay on the U.S. Court of Appeals for the Eighth Circuit.

**KURT T. LASH** is the James P. Bradley Professor of Constitutional Law at Loyola Law School Los Angeles and is a graduate of Yale Law School. He is the author of *The Lost History of the Ninth Amendment* (Oxford University Press, forthcoming). His constitutional law articles have appeared in the *Stanford, Virginia, Northwestern, and Texas Law Reviews*.

**JAMES H. MILLER** served in the Presbyterian Church (U.S.A.) as a pastor from 1961 to 1975 and as executive presbyter of the Albany Presbytery from 1976 to 1996 during a period when that presbytery faced property disputes with withdrawing congregations. He holds an M.Div. from Union Theological Seminary in New York City, New York.

**LYNN MOYER** is the Chancellor and a Lay Eucharistic Minister of the All Saints Anglican Church in Long Beach, California. It is one of the congregations that has withdrawn from The Episcopal Church. She has been a member of that church for 30 years and has served on the vestry at various times.

**JEREMY B. ROSEN** is a partner with Horvitz and Levy, Los Angeles, California, and serves as legal counsel for the Episcopal Diocese of Los Angeles in the California church property litigation. He is a magna cum laude graduate of Duke Law School and clerked for Wm. Matthew Byrne, Jr., U.S. District Court, Central District of California.

**SHELLEY ROSS SAXER** is professor of law and associate academic dean at Pepperdine University School of Law. Her law degree is from UCLA and she clerked for Wm. Matthew Byrne, Jr. of the U.S. District Court, Central District of California. She writes in the area of land use and the First Amendment.

**KENNETH W. STARR**, Duane and Kelly Roberts Dean and professor of law, Pepperdine University School of Law, has argued 25 cases before the U.S. Supreme Court, including some of its major religious liberty cases. He is the author of *First Among Equals: The Supreme Court in American Life* (Warner Books, 2002). He served as solicitor general, D.C. Circuit Court Judge, and law clerk to U.S. Supreme Court Chief Justice Warren Burger.

**ROBERT W. TUTTLE** is the Sherry Kirschner Berz Professor of Law and Religion at The George Washington University (GW). He holds a law degree from GW, a master's degree from the Lutheran School of Theology at Chicago, and a Ph.D. in religious ethics from the University of Virginia.

## Schedule

7:30 a.m. Registration, continental breakfast

8:30 a.m. Welcome and introduction  
**Dean Kenneth W. Starr**

8:45 a.m. PANEL ONE: *The State of Religious Liberty in the United States*  
**Richard W. Garnett, Kurt T. Lash, and Leslie Griffin**

10:30 a.m. Keynote Speaker  
**Kent Greenawalt**

11:30 a.m. PANEL TWO: *The Religious Property Cases: The View from the Ground; Challenges to Denominations, Challenges to Congregations*  
**James H. Miller and Lynn Moyer**

12:30 p.m. Lunch

2 p.m. PANEL THREE: *Religious Property Disputes: Hierarchical Deference or Neutral Principles?*  
**Jeremy B. Rosen, Steffen N. Johnson, and Robert F. Cochran, Jr.**

3:30 p.m. PANEL FOUR: *Application of Neutral Principles in Church Property Disputes*  
**Robert W. Tuttle and Shelley Ross Saxer**



## Location and Accommodations

**THE CONFERENCE WILL BE HELD** at Pepperdine University School of Law, Malibu, California. *The weather in January is typically sunny and pleasant*, in the mid-70s during the day and the 50s at night. The campus is along the coast, 45 minutes north of Los Angeles International Airport (LAX). For links to hotels in the area, visit: [http://law.pepperdine.edu/welcome/visitor\\_information/hotels.html](http://law.pepperdine.edu/welcome/visitor_information/hotels.html).

**A NOTE TO OUR JEWISH COLLEAGUES** – The School of Law is located one-and-a-half miles from an Orthodox worship center and hotel accommodations (Casa Malibu). *Kosher meals will be available at all conference events.* To request Kosher meals or raise additional questions, contact Rabbi and Pepperdine law professor Sam Levine at (310) 506-6892 or [samuel.levine@pepperdine.edu](mailto:samuel.levine@pepperdine.edu).

## MCLE Credit

This conference has been approved by the State Bar of California for six hours of Minimum Continuing Legal Education (MCLE) credit. Pepperdine University School of Law certifies that *this activity conforms to the standards* for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

**ON THE COVER** is a rendering of The Falls Church in Falls Church, Virginia, currently the subject of litigation between the Episcopalian Church and the local congregation. The historic sanctuary, completed in 1769, is on the left.

## Registration

You may register online at <http://law.pepperdine.edu/nootbaar> or use the form below.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

### CONFERENCE FEES:

General admission (includes continental breakfast and lunch): \$150.00  
Student admission (no meals, but you must register): FREE

### PLEASE CHECK ALL THAT APPLY:

Please provide:

Vegetarian meals

Expected attendance:

All Day  Morning Sessions Only  Afternoon Sessions Only

### PAYMENT BY:

VISA  MasterCard

Enclosed check (payable to Pepperdine University)

Name (as it appears on card): \_\_\_\_\_

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Signature: \_\_\_\_\_

### RETURN THIS FORM NO LATER THAN JANUARY 15, 2009 TO:

Audrey J. Owens, Program Manager  
Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics  
Pepperdine University School of Law  
Malibu, CA 90263  
FAX: 310.506.7729  
Telephone: 310.506.7635  
E-mail: [robert.cochran@pepperdine.edu](mailto:robert.cochran@pepperdine.edu) or [audrey.owens@pepperdine.edu](mailto:audrey.owens@pepperdine.edu)