

The Magazine of the Federalist Society

# The Federalist Paper

Summer 2015  
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SUMMER  
• ISSUE •

**INSIDE:**  
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Convention Recap**  
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Practice Groups &  
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# THE FEDERALIST No. 78



“The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.”

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## LETTER FROM THE EDITOR

Dear Friend of the Society,

We are pleased to bring you the fall issue of *The Federalist Paper*. Inside, as always, we review the many programs and publications the Federalist Society has sponsored through its various divisions and special projects over the past months.

The Student Division finished another stellar year of events at nearly every law school across the country. The highlight of the first half of 2015 was our Annual Student Symposium at the University of Chicago Law School in February.

We are also pleased to bring you a recap of our National Lawyers Convention from last November.

Also included in this issue are full updates from the many activities of our Lawyers Chapters, State Courts Project, International Law & Sovereignty Project.

We are looking forward to our next National Lawyers Convention in Washington, DC on November 12-14.

Stay tuned on [fedsoc.org](http://fedsoc.org) and [FedSocBlog.com](http://FedSocBlog.com) to stay updated on our Teleforum Conference Calls, SCOTUScasts, Practice Group Podcasts, newest *Engage* articles, and white papers.

Finally, in May the Federalist Society's offices in Washington, D.C. moved to a new address: 1776 I St. NW, Suite 300, Washington, D.C. 20006.

As always, we invite and encourage friends and members to send in comments and suggestions to [Katie McClendon@fed-soc.org](mailto:Katie.McClendon@fed-soc.org)—and we look forward to hearing from you!

# Features

Summer 2015



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# Student Division Report

By Caroline Moore

Assistant Director, Student Division

Student chapters held over 1100 events during the 2014-2015 academic year. One of the main considerations for our chapters is outreach and attendance numbers. So, we anticipated the number of events would drop a little this year. Several student chapters had events with 150 or more attendees, those chapters were as follows: **Northwestern, Missouri-Columbia, Harvard, California-Berkeley, Barry, California-UCLA, Brigham Young, Michigan, Nebraska, George Mason, Campbell, and Yale.** Our chapters worked tirelessly to increase attendance for all of their events by bringing in engaging speakers, using innovative social media advertising, and providing students with intelligent discussions of timely issues that face our courts.

As in past years, many student chapters kicked off their school year with panels forecasting decisions on cases for the upcoming Supreme Court term. Chapters held 30 Supreme Court Reviews and Previews in the fall. Three of the cases that are of particular interest to our chapters are as follows. *Holt v. Hobbs* looked at whether or not a prisoner can grow a beard behind bars to comply with his religious obligation. Thirty-nine states in addition to Arkansas allow inmates to grow beards. Another intriguing case this term was *Yates v. United States*. *Yates* centers around a fisherman who was cited for catching oversized red grouper; the case explores the definition of “tangible objects.” The court had to decide if fish were considered tangible objects and decide if Mr. Yates’ act of throwing the oversized fish overboard was a tactic to derail the investigation. Last but not least, *King v. Burwell* had to do with Obamacare

and specifically insurance subsidies through the federal exchanges. One of the highest attended Supreme Court Previews was at **California-Berkeley.** Profs. John Yoo and Jesse Choper, both of California-Berkeley, debated for the chapter’s “Supreme Court Review,” which had 150 attendees. **Southwestern** once again hosted a successful “Supreme Court Preview” panel with Profs. Gowri Ramachandran, Jonathan Miller, Roam Hoyos, and Amy Peikoff, all of Southwestern. The 90 attendees enjoyed hearing from this panel for the annual panel that touched on upcoming Supreme Court cases. **Southern California**

held “Supreme Court Preview” with Miguel Estrada of Gibson Dunn, Benjamin Howich of Munger Tolles & Olson LLP, and Prof. Rebecca Brown from Southern California. **Ohio State** held a Supreme Court preview with a panel of Ohio



Shaun McCutcheon with the University of Kentucky chapter after an event on campaign finance and Mr. McCutcheon’s victory at the U.S. Supreme Court.

State Professors. The panelists included: Dean Alan Micheals, Prof. Rick Simmons, Prof. Guy Rub, and Prof. Martha Chamallas. They had over 115 attendees at this event. Chapters at **Columbia, William & Mary, Notre Dame, Roger Williams, Chicago, and Michigan State** held Supreme Court previews with over 80 attendees. These are some of our highest attended events of the year because they are a great way for our chapters to kick off their semesters and attract a wide range of attendees.

Campaign finance was a prevalent topic and Shaun McCutcheon, of *McCutcheon v. FEC*, spoke to our chapters on several occasions. This provided students with insight into how a case makes it to the Supreme Court. The average attendance for these events was 69. **Kentucky** hosted Shaun McCutcheon and commenta-

tor Prof. Joshua Douglas of Kentucky for a discussion on “*McCutcheon v. FEC: Campaign Finance & the 2016 Elections.*” Mr. McCutcheon discussed the case he was directly involved in and his political activism. In his remarks, he stressed the importance of eliminating limitations to individual campaign spending to protect the First Amendment. Prof. Douglas drew from his experience as an election law scholar to explain concepts such as public financing of campaigns. **Michigan** hosted “Campaign Finance after *McCutcheon*” with Prof. Brad Smith of West Virginia for this event. The chapter continued its streak of strong attendance for this event, which drew a crowd of 90. Prof. Smith explained what *McCutcheon*’s role is in the ever-changing world of campaign finance. When the court struck down overall individual limits it was a crucial victory for the First Amendment. But, this case also addresses the concern of whether higher contribution limits lead to more influence or power for the individuals donating. **Houston, California-UCLA, Ohio State, Washington-St. Louis, and Colorado** all held campaign finance events last fall with 55 or more attendees.

Immigration is a topic that seems to continuously be both in the news and on our student calendar, particularly because many conservatives differ on the issue and the impact it will have. **Nebraska** hosted Prof. Michael Scaperlanda of Oklahoma Law and Prof. Anna Shavers of Nebraska for “Executive Amnesty.” The chapter chose to use Prof. Shavers as the commentator for this event because she is one of 134 law professors who signed a letter addressed to the White House stating that the executive actions on immigration were constitutional. The event drew a crowd of 118. **Illinois** held an event on “Immigration Reform” with Stuart Anderson from the National Foundation for American Policy. The chapter enjoyed hearing his unique insight into immigration and what he thinks are the largest barriers for the U.S. to over-

come. Dr. James Carafano from the Heritage Foundation debated Raed Gonzalez from Gonzalez Olivieri LLC at **South Texas**. The event was titled, “Immigration Discussion: Unaccompanied Minors & the Administration’s Stance on Addressing the Issue after the Elections.” There were 70 attendees at this event. Doug Bandow from the Cato Institute and attorney Wayne Golding participated in a debate on immigration at **Florida A&M** this fall. The debate had the chapter’s highest attendance of the year with 75 attendees. The average attendance for events on immigration is 53.

Students continue to hold a significant number of events honoring Judge Robert Bork’s legacy by addressing topics such as Originalism vs. The Living Constitution, the role of judges, and rule of law. Chapter events on these topics are the cornerstone of our organization and continue to be of value to student chapters. The average attendance for these events is 75. Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit participated in an event alongside Prof. Eugene Volokh of UCLA for an event “A Conversation with a Judge.” The event was **California-UCLA**’s first event of the fall semester and drew a wide audience of both Federalist Society and non-Federalist Society members. **Harvard** held “*Zivotofsky v. Kerry*” which included debate opponents Solicitor General Jonathan Mitchell from the



*Members of the Yale chapter after recreational firearms outing that coincided with the chapter’s event on the Second Amendment.*

office of the Attorney General of Texas versus Prof. Jack Goldsmith from Harvard. **Virginia** held “The Subjects of the Constitution: A New Theory of Judicial Review” with Prof. Nicholas Quinn Rosenkranz of Georgetown and Prof. Toby Heytens of Virginia as the commenting professor. **Yale** held “Interpretive Methodology,” which was a panel including Judge Richard Posner from U.S. Court of Appeals for the Seventh Circuit, Prof. John McGinnis from Northwestern, and Prof. Mitchell Berman from Penn. **Notre Dame** also held an event with Judge

Alex Kozinski, as well as Prof. Randy Kozel from Notre Dame titled, “A Conversation with a Judge.” This event allowed Judge Alex Kozinski to be candid about his career path and give insight into life on the bench. All of the above-mentioned events had over 90 attendees.

Our students continue to be interested in events dealing with security and privacy. The average attendance for these events is 64. In February, **Texas Tech** hosted Doug Bandow from the Cato Institute for “What’s a Bankrupt Republic to do When the World is Aflame?” During the event, Mr. Bandow focused most of his attention on current American foreign policy. He examined American alliances overseas, as well as America’s continued financing of European and South Korean defense. Mr. Bandow then explained his vision for American foreign policy. The chapter president explained that Mr. Bandow’s vision for foreign policy “stressed the need for a flexible response to non-state actors in an ever-changing world.” **Penn** held “Technology, Security, and the Future of Fourth Amendment Jurisprudence” with Prof. Orin Kerr of George Washington debating Prof. Christopher Yoo of Penn. The chapter had 95 attendees for this event, which closely examined the lawfulness of searches and seizures. **Columbia** held a

debate between Judge Joseph Bianco of the United States District Court for the Eastern District of New York and Prof. Matthew Waxman of Columbia for an event “The Constitution and National Security in the Post-9/11 World.” **Vir-**

**ginia** held “Responding to the Sony Hacks: Cyberattacks, National Security, and Transnational Crime,” with Prof. Greg McNeal of Pepperdine and commentator Prof. John Setear of Virginia. This event brought together a crowd of 105 to weigh in on the future of technology and cyberattacks. **Temple** held an event with Prof. Orin Kerr of George Washington and Prof. Lauren Ourziel of Temple on “The Digital Fourth Amendment: How Computers are Changing Search and Seizure Law.” According to the

chapter, Prof. Kerr provided background on the Fourth Amendment and the role prohibition played in the explosion of federal law enforcement. He discussed *Riley v. California* and explained how the *Robinson* rule affects phones in pockets. The conversation between Profs. Kerr and Ourziel then turned to technology and wiretapping and the discussion of whether or not the courts should wait until technology stabilizes before they make a decision on it. Prof. Kerr concluded the event by saying technological change doesn’t allow perfect equilibrium adjustment. Technology provides options and the Court gets to pick what comes closest in the net result.

Many student chapters held Wealth of States events. Events titled Wealth of States give insight about policies, taxation, and regulations that differ from state to state and contribute to the economic growth of one state over another. The wealth of a state is dependent on many factors including taxes, energy, worker freedom, and regulatory policies. This grant allows student chapters to hone in on a particular state policy and learn how it is impacting those who live in the state. Especially timely topics have to do with ride sharing. Tim Carney from *The Washington Examiner* and commentator Prof. Brett McDonnell

from Minnesota participated in “Innovation vs. Regulation: What’s Driving the Debate about Uber” at **Minnesota**. This event looked at which particular states and even towns are strongly opposed to having ride sharing options like Uber and Lyft

available to their constituents. It examined the question of whether or not to regulate such innovative technology, taking into account that regulation of new technology stunts its growth. **Southern Methodist** held “Tax Policy by the States,” a panel with Stephen Moore from The Heritage Foundation, and Profs. David DePianto and Gregory Crespi, both from Southern Methodist. The event looked at how tax policies from state to state either encourage or dissuade people from moving to a state.



*The Toledo Law Chapter hosts a Supreme Court Preview Panel.*

**Florida** hosted Representative Dana Young from the Florida House of Representatives and commentator Meg The Losen from First Magnitude Brewing Company for “Small Business Discrimination.” Drawing on the interest in craft and micro brewing among young people, their event brought a crowd of 105 together, many of whom had never been to one of their events. **Northern Ohio, South Carolina, Missouri-Columbia, Kansas, Arkansas-Little Rock, Florida, Elon, Appalachian, Missouri-Kansas City, George Mason, Case Western, Chicago, Alabama, Michigan, Northwestern, Columbia, California-UCLA, Chicago-Kent, Minnesota, Hawaii, Nebraska, Virginia,** and **Temple** all had events with over 60 attendees.

Many of our chapters have already held other highly attended events this year. **Pepperdine** hosted Hon. Ken Starr of Baylor and commentator Hon. Deanell Reece Tacha from Pepperdine for “First Among Equals: The Supreme Court in American Life.” This was one of the chapter’s best events of the year-with 169 attendees, including lawyers from Malibu and Los Angeles. **Florida** hosted Sandra Froman of Law and Mediation offices and Joshua Roe, the President of UF Students for Concealed Carry. The event “No Guns Allowed: Are College Campuses, Shopping Malls, & Movie Theaters Any Safer When Guns Are Banned?”. John Allison, President of the Cato Institute, participated in an event at **Southwestern**, which drew 80 attendees. The event “What it Means to be a Business Leader” touched on many of the leadership characteristics he discusses in his recent book. Dean Prager introduced Mr. Allison and Prof. Amy Peikoff moderated the event. **Nebraska** hosted Mike Adams from *TownHall* for the event “Censorship: You Can’t Say That...Oh, Yes I Can!” He discussed the constitutionality of university censorship of both faculty and student speech. North Carolina hosted Dr. Ghate for an event on Obamacare. Dr. Ghate spoke at length about the case and concluded that the Supreme Court was placed in a no-win situation. He discussed the philosophical

roots of how America got here, with special emphasis on the intent of the Founders, the philosophy of individual rights and limited government, and the meaning of the First Amendment.

It was encouraging to have 197 chapter members volunteer and attend the National Lawyers Convention in November. We appreciate the students who acted as volunteers for the weekend. Our volunteers had the chance to hear Justice Antonin Scalia and former U.S Attorney General Michael Mukasey. Some students were even able to attend the Annual Dinner, making the most of the opportunity to re-connect with students from the

Student Leadership Conference and hear remarks from Justice Samuel Alito. Other volunteers attended the annual Barbara K. Olson Memorial Lecture and heard from John Allison, President of Cato. We always encourage students to attend the National Lawyers Convention to further expose them to speakers, faculty, and other lawyers who are focused on keeping the momentum ongoing in the conservative movement. Our goal is to have students leave the conference empowered and ready to challenge the norms on their campuses.

Our Student Symposium was held on February 20-21 at the **University of Chicago** and we had just over 500 students, lawyers, and faculty in attendance. The theme of the Student Symposium was “Law and Innovation.” For full coverage of the Symposium, please see the feature on pages 16-19.



*(left to right) Brooklyn Law School Chapter President Michael Zebrowski; Prof. Richard Epstein, NYU Law; and Brooklyn Law School Chapter Vice President Steven Ballew after an event*

# Faculty Division Report

By Anthony Deardurff  
Deputy Director, Faculty Division

The Faculty Division looks back on a season brimming with productive programming. To list just a few highlights: Once again, the Annual Faculty Conference drew strong attendance. The Division held two successful colloquia. The Division's programs at the National Lawyers Convention (including a new panel for non-faculty members on different kinds of careers in law teaching) and at the Student Symposium were also quite successful. Finally, the Division, with the help of the Practice Groups, continues to post podcasts on notable arguments and decisions of the Supreme Court's October 2014 Term.

The 17th Annual Faculty Conference, held on January 3-4 in Washington, D.C. in conjunction with the annual meeting of the Association of American Law Schools (AALS), was one of our best attended Faculty Conferences yet, drawing approximately 160 law professors, interested practitioners, non-profit staff, and aspiring academics. An additional 600 people watched our first-ever livestream of the opening panel and the debate. The conference featured panels comprised of distinguished senior and junior scholars including "The Administrative State: Within the Bounds of Law?" which discussed the legality of the current administrative state and "The Executive Power to Not Enforce the Law?" in which panelists debated the scope of executive authority. Additional panels were dedicated to presentations by winners of the Division's Young Legal Scholars Paper Competition and presentations of faculty works in progress. The signature luncheon debate featured an informative and timely exchange between Prof. Jonathan Adler (Case Western Reserve University School of Law) and Prof. Nick Bagley (University of Michigan Law School) on whether the Affordable Care Act authorizes subsidies for individuals purchasing health insurance through federal exchanges. The conference included an additional debate entitled "The Private Attorney General: Good or Bad" in which participants discussed whether the use of private attorneys general in our legal system is ultimately helpful or harmful. Video of the conference events is available at <http://www.fed-soc.org/events/detail/17th-annual-faculty-conference>

Our *Law and Liberty* series of colloquia, co-spon-

sored by the Liberty Fund, continues to be popular among faculty, practitioners and academically inclined students. After reviewing a common set of background readings, 15-18 participants gather for a day and a half of rigorous discussion of enduring legal questions. On January 23-24, participants gathered for "International Law, Foreign Law, and the United States Constitution" in Las Vegas, Nevada, where participants engaged international and foreign law from the perspective of American Constitutional law. On February 27-28, "Federalism at the Crossroads" took place in Marina del Rey, California. Using Michael S. Greve's recent book *The Upside-Down Constitution* as a focal point, participants explored various topics relating to American federalism, including Greve's proposal that the important question in this discussion is not "how much federalism?" but rather "what type of federalism?"

Numerous faculty joined us for our customary *Faculty Breakfast* held each year during the National Lawyers Convention. As usual, faculty and aspiring academics gathered to enjoy fellowship, discuss relevant programming developments, and assess important academic trends.

In addition, for the first time, the Division held a roundtable luncheon at the Convention entitled "*Teaching Law: Tenure-track, Adjunct, and Clinical Pathways.*" The program, which drew a standing room-only-crowd of over 60 attendees, was directed toward lawyers and law students interested in exploring possible teaching options. A panel of tenured professors, clinical law professors, a former acting dean, and an adjunct professor addressed some of the benefits and challenges of these different approaches and pathways to teaching law. The Division also hosted a panel on this topic at the Student Symposium.

The Division also continues to post new faculty and practitioner "SCOTUScasts" on recently argued and/or decided Supreme Court cases, with podcasts on about many cases decided this term. These may be found at <http://www.fed-soc.org/multimedia/page/scotuscast>.



# National Lawyers Convention

On November 13-15, 2014, the Federalist Society hosted its 32nd annual National Lawyers Convention at the Mayflower Hotel in Washington, DC with over 1,000 people in attendance. This year's topic, "Millennials, Equity, and the Rule of Law," sparked a number of animated discussions about the challenges facing the youth and the possible legislative solutions. The Convention was teeming with spirited debates, professional camaraderie, and the requisite dose of judicial wisdom. The annual dinner featured an interview of U.S. Supreme Court Justice Samuel Alito, conducted by his former law clerk, Adam Ciongoli.

The Convention opened with a speech by U.S. Supreme Court Justice Antonin Scalia on the origins and continuing legal influence of Magna Carta. This year's Barbara K. Olsen Memorial Lecture featured John Allison, president and CEO of the Cato Institute. The Convention also featured a lively annual Rosenkranz Debate between former Attorney General Michael Mukasey and former ACLU president Nadine Strossen, who addressed the question of whether the indiscriminate collection of American phone records violated the Fourth Amendment. Other key speakers included U.S. Senator Orrin G. Hatch and former Hewlett-Packard CEO Carly Fiorina.

As in years past, the Convention served as an ideal forum for discussions among Practice Group chairmen, meetings of Lawyers Chapter and Faculty Division leaders, and breakfasts for law school alumni.

The Convention's four showcase panels addressed various situations young people currently face. The first panel discussed youth, employment, and the law. It



*(above) Justice Samuel A. Alito, Jr. (left) being interviewed during the Annual Dinner by his former law clerk Adam G. Ciongoli (right), who is now Executive Vice President & General Counsel at Lincoln Financial Group. (below) The Seventh Annual Rosenkranz Debate & Luncheon featured former U.S. Attorney General Michael B. Mukasey (left) against former ACLU President Prof. Nadine Strossen (right) (New York Law School). The debate was moderated by Prof. Nicholas Quinn Rosenkranz (center) from Georgetown University Law Center.*



featured Prof. Richard A. Epstein, Hon. Chai Rachel Feldblum, Hon. Gail Heriot, and Prof. J. Hoult "Rip" Verkerke, and was moderated by Fifth Circuit Judge Jennifer W. Elrod. The second showcase panel, which dealt with intergenerational equity and social security, Medicare, Obamacare, and pensions, was moderated by Seventh Circuit Judge Frank H. Easterbrook and featured Hon. Chris DeMuth, Prof. John O. McGinnis, and Prof. David A. Weisbach. The speakers on the third showcase panel—Prof. Paul F. Campos, Ms. Anne D. Neal, Dean Daniel Polsby, and Prof. Richard Kent Vedder, moderated by Prof. Thomas D. Morgan—delved into higher education and

whether it really benefits the students. The fourth and final panel examined the future of the American dream. Ms. Karlyn Bowman moderated the discussion between Hon. Rachel L. Brand, Hon. Lanny J. Davis, Prof. Neal K. Katyal, and Dr. Charles A. Murray.

# National Lawyers Conventon



# Millennials, Equity, & the Rule of Law



# Practice Groups Update

*By Will Courtney, Assistant Director of Practice Groups,  
Juli Nix, Director of Conferences*

**T**he **Administrative Law and Regulation Practice Group** organized a panel at the National Lawyers Convention titled “Without Standing, Are We All Sitting Ducks?” Professor Jonathan H. Adler, Professor Amanda Cohen Leiter, Robert N. Weiner, and Patrick Wyrick discussed the history, development and current status of standing doctrine in regulatory litigation, with particular focus on the extent to which standing and related justiciability requirements have come to serve as a shield against meaningful judicial review of agency actions. The panel was moderated by the Hon. A Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit.

The **Civil Rights Practice Group** sponsored a wide-ranging panel at the National Lawyers Convention taking on the controversial topic of “Sexual Assault on Campus,” covering everything from the facts on the ground to the due process implications of university responses. The panel was moderated by the Hon. Diane S. Sykes of the U.S. Court of Appeals for the Seventh Circuit and featured Heather Mac Donald, Seth Galanter, Lara S. Kaufmann, and Greg Lukianoff. Another highlight came when the practice group hosted former U.S. Attorney General Hon. Edwin Meese III to discuss Voter ID Laws on a Teleforum conference call.

The **Corporations, Securities, and Antitrust Practice Group** hosted a lively debate with its panel at the National Lawyers Convention. For thirty years, the economic analysis of corporate law has been based on the assumption that shareholder value is a reliable proxy

for social welfare. A distinguished group of speakers argued whether shareholder value can still be reliably equated with social welfare or if the current incentive structure facing large institutional investors encourages the misallocation of resources and a net social loss. The panel, titled “The Short-Termism Debate” was composed of Professor Lucian A. Bebchuk, Professor Jonathan R. Macey, Professor Robert T. Miller, and Steven A. Rosenblum, and was moderated by former Chief Justice of the Delaware Supreme Court Hon. E. Norman Veasey.

Despite its title, the **Criminal Law and Procedure Practice Group’s** panel at the National Lawyers Convention, “Criminal Sentencing Reform: A Conversation among Conservatives,” was among the most contentious offerings at the convention. The Hon. William H. Pryor, Jr. of the U.S. Court of Appeals for the Eleventh Circuit moderated, with Marc A. Levin, John G. Malcolm, the Hon. Michael B. Mukasey, and Prof. William G. Otis speaking. The practice group also hosted a panel at the National



*Hon. David Weil, Administrator, Wage & Hour Division, U.S. Department of Labor, & Diana Furchtgott-Roth, Senior Fellow at the Manhattan Institute and former chief economist at the U.S. Department of Labor during the Labor & Employment Law Practice Group’s “Minimum Wage” at the National Lawyers Convention.*

Press Club on December 15 titled “The Criminalization of Politics.” The panel of former high-level Justice Department attorneys discussed the recent use of criminal law to pursue public officials and political activity from Bob McDonnell to John Edwards. John G. Malcolm moderated the panel, which was made up of Todd P. Graves, Edward T. Kang, and John C. Richter.

The **Environmental Law and Property Rights Practice Group** put together a panel at the National Lawyers Convention to take an in-depth look at the

Environmental Protection Agency’s Clean Power Plan, titled “Do the EPA’s CO<sub>2</sub> Rules Go Too Far?” The Hon. Frank H. Easterbrook of the U.S. Court of Appeals for the Seventh Circuit moderated the panel, which was made up of Paul Bailey, Elbert Lin, Professor Robert Percival, and Robert M. Sussman. The practice group also hosted a number of Teleforum programs covering key developments in environmental litigation. Theodore Hadzi-Antich offered an update following oral arguments in the D.C. Circuit Court of Appeals in a case to determine the remedy for an alleged violation of administrative procedure in the EPA’s emissions rules for cars and trucks; former Nebraska Deputy Attorney General Katie Spohn joined Tyler Ward to discuss the Nebraska Supreme Court’s ruling in a critical case regarding the Keystone XL Pipeline; and Susan Combs, Professor Justin Pidot and William Yeatman discussed the effects of sue-and-settle litigation under the Endangered Species Act.

The **Financial Services and E-Commerce Practice Group** took a comprehensive look at the effect of government policies on the efficient allocation of credit in the U.S. economy with its panel at the National Lawyers Convention, “Credit to Cronies: Government’s Heavy—If Hidden—Hand.” Formed SEC Commissioner Paul Atkins moderated the panel of Edward J. DeMarco, Bert Ely, and Dr. Paul H. Kupiec. The

practice group has continued to have great success with its monthly Consumer Financial Protection Bureau Update Teleforum calls, and hosted a fascinating two-part series on the FDIC’s newly proposed “Single Point of Entry” strategy for resolving large failing banks. Dr. Paul H. Kupiec and Peter J. Wallison presented a paper critical of the proposal on a January 22 call, and Randall Guynn, Professor David Skeel, and James Wigand offered their rebuttal on a February 18 program.

The question of presidential power was discussed in a Teleforum hosted by the **Federalism & Separation of**

**Powers Practice Group** in early December. Our discussion, “Immigration: The Limits of Executive Authority” addressed the specifics of the President’s recent actions on immigration, the legality of those actions, and if the President exceeded his constitutional authority to act. Professors John S. Baker, Jr., John C. Eastman, John C. Yoo and Margaret D. Stock discussed this timely issue and fielded questions from our call in audience.

On March 4, 2015 the Supreme Court heard oral arguments in *King v. Burwell*, which focuses on whether the Internal Revenue Service may permissibly promulgate regulations to extend tax-credit subsidies to coverage purchased through exchanges established by the federal government under Section 1321 of the Patient Protection and Affordable Care Act. The Federalism & Separation of Powers Practice Group hosted a panel discussion at the National Press Club prior to the oral argument to discuss the case. The panel featured Prof. Jonathan H. Adler, Simon Lazarus, Carrie Severino, Robert N. Wein-

er, and was moderated by The Washington Post reporter Robert Barnes.

The Federalism & Separation of Powers Practice Group hosted a Teleforum with former Senator James Buckley discussing his recent book, *Saving Congress from Itself: Emancipating the States and Empowering Their People*. Both in the book and on the call, Senator Buckley eloquently contends that our federal system of government has been systematically under-

mined by the practice of Congress intruding on matters the Constitution reserves to the States. While Senator Buckley recognizes the inevitability of competition between state and federal politicians to be seen as solving important problems for constituents, he contends that without the federal judiciary keeping federal lawmakers within constitutional bounds, they face strong, likely irresistible, incentives to use federal taxpayer dollars to benefit home states and districts. As the culmination of his analysis, Senator Buckley offers a “modest” proposal: that “Congress immediately terminate all federal pro-



*(left to right) Patrick Oot, Partner at Shook Hardy, & Bacon LLP and former Senior Special Counsel for Electronic Discovery at the SEC; Jamie Brown, Global Discovery Counsel at UBS AG and former Associate General Counsel at the CFTC; and Hon. Jerry Smith (moderator), U.S. Court of Appeals for the Fifth Circuit during the Professional Responsibility Practice Group’s “Documentation Retention Policies, Litigation Holds, and Legal Ethics” Panel at the National Lawyers Convention.*

grams that offer grants to states and their subdivisions.” Acknowledging that federal grants currently constitute more than 30% of state revenues, and hence Congress cannot cut off the flood of federal money overnight, Senator Buckley specifically proposes that Congress “terminate the grants by converting them into single no-strings-attached block grants—one for each state” and then subsequently phase out these block grants over a period of years. Senator Buckley was interviewed by his former clerk Robert Gasaway, Partner at Kirkland & Ellis LLP; the fascinating discussion has been posted online as a podcast.

The **Free Speech & Election Law Practice Group** hosted a Teleforum call in March discussing the recent targeting by ISIS of two American Muslim professors for criticizing the Charlie Hebdo attacks. The Organization of Islamic Cooperation has redoubled efforts to criminalize expressions of “Islamophobia” in Western nations. The participants attempted to answer important questions about speech; what speech is, and what speech should be, protected in these and other contexts. The call participants included Dr. M. Zuhdi Jasser, Founder and President of the American Islamic Forum for Democracy; Nina Shea, Senior Fellow and Director of the Center for Religious Freedom at the Hudson Institute; and Prof. Eugene Volokh, the Gary T. Schwartz Professor of Law at the UCLA School of Law.

The Free Speech and Election Law Practice Group co-sponsored a Teleforum with former United States Attorney General Edwin Meese III on the topic of voter ID Laws. Numerous states have passed voter ID, and the Supreme Court has permitted them to remain in effect. Nonetheless, voter ID remains a highly controversial issue. General Meese discussed voter fraud, the importance of voter ID laws and answered audience questions on a live Teleforum conference call which has been posted as a podcast.

On Tuesday, January 20, the Supreme Court heard arguments in *Williams-Yulee v. The Florida Bar*, a First Amendment case involving the manner in which elected judges may raise campaign funds for themselves. At issue was whether a widely adopted provision of the ABA Model Code of Judicial Conduct, which prohibits judicial candidates from personally soliciting campaign funds, violates the First Amendment. In addition to broader arguments regarding the proper scope and function of the First Amendment in the context of judicial elections, this case involves more focused First Amendment questions regarding whether the current rule, as adopted in Florida, is actually effective in preserving the

existence or appearance of impartiality and whether there are less restrictive means—such as recusal—to further such goals. Free Speech and Election Law Executive Committee Chairman Erik S. Jaffe and Edward Whelan of the Ethics and Public Policy Center attended the oral argument and discussed the case on a Courthouse Steps Teleforum call.

At issue in *Reed v. Town of Gilbert* was the Town of Gilbert’s sign code that imposes limits on the size, location, number, and duration of the signs advertising the weekly services of the Good News Community Church, whose pastor, Clyde Reed, sued. The Free Speech and Election Law Practice Group hosted Hon. Hans von Spakovsky for a Courthouse Steps Teleforum to discuss the case and oral argument, which speak to whether the First Amendment rule against content discrimination requires a plaintiff to prove intentional discrimination by a government entity and whether the Town of Gilbert’s assertion that its sign code lacks a discriminatory motive renders its facially content-based sign code content-neutral and justifies the code’s differential treatment of religious signs.

On December 2nd, the **Intellectual Property Practice Group** hosted an important Conference titled, “Patents and Innovation: Addressing Current Issues.” The program featured two panels and a keynote address.

The morning began with a panel titled, “The Regulatory Reach of the FTC, and its International Implications” and featured Alden F. Abbott former Director of Patent and Antitrust Strategy at BlackBerry, current member of the Federal Trade Commission Hon. Joshua D. Wright, and was moderated by Hon. Paul Michel, a retired Chief Judge from the U.S. Court of Appeals for the Federal Circuit.

The second panel, “Balancing Patent Rights and Litigation Abuses,” featured the Hon. F. Scott Kieff of the United States International Trade Commission, Prof. Adam Mossoff from the Center for the Protection of Intellectual Property at the George Mason University School of Law, Noah Phillips who is Chief Counsel for U.S. Senator John Cornyn at Senate Judiciary Committee and was moderated by Dean A. Reuter, our Vice President and Director of Practice Groups. The Conference ended with a fascinating keynote address by Prof. Richard Epstein. The full conference video and audio recordings can be accessed by visiting the Federalist Society’s website.

# In Memoriam: Prof. Michael W. Lewis

The Federalist Society lost a great friend with the passing of **Michael W. Lewis**, Professor of Law at the Ohio Northern University Pettit College of Law, in June, at age 50, of cancer.

Professor Lewis was a naval aviator, internationally renowned law professor, and tireless public advocate for a principled and wise application of the Law of Armed Conflict, consistent with both the values and interests of the United States.

After receiving his undergraduate degree from Johns Hopkins University, Professor Lewis flew F-14's for the U.S. Navy and graduated first in his class from Top Gun. He served in Operations Desert Shield and Desert Storm. He then entered Harvard Law School, where he was a member of the Federalist Society and served on the editorial staff of the Harvard Journal of Law & Public Policy. One year after joining the faculty at Ohio Northern Law School, he received its Award for Excellence in Classroom Teaching.

Professor Lewis frequently participated in Federalist Society programming and scholarship, presenting on the topics of terrorism, national security, the rules of engagement, military tribunals, drones, and interrogation at dozens of student and lawyers chapter events nationwide, as well as the 2014 National Lawyers Convention.

Professor Lewis also served on the Executive Commit-



tee of the Federalist Society's International & National Security Law Practice Group. Vince Vitkowsky, Chair of that Executive Committee, said "Mike was an amazing person—an incredible blend of talent, energy, charisma, sincerity, and generosity of spirit. We are privileged to have known him and worked with him, and we will miss him profoundly." Rachel Brand, Member of the Privacy and Civil Liberties Oversight Board and law school classmate, remarked that she "greatly admired his intellect and his commitment to service to his country." Robert M. Chesney, Associate Dean of the University of Texas School of Law, recalled that "Mike was fearless in engaging the hardest and most fraught issues in national security law. He combined his sharp intellect with his practical experience, and made unusually valuable contributions as a result."

In announcing his passing, ONU Dean Richard Bales wrote that Professor Lewis "loved sports, loved his country, loved his family, and loved his work." Former student and Federalist Society member Rob Luther recounted that "he excelled at everything he attempted and was a role model to the hundreds of students that were fortunate to have him. He's going to be impossible to replace." Professor Lewis is survived by his wife and daughter.

# Student Symposium: Law & Innovation

On February 20–21, 2015, law students from around the country attended the Thirty-Fifth Annual Federalist Society National Student Symposium hosted by the University of Chicago Law School Federalist Society in Chicago, Illinois to consider the issues surrounding “Law & Innovation.” Panels covered a variety of topics and provided a venue for judges, businessmen, law professors, practicing lawyers, and other experts to debate and speak on legal issues relating to innovation, and for students to respond with their questions. The year of preparation that the chapter’s members put into the event paid off, as they took care to ensure that attendees enjoyed the event. Speakers and students were given an opportunity to mingle after each panel and during cocktail receptions to discuss the topics addressed and to meet other members of the Federalist Society from across the country.

The two-day event consisted of four main panels that explored the effect of the administrative state, the status of patent law, innovation in the healthcare system, the distributional effects of innovation, and culminated with a keynote panel at the banquet which addressed the effects of regulatory uncertainty on business. An additional optional panel was held over lunch to provide interested students with information and guidance for navigating the path to working in the legal academic market. The Symposium concluded on Saturday night with the presentation of the annual Feddie Awards, rec-

ognizing exceptional performance by student chapters over the year.

## Panel 1: Innovation and the Administrative State

**Hon. Justice Stephen Markman** of the Michigan Supreme Court moderated the first panel. In his opening remarks, he introduced the administrative system as an alternative to the legislative process to implement government policy. He spoke of the structural differ-

ences that permit an agency to act more responsively than the legislative branch and of the associated costs and benefits. The first panelist, **Jon Dudas**, Senior Associate to the President of the University of Arizona and former Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office dur-

ing the Bush Administration, emphasized the importance of using cost-benefit analysis within the administrative process. **Jennifer Nou**, a Neubauer Family Associate Professor of Law at the University of Chicago and former policy analyst in the White House’s Office of Information and Regulatory Affairs (OIRA), described the executive oversight process and the role of retrospective oversight. Prof. Nou said that three administrative areas had seen innovation recently. **Steve Lehotsky**, Deputy Chief Counsel for Litigation for the U.S. Chamber of Commerce and former attorney-advisor in the Justice Department’s Office of Legal Counsel, explained three



*(left to right) Hon. Frank Easterbrook, U.S. Court of Appeals for the Seventh Circuit; Prof. Richard Epstein, NYU Law; Beth Kregor, Univ. of Chicago Law School; & Prof. John McGinnis, Northwestern Univ. School of Law during the “Innovation and Inequality: Conservative and Libertarian Perspectives” panel.*



strategies for regulation. **William Baude**, a Neubauer Family Associate Professor of Law at the University of Chicago queried whether the legislature should normatively require cost-benefit analysis in regulations and concluded that the Administrative Procedure Act (APA) needs to be modernized in these respects.

## Panel 2: Current Issues in Patent Law & Policy

**H o n . Judge Danny Boggs** of the U.S. Court of Appeals for the Sixth Circuit moderated the second panel that addressed many issues facing the field of Patent Law. Judge Boggs laid out the traditional argument for a system of patents, as a grant of property created by the government to incentivize and reward technical innovation. **Phyllis Turner-Brim**, Vice President and Chief IP Counsel of Intellectual Ventures, a patent monetization firm, discussed the growing importance of patents and suggested that the recent criticism of the patent system does not hold up to scrutiny. **Michael Meurer**, the Abraham and Lillian Benton Scholar Professor of Law at Boston University School of Law, identified the critical importance of a patent policy that favors innovation. Prof. Meurer concluded with

recommended reforms for the patent system, suggesting that the one-size-fits-all model of patent terms should be discarded, that business methods be deemed unpatentable, and that the scope of property rights should be clarified during patent prosecution at the PTO.

**Douglas Melamed**, the Herman Phleger Visiting Professor of Law at Stanford Law School and previ-

ous Senior Vice President and General Counsel of Intel Corporation, began with a description of the broad purpose of patents to incentivize innovation, and explained that this incentive is only worth as much as the remedies provided. **Adam Mortara**, partner at Bartlett Beck Herman Pelenchar & Scott and Lecturer in Law at the University of Chicago Law School, spoke primarily on the issues related to pharmaceutical and chemical patents. Although the pharmaceutical industry is very pro-patent to avoid competi-

tion from generic producers and mandatory substitution laws, Mr. Mortara argued that inefficiency arises from the PTO's inability to effectively recognize medical innovation, and that the Food and Drug Administration (FDA) would be a far better regulator of this subject matter.



*(above) Students from across the country listen attentively as experts debate law & innovation. (below) (left to right) Hon. Thomas B. Griffith, U.S. Court of Appeals for the D.C. Circuit; Peter Huber, Senior Fellow at the Manhattan Institute; Lindsay Kelly, Special Counsel at Irell & Manella; & Gerald Masoudi, Partner at Covington & Burling during the "Innovation and Health Care" panel.*



### Panel 3: Innovation and Health Care

**Hon. Judge Thomas B. Griffith**, of the U.S. Court of Appeals for the D.C. Circuit moderated the third panel, which covered the effects that the Food and Drug Administration's policies on pharmaceuticals and medical devices have on innovation in medicine. **Peter Huber**, partner at the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, and senior fellow at the Manhattan Institute, began his discussion by identifying the progress that medicine has made over the past century and how many drugs successfully treat diseases even in the absence of a understanding the biological mechanisms at play. **Lindsay Kelly**, Special Counsel in the Los Angeles office of Irell & Manella LLP and former Assistant United State Attorney for the Eastern District of Virginia, began by discussing the legal issues facing biologically produced medicines. She spoke of the interest shown by large pharmaceutical companies, the regulatory uncertainty surrounding the area, and high costs associated with this type of medicine. **Gerald Masoudi**, partner in the Washington, D.C., office of Covington & Burling, former General Counsel of the FDA, and Deputy Assistant Attorney General in the Antitrust Division of the DOJ, started by discussing the ways that the FDA regulates corporate speech by prohibiting companies from mentioning off-label applications of pharmaceutical drugs. Mr. Masoudi explained that since the FDA requires approval through clinical trials for a particular *use*, the company may not advertise or even mention unapproved uses in any way.

### Panel 4: Innovation and Inequality—Conservative and Libertarian Perspectives

**Hon. Judge Frank Easterbrook** of the U.S. Court of Appeals for the Seventh Circuit served as moderator for the fourth main panel, which broadly covered how innovation relates to inequality and whether a fast

pace poses a threat to social stability. **John McGinnis**, the George C. Dix. Professor in Constitutional Law at Northwestern University School of Law, began his discussion by setting out the premise that increasing technology fundamentally reduces inequality in real terms. Continuing on this line of thought, he described how the decentralization of information and the dematerialization effect of software increase the return for all consumers. He concluded by emphasizing the common interest that all have in promoting growth, which is a positive-sum game. **Beth Kregor**, the director of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School, spoke of the opportunities that innovation creates for entrepreneurs and how barriers to entrepreneurship deprive the poor of access to the newly created wealth. Ms. Kregor argued that overregulation, such that a third of all occupations in the United States require some sort of license, inhibits the poor and represents rampant rent seeking among these



*The University of Florida Chapter receives the Thomas Paine Feddie award for most creative publicity.*

politically powerful groups. **Richard Epstein**, the Laurence A. Tisch Professor of Law and Director of the Classical Liberal Institute at NYU School of Law, posited that the framing of innovation and inequality as separate in all cases is not necessarily true. He noted that inequality can increase through innovation, but that such a development should cause rejoicing rather

than despair, since the market is rewarding innovators for the consumer surplus that their innovations release, which is magnitudes greater than the producer surplus captured by the innovator.

### Keynote Panel: Business in an Environment of Regulatory Uncertainty

The 2015 National Symposium concluded with the annual banquet, where the Paul M. Bator Award, which is presented to a promising faculty member under the age of forty for excellence in scholarship, was awarded to Professor Joshua Kleinfeld of Northwestern University

School of Law.

During the banquet proceedings, Professor Michael H. Schill, Dean of the University of Chicago Law School, recalled how he “immediately accepted” the chapter’s decision to seek the Federalist Society Symposium, describing the strong and historical relationship between the Federalist Society and Chicago, which was one of the founding chapters. Prof. Schill closed his remarks by congratulating the Chicago chapter for its performance over the past year, putting on forty events, and for hosting a successful symposium.

The banquet also featured a panel that addressed “Building an Innovative Business,” with representation from some of the businesses recognized as major innovators in recent years, Facebook, Lyft, Airbnb, computer software services company Palantir Technologies, and lending startup Able. Moderated by **Ted Ulyot**, attorney at Palantir Technologies and former General Counsel at Facebook, the panel covered an array of legal issues that typically face a business as it starts, expands, and eventually goes global. **Katie Biber Chen**, Senior Counsel at Airbnb, described the philosophy of a company facing regulatory uncertainty, touching on the potential advantages and the faint omnipresent fear that the risks will not pay off. She explained that the primary legal issues facing Airbnb were short-term rental laws and the application of local hotel taxes. Ms. Chen also underscored how collaboration rather than combat can be a far more successful strategy when encountering opposition by regulators. **Evan Baehr**, co-founder of online lending service Able, spoke of his personal experience founding a mail-filtering startup, Outbox, that could have had major effects on the USPS if it had been successful. However, before substantial growth could occur, Mr. Baehr recounted that the USPS essentially

forced Outbox to wind down its operations, but that the experience provided invaluable knowledge that he is now applying in his online lending service startup. **Colin Stretch**, General Counsel at Facebook, provided the perspective of a larger, more established company.



*Prof. Joshua Kleinfeld, Northwestern Law School, with Federalist Society Senior Vice President & Faculty Division Director Lee Liberman Otis after receiving the 2015 Paul M. Bator Award.*

He described the need to embrace risk and educate regulators throughout the compliance process. Mr. Stretch concluded by explaining that although Facebook was founded in 2004, it is viewed as an established player and treated with more scrutiny by regulators.

**Candice Taylor**, Associate Litigation Counsel at Lyft, recounted the industry’s expansion into

new jurisdictions and the incremental steps taken to gain more regulatory certainty. She noted the need for companies to dispel misinformation and reassure regulators that providing features like insurance and background checks can mitigate hazards and benefit consumers.

The annual Freddie Awards were presented at the close of the banquet to chapters that have performed exceptionally well over the past year. Columbia University was awarded the James Madison Chapter of the Year Award, the University of Nebraska won the Alexander Hamilton Most Improved Chapter Award, Harvard University received the Samuel Adams Greatest Membership Growth Award, and the University of Florida won the Thomas Paine Award for most creative publicity. The 5th Freddie, the Benjamin Franklin Award for Spring Breakout Chapter, was awarded at the Student Leadership Conference in July to the chapter with the most outstanding spring semester.

# Lawyers Chapters Update

By Lisa Ezell

Vice President & Director, Lawyers Chapters

The Federalist Society's Lawyers Chapters hosted a variety of programs this winter and spring, including several on election and voter ID law, religious liberties, and executive power. We present an overview of these programs.

The **Jacksonville, Miami, Orlando, Tallahassee,** and **Tampa** Lawyers Chapters hosted their first statewide Florida Chapters Conference this past February. The two-day conference focused on a number of topics and drew an impressive sold-out crowd of over 250 attendees. The Friday opening panel was moderated by Judge Wendy Berger of the Florida Fifth District Court of Appeal and discussed the Florida judicial selection process. Panelists included Pete Antonacci and Charlie Trippe, both former General Counsel to Governor Rick Scott; Tim Cerio, the current General Counsel to Governor Rick Scott; Zander Clem of Morgan & Morgan; and Paul Huck of Jones Day. Friday evening concluded with an address from Florida Agriculture Commissioner Adam Putnam. Putnam, a former member of the U.S. House of Representatives, criticized Congress for allowing an "aggressive executive branch" to overreach. He praised the merits of federalism, singling out Florida's "solution-oriented approach" for solving state problems.

The Conference resumed Saturday morning with an address from the Florida Chief Financial Officer Jeff Atwater. Atwater emphasized the critical role of small business in restoring the American dream. He criticized regulatory excess which often curbs the efforts of innovators to create new economic opportunities. Following Atwater's address, Judge Frank Shepherd of the Florida Third District Court of Appeal moderated a panel on the merits of originalism which included panelists Greg

Katsas of Jones Day, Prof. John McGinnis of Northwestern University School of Law, and Prof. Peter Smith of George Washington University Law School. Judge Barbara Lagoa of the Florida Third District Court of Appeal moderated the next panel which addressed developments in "Florida Tort and Business Law." Panelists included Mark Behrens of Shook, Hardy, & Bacon, LLP; William Large, president of the Florida Justice Reform Institute; and Daryl Parks of Parks & Crump. Keynoting at the lunch reception was Fred Barnes, the Executive Editor of The Weekly Standard. Barnes discussed the importance of state attorneys general in curbing instances of executive branch overreach. At the luncheon, the Florida Chap-



*U.S. District Court Judge Loretta Preska with Federalist Society Board Member & Former U.S. Attorney General Michael Mukasey at the New York City Lawyers Chapter's annual gala. Judge Preska received the chapter's James Madison award at the gala.*

ters also awarded Judge Frank Shepherd with their inaugural Good Shepherd Award. Judge Shepherd, the former president of the Miami Lawyers Chapter, inspired the award. He was honored for his mentorship and guidance to younger members of the Federalist Society. After the luncheon, Justice Charles Canady of the Florida Supreme Court moderated the final panel which discussed the separation of powers in the modern age. Panelists

included Rachel Brand of the Privacy and Civil Liberties Oversight Board, Charles J. Cooper of Cooper & Kirk PLLC, Brianne Gorod of the Appellate Counsel of the Constitutional Accountability Center, and Florida Department of Economic Opportunity Director Jesse Panuccio.

The 2015 **Western Chapters Conference**, hosted at the Ronald Reagan Presidential Library, focused on technology, innovation, and regulation in the sharing economy. Judge Andrew Guilford moderated the morning panel, which addressed the America Invents Act in relation to patents and innovation. Panelists included

Joel Ard of Foster and Pepper, Prof. Robin Feldman of the University of California Hastings College of Law, and Joe Matal, the Assistant Solicitor at the Patent and Trade Office. Panelists discussed the background of the patent system and patent litigation in relation to the America Invents Act, the interplay between intellectual property and real property, and the balance between fostering innovation while protecting inventors. Keynoting this year was John Allison, President and CEO of the Cato Institute and former CEO of BB&T. Allison spoke on the ability of the free market system to foster life, liberty, and the pursuit of happiness. The afternoon panel featured attorneys Katie Biber Chen from Lyft and Andrea Lobato from Airbnb, who discussed the legal and regulatory challenges facing their services, as well as the opportunities they offer to consumers. Evan Baehr of Outbox offered insight on the power of government to destroy entrepreneurial endeavors. Prof. Stephen Miller of the University of Idaho School Of Law discussed the role of regulation in the sharing economy and how to balance the interests of local governments and consumers. Over 150 lawyers and students attended the conference.

Several chapters in recent months hosted programs addressing election law and voting rights issues. These programs focused on recent litigation and proposed legislation and issues that arose in the 2014 elections. The **Columbus** Lawyers Chapter hosted a 2014 “Election Wrap-Up” lunch. The event hosted political reporter Jim Heath of Ohio 10-TV, political correspondent Jo Ingles of Ohio Public Radio and Television Statehouse News Bureau, and Thomas Suddes from *The Plain Dealer*. The **Chicago** Chapter hosted a post-election group discussion with guest speaker Prof. Josh Blackman of South Texas College of Law in Houston. With a change in the political dynamic both nationally and in Illinois, the group discussed all facets of ObamaCare, Hobby Lobby, the future of the Affordable Care Act, recess appointments, and other executive actions. The **Phoenix** Lawyers Chapter hosted former Arizona Senator Jon Kyl for an evening discussion on post-election issues. Senator Kyl’s wealth of knowledge and experience made for an interesting and lively discussion.

On February 27, the **Milwaukee** Lawyers Chapter of the Federalist Society, Marquette Law School, and Milwaukee Lawyer Chapter of the American constitutional Society co-hosted a half day conference on campaign finance law in Wisconsin. The conference attempted to explain how recent federal court decisions on campaign finance affect Wisconsin state law and regulations. Many

speakers concluded that Wisconsin’s campaign finance laws are outdated—40 years old—with vast portions contradictory to newly developed First Amendment case law. The state legislature has promised to address these issues in the coming months. Speakers at the conference included former FEC Commissioner Brad Smith, President of the Wisconsin Institute for Law & Liberty Rick Esenberg, Speaker of the Wisconsin Assembly Robin Vos, and Minority Leader Rep. Peter Barca. Over 220 attended the event. Many chapters were also interested in hosting events that focused on the Supreme Court and the Justice Department. The **Puget Sound** Lawyers Chapter hosted Eric Miller of the Perkins Coie Appellate Practice. Miller shared a preview of the upcoming U.S. Supreme Court term, including an overview of the October Term 2014 docket cases and issues and cases not yet on the Court’s docket. The **New York City Young Lawyers** Chapter hosted Ilya Shapiro of the Cato Institute at an evening reception where he previewed the Supreme Court term. The **Long Island** Lawyers Chapter hosted Ilya Shapiro as well, where he also gave a preview of upcoming Supreme Court cases. The **Minnesota** Lawyers Chapter held a lunch event that featured *National Review* columnist John Fund. Fund discussed the Justice Department’s actions as President Obama’s enforcer and the future of the Department as we head towards the election in 2016. The **Fort Worth** Lawyers Chapter also hosted John Fund. He discussed his book, *Obama’s Enforcer: Eric Holder’s Justice Department*.

Many chapters hosted programs around challenges to religious liberty. Sam Casey spoke to the **Charlotte** Lawyers Chapter of the Federalist Society in February. Casey spoke to a crowd of approximately thirty people, including two federal judges, about the importance of life and religious liberty. Casey explained that apathy and a rapacious federal government are the two biggest threats to these important rights, illustrating his points with personal anecdotes from his experience advocating for these rights. He also reviewed recent judicial decisions and legislation on life and religious liberty issues. Casey emphasized the centrality of both life and religious liberty to all people, regardless of creed, color, or career, and encouraged everyone to fight to preserve these rights. The **Dallas** Lawyers Chapter hosted a discussion with Hiram Sasser of the Liberty Institute. Sasser shared his views on the serious challenges to religious liberty facing churches, schools, the military, and society in general. He also shared his insight on the many high-profile cases he has worked on, including *Salazar v. Buono*, the defense

of the Mojave Desert Veterans Memorial Cross in the United States Supreme Court.

Other chapters focused on the ramifications of the *Hobby Lobby* decision. The **Cincinnati** Lawyers Chapter hosted a luncheon where Kyle Duncan, lead counsel for Hobby Lobby Stores in its HHS Mandate Challenge, discussed his involvement in the case, the Supreme Court's decision, and the likely impact of that decision in the years to come. The **Philadelphia** Chapter held an evening reception featuring Prof. John C. Eastman discussing "The Good, the Bad, and the Ugly" of the *Hobby Lobby* decision. The **Rochester** Chapter hosted Prof. John Eastman as well, along with Brian Hauss, Staff Attorney for the Center for Liberty.

Chapters held events around Obamacare and discussed the ramifications that the legislation was having all across the country, with a particular emphasis on previewing *King vs. Burwell*. The **Pittsburgh** Lawyers Chapter held a lunch event with Jonathan Adler of Case Western Reserve University Law School. At the lunch, Adler discussed how the Affordable Care Act authorizes federal subsidies for health coverage obtained on an Exchange established by States. The **Columbus** Lawyers Chapter also hosted Prof. Adler, where he discussed his experience as one of the first to develop the case against the legality of the Obamacare subsidies. The **Portland** Lawyers Chapter hosted Michael Cannon, Director of Health Policy Studies at The Cato Institute at an evening reception. He spoke in Portland just six days before the U.S. Supreme Court heard oral arguments in *King v. Burwell*. Cannon discussed the case, what it means for Oregonians and Washingtonians, and how Congress should reform health care after Obamacare.

In February, the **Northwest Arkansas** Federalist Society Lawyers Chapter held its inaugural event at the University of Arkansas Law School. Speaking to about

65 lawyers and 20 law students, Judge Morris "Buzz" Arnold presented at length on the Foreign Intelligence Surveillance Court (FISC) and the Foreign Intelligence Surveillance Court of Review (FISCR). Judge Arnold drew on his seven years of experience on the FISCR to provide an insider's view of the operation of those courts as well as his perspective on the most popular criticisms made against the court.

After his presentation, Judge Arnold took questions both formally at the event and informally at a subsequent reception. The event was cosponsored by the University of Arkansas Student Chapter. Judge Arnold also addressed the **Little Rock** Lawyers Chapter in January.

Other notable

events... The **Atlanta** Lawyers Chapter hosted newly elected Senator David Perdue before about 150 lawyers in December. He discussed his new position on the Senate Judiciary Committee, his belief in original meaning, and his desire to be very thorough in vetting judicial nominees. He also discussed his business background and the fact that very few former Fortune 500 CEOs were in the Senate. Both **Houston** and **Fort Worth** hosted Amherst Prof. Hadley Arkes. He discussed natural law in Houston and abortion and public policy in Fort Worth. The **Kansas City** Lawyers Chapter hosted a discussion on the future of education in Kansas City as it relates to charter schools future growth and viability. The panelists engaged in a lively discussion on educational choice and how various options should be funded. Over fifty attended the panel. The **Salt Lake City** Lawyers Chapter hosted Ed Whelan of the Ethics and Public Policy Center at a lunch event. Whelan shared his insights into how the Republican majority in the Senate will affect current and future judicial nominations for the next two years.



*The Atlanta Lawyers Chapter hosted a panel discussion in April on "What are the Roles of Parents and the Government in Raising Children?"*

# Alumni Relations

*By Caroline Moore*  
*Director of Alumni Relations*

The main focus of Alumni Relations at the Federalist Society is to bring our alumni together in a way that will allow our members to connect or re-connect with their peers. In addition to the Annual Alumni Breakfasts at our National Lawyers convention, we've added annual summer receptions, alumni receptions during alumni weekends, and events in conjunction with student chapter banquets to reach alumni who are interested in building relationships with each other and current student members. These events feature alumni speakers and give our student and lawyer members a chance to build relationships with one another. We hope that bringing these alumni together will enable them to enjoy a continuation of the camaraderie they experienced in our Student Chapters, and also help our chapters and their schools by more widely extending the vigorous discussion of ideas.

We hosted thirteen Alumni Chapter breakfasts at the National Lawyers Convention in November. It is our intention that many alumni chapters will use this event to organize future alumni events for their respective schools and have the chance to build relations with one another.

The main focus of our alumni efforts this fall was to expand our reach to alumni who attended the National Lawyers Convention in November. There were two additional alumni chapter events that took place during the National Lawyers Convention this year. **University of Chicago** and **Yale** held simultaneous alumni receptions. These receptions, in addition to the Alumni Breakfasts, will connect members from across the nation. The National Lawyers Convention weekend is filled with activities, but thanks to an overwhelmingly positive response our chapters will continue to hold these events next year.

The **Catholic University** Alumni Chapter hosted Eileen O'Connor, Partner at Pillsbury Winthrop Shaw Pittman LLP and former Assistant Attorney General for the Tax Division at the Justice Department. The **University of Chicago** Alumni chapter hosted Professor Neomi Rao, Associate Professor at George Mason Law School. Ammon Simon, Financial Services Counsel for Representative Randy Hultgren, spoke at the **Columbia** Alumni Chapter

breakfast. The **George Washington** Alumni Chapter had 49 in attendance. Alida Kass, Chief Counsel to the New Jersey Civil Justice Institute, spoke to the **Georgetown** Alumni Chapter. The Georgetown Alumni Chapter had 38 in attendance.

The **Harvard** Alumni Chapter hosted the Hon. Alberto Gonzales, former U.S. Attorney General. Megan Sowards, General Counsel for the National Republican Senatorial Committee, spoke to the **Michigan** Alumni Chapter. The **NYU** Alumni Chapter hosted Robert McNamara, Senior Attorney at the Institute for Justice.

The **Yale** Alumni Chapter hosted Elbert Lin, Solicitor General of West Virginia. The Yale Alumni Chapter had 76 in attendance. Scott Keller, Chief Counsel to Senator Ted Cruz, spoke at the **University of Texas** Alumni Chapter breakfast. Brian Walsh, Executive Director of the American Religious Freedom Project at the Ethics and Public Policy Center, spoke at the **Regent** Alumni Chapter breakfast. The **Stanford** Alumni Chapter hosted Greg Lukianoff, President of the Foundation for Individual Rights in Education. The **University of Virginia** Alumni Chapter hosted John Mitnick, Senior Vice President, General Counsel, and Secretary of The Heritage Foundation. Overall, there was an increase in attendance at these events and there was much positive feedback about these events.

If you are interested in being involved with an alumni chapter please contact Caroline Moore at [alumni@fed-soc.org](mailto:alumni@fed-soc.org) or find the alumni chapters Facebook groups online. These private groups will be managed by the Federalist Society. We look forward to expanding the current alumni groups and using them to build a strong Federalist Society alumni network.

# DIGITAL MEDIA @FEDSOC

For an organization such as the Federalist Society, whose purpose is to communicate ideas, the digital world is not merely a tool to help programs, but also a content-driven meeting place for people interested in profound ideas and rigorous discussion of legal topics. This is an opportunity and a challenge for the Federalist Society—one we are excited to tackle. Over the last several months we have made significant strides in digital media, including new video content, improved digital marketing, and a significant boost to social media at the National Lawyers Convention and Student Symposium.

## FEDSOC.ORG

One exciting digital development was actually just a tiny change. No more hyphen in our URL or email addresses! So instead of fed-soc.org, it's just FedSoc.org.

Blog: The last quarter of 2014 brought significant growth in readership and record traffic. This increase was due in part to increased social media efforts and our covering breaking news, and it has built momentum for a blog relaunch this spring, bringing the blog under the FedSoc.org URL and adding a cadre of new bloggers. Stay tuned...

## SOCIAL MEDIA

Our social media efforts continue to be the number one driver of traffic to our blog posts and website. Our Facebook page, with 119,123 likes, and Twitter account, with 22,211 followers, still provide our biggest audiences for outreach and education. But our recent emphasis has not only been on growth but also on quality of audience. We've made an effort to moderate discussions among our online community to make sure fans can have meaningful conversations. We continue to use other networks like LinkedIn, Instagram, iTunes, and Google+ to reach audiences—with an increased emphasis on professional networking and images—but our most important channel outside of Facebook and Twitter is YouTube.

You also may have noticed our new hashtag for events: #FedSocEvents. Whether it's a conference in Florida, a panel in DC, or a debate in Los Angeles, following and using #FedSocEvents helps us get the word out and allows people from around the world to engage with speakers and their ideas.

YouTube and Video Content: It's a visual world, and YouTube is its atlas. In fact YouTube is arguably the second biggest search engine after Google (its owner). When people want to learn something, they often turn to YouTube to teach them. That's why it's more important than ever that the Federalist Society creates compelling video content, and 2014 was a step in the right direction.

Recently we've been focusing more on short, well-produced videos, including pre-argument SCOTUS videos, interviews and soundbites with event speakers, and videos highlighting special projects such as the Magna Carta the exhibit at the Library of Congress the Society co-sponsored and the 2015 Bator Award given to Prof. Josh Kleinfeld at the Student Symposium.

## NATIONAL LAWYERS CONVENTION

This year we ramped up our social media efforts at the National Lawyers Convention. We set up a "Tagboard" on site that allowed us to highlight the best tweets from the convention using a specific hashtag: #FedSoc2014. The increased visibility of Twitter encouraged more people to tweet. Overall, the volume of tweets and the reach was impressive. Senator Ted Cruz, Jeb Bush, Carly Fiorina, Senator Orrin Hatch, and many high-profile media outlets all tweeted about the Convention. The volume of tweets using the #FedSoc2014 hashtag hit a high point on Thursday afternoon, and we started to "trend" on Twitter in the Washington, DC area. Only the most discussed issues, topics, and hashtags end up trending. #Awesome.

## 2015 PLANS

To continue to increase our online reach, our focus remains on improving our online content and in improving our marketing and tracking efforts. We welcome Joanmarie Davoli in the newly created position of Digital Education Specialist to take the lead on our content development efforts.



# International Affairs Report

*By Paul Zimmerman*

*Deputy Director, International Affairs*

The Federalist Society's International Affairs Division has opened the new year with a series of initiatives in its continuing work to build a robust exchange on the importance of the rule of law, separation of powers, and individual freedom in Western Europe and Central and Eastern Europe, and through our Global Governance Watch® website.

In November 2014 and February 2015, the Federalist Society brought together attorneys, academics, leaders in civil society, and others to discuss the state of the rule of law and sovereignty in the United Kingdom, as it hosted the latest meetings of the Law and Liberty Circle in London. The November meeting featured an exchange on whether the U.K. would be better off with a written Constitution and Bill of Rights. The February meeting dealt with the European Arrest Warrant, which requires European Union countries to surrender up citizens and others who are wanted by the authorities of other member countries, and offered attendees the opportunity to meet and pose questions to former U.S. Attorney General and Federalist Society Board of Directors Member Edwin Meese, III, who was visiting the U.K. to take part in an event by the Margaret Thatcher Centre.

In mid-November, the Society once again hosted several of its European partners at its signature annual National Lawyers Convention in Washington, D.C. This year's event included attendees from France, Hungary,

Belgium, and the U.K. As in past years, the European delegation were treated to an exciting array of panels and speakers, and connected with Federalist Society members from across the country, as they received an up-close view of how our organization operates in the U.S.

At the close of November, the International Division built upon its successful partnership with the French Institut de Formation Politique (IFP) by sponsoring the third installment of its Law and Policy Circle. The

purpose of the event is to train twenty French students and young professionals in the skills involved in legal debate and media. With the third session of the Circle, the IFP-Federalist Society network in France has expanded to over sixty young conservatives and libertarians interested in the state of the law in the country.

Another successful Federalist Society partnership in France, with the new student organization the Law and Liberty Circle,

reached a promising milestone in December 2014 as the group hosted its first event at the University Paris II – Panthéon-Assas. The event featured former French Attorney General Philippe Bilger who spoke on the importance of the right to freedom of speech and generated dozens of questions from the crowd of over 100 students. Following the lecture, a large number of attendees joined Attorney General Bilger and Law and Liberty Circle leaders for a pizza reception, at which many signed up to become members of the new initiative.

The Society further supported the exchange of ideas



*The Federalist Society and the Freedom Association hosted Philip Johnston (left) of The Daily Telegraph and Ewen Stewart (right) of Global Britain at a February debate near Lincoln Cathedral, the home of one of the original copies of Magna Carta, on the charter's relevance today.*

on the rule of law and freedom in London through events with U.S. dignitaries at the end of 2014. In November, the international project sponsored a talk by Representative Louie Gohmert of the U.S. House of Representatives on the rule of law and individual rights in the U.S., hosted by the conservative and libertarian training organization the Young Britons' Foundation. In December, on the occasion of the visit of a congressional delegation of members of the U.S. House Judiciary Committee, the Federalist Society and the U.S. Embassy in London co-hosted a meeting between the delegation and British barristers at the Honourable Society of Gray's Inn to help inform them on the workings of the U.K. justice system.

In late February, the Federalist Society hosted its first event at the Cambridge University Law Faculty, with the student group Cambridge Libertarians. This event, a debate on whether to replace the U.K. Human Rights Act with a British Bill of Rights, featured British barrister and former member of the U.K. Commission on a Bill of Rights Martin Howe QC and Dr. David Erdps, University Lecturer in Law and the Open Society at the University of Cambridge. The debate provoked a lively exchange on the importance of the European Court of Human Rights among all the present attendees.

The Society followed up this event by sponsoring the first of ten debates on the modern-day relevance of Magna Carta organized by The Freedom Association, a libertarian organization with the aim of advancing the principles of liberty and the rule of law in the U.K. The first event was held in Lincoln, where one of the original copies of the 1215 document has been housed for

centuries, and was punctuated by an exchange between Philip Johnston, Assistant Editor and Leader Writer for *The Daily Telegraph*, and Ewen Stewart, founding Director of the independent consultancy Walbrook Economics and Consulting Director of the nonprofit organization Global Britain, regarding whether Magna Carta is doomed to irrelevance in the modern era. The debate generated a number of comments from the attending crowd of students, educators, attorneys, and others who, in the end, agreed nearly unanimously that Magna Carta has retained its relevance through the past eight centuries of its existence.

Using as a starting point its support of the exhibition "Magna Carta: Muse and Mentor" at the U.S. Library of Congress in late 2014, the Federalist Society will continue to partner with groups in the U.K. to celebrate the 800th anniversary of the document; the Society will continue to help educate interested Britons on the principles for which it has served as an illuminating foundation and highlight the link between that ancient document and our own Constitution. More broadly, we will continue to generate a vital exchange on the foundational principles of the rule of law, constraints on government, and liberty across Europe, so Americans can look to their friends and allies across the Atlantic to help advance the necessary and free debate on these basic Western legal principles.

To share your comments about the International Affairs Division, or to learn more about its work, please contact Jim Kelly at [jkellyiii@fed-soc.org](mailto:jkellyiii@fed-soc.org) and Paul Zimmerman at [paulz@fed-soc.org](mailto:paulz@fed-soc.org).

## NORTHWESTERN LAW PROFESSOR JOSHUA KLEINFELD RECEIVES 2015 PAUL M. BATOR AWARD

The Federalist Society presented the Paul M. Bator Award on Saturday, February 21 to Prof. Joshua Kleinfeld of Northwestern University School of Law. Established in 1989 to honor the memory of Prof. Paul M. Bator, a renowned scholar and teacher of federal courts and constitutional law at Harvard and the University of Chicago and Principal Deputy Solicitor General in the Reagan Administration, the award is given annually to a law professor under 40 who has demonstrated excellence in legal scholarship, a commitment to teaching, a concern for students, and has made a significant public impact. Michael Ballew, a student at the University of Chicago Law School, served on the selection committee and presented the award on behalf of the Federalist Society at its 2015 National Student Symposium, held at the University of Chicago Law School.

# State Courts Report

By Zach Mayo  
Deputy Director, External Relations

The State Courts Project monitors activities relating to the role of state courts, judicial selection, judicial philosophy, and the rule of the law generally, consistently seeking to spark debate and increase the quality of the discussion surrounding important legal policy issues. The developments described below have drawn considerable attention in local legal communities and in some cases nationally.

## Wisconsin

In April, voters in Wisconsin approved an amendment to the state constitution changing the way the state's chief justice is selected. Previously, the chief justice was simply the justice with the longest tenure on the court. The amendment instead gave the decision to the other justices, who now elect the chief justice from among their number.

In the immediate aftermath of the constitutional change, then-Chief Justice Shirley Abrahamson launched a federal legal challenge to the constitutionality of implementing the change immediately. She claimed that voters had reelected her with the understanding that she would remain chief justice. This resulted in Justice Patience Roggensack's election to the position by her colleagues.

In July, the Wisconsin Supreme Court was once again in the news, declaring that portions of Wisconsin's campaign finance laws were unconstitutionally overbroad and vague. This effectively ended the "John Doe" investigation into associates of Governor Scott Walker.

## North Carolina

Also in July, the North Carolina Supreme Court upheld that state's school voucher system against a state constitutional challenge. This reversed a lower court opinion that said the program violated a state obligation to provide a sound education to all students, since private schools receiving voucher funds do not operate in the same way that public schools do. In contrast, the state Supreme Court held that the plaintiffs had not demonstrated that the program plainly and clearly violated any requirement or restriction of the state constitution.

## Judicial Selection

Comments from newly elected governors Bruce Rauner of Illinois and Asa Hutchinson of Arkansas began conversations about altering their states' current methods of selecting state supreme court justices. Illinois currently uses partisan elections, while Arkansas has nonpartisan elections. The Federalist Society and its Lawyers Chapters have brought the commentary of noted experts on judicial selection to those states, most recently with a Lawyers Chapter event in Little Rock.

## Publications

The Federalist Society released several State Courts Project publications this spring. We maintained our focus on providing coverage for state-level developments in civil justice with the release of "2014 Civil Justice Update." This white paper by Emily Kelchen chronicles the litigation trends, legislation, and judicial developments that had notable impacts on the civil justice system locally and nationally over the course of 2014.

Additionally, the State Courts Project continues to release articles in our *State Court Docket Watch* series. This series provides a platform for knowledgeable practitioners to provide brief and insightful summaries of interesting legal developments in their states. They highlight the impact of these cases locally and their potential ramifications nationally.

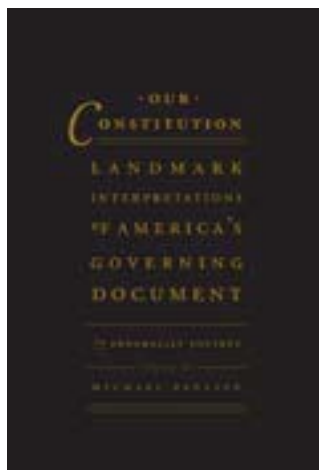
This spring, the Society released two *Docket Watch* articles. The first, authored by Caroline Levine, discusses a recent Florida Supreme Court case concerning the application of the Fourth Amendment to real-time location information from cellular telephones. The second, from Luke Wake, discusses and provides context for a 2014 Indiana Supreme Court decision upholding the state's "Right to Work" legislation. Articles are released on a regular basis through our State Courts Guide website, and a compiled version of articles is distributed quarterly to our membership.

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