



THE **Federalist** PAPER

THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG

Winter 2023

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Dear Friend,

The 2022 National Lawyers Convention was one for the books! The Scalia Dinner featured brief remarks by Justices Alito and Barrett, and the convention days included addresses by Judge Pryor, Senator Lee, Professor Epstein, and Judge Randolph. As if that Who's Who weren't enough, the showcase and breakout panels were brimming with incredible speakers and overflowing with insight. The convention theme was *The Current State of the Legal Profession*, a timely topic and very worthy of the in-depth treatment it received. As always, the conversation continues in our student and lawyers chapters and among our faculty and practicing members. Please join us as we consider the future of our profession and its place in American society.

Student chapter leaders have been doing excellent work planning and hosting events on their campuses. The Student Division has developed a new way to recognize their service: beautiful commendations awarded to leaders who pass the bar exam. See an example in these pages, alongside a profile of an exemplary student leader. And don't forget to save the date for the National Student Symposium!

It is conference season for our Lawyers Chapters! January saw statewide conferences in Missouri and Florida, as well as our regional Western Chapters Conference. See inside for photos of these events, and save the date for the next statewide or regional conference near you! The Faculty Division hosted the Annual Faculty Conference in early January, as well as a breakfast at the NLC. It also cosponsored a special lecture event featuring Judge Don Willett.

The Practice Groups have been actively hosting events and webinars, but their main focus in the last few months, as featured in these pages, was on planning and hosting their NLC breakout sessions. Watch panels you missed online, and keep up with upcoming programming by visiting fedsoc.org.

Our Regulatory Transparency Project has been hosting live events and releasing excellent new videos and podcasts. See inside for details, and follow their work at regproject.org. Freedom of Thought and the Digital Division both hosted events at the NLC, which you can read about in these pages. External Relations have been active in both hosting events and publishing new articles.

Don't forget to save the date for the 11th Annual Executive Branch Review Conference in Washington, DC. And visit our website to read, listen to, and watch new content, and to find upcoming events near you!

We hope you enjoy this issue of the *Federalist Paper*. Please send any questions or comments to us at info@fedsoc.org.

Sincerely,

Katie McClendon
Director of Publications

“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.”

Federalist No. 78

STUDENT DIVISION

The Federalist Society

for Law & Public Policy Studies
presents this commendation to

Kellie Majcher, Esq.

in recognition of your distinguished service as

President of the
University of Michigan Law School Chapter

on behalf of our joint efforts to advance the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.

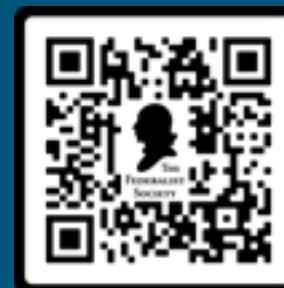
30 September 2022

Eugene B. Meyer

Commendations for Student Chapter Officers

To honor graduating officers of Federalist Society student chapters, the Student Division has produced commendations to honor these students' bar passage and service to the Federalist Society. Featuring a silhouette of James Madison by classically-trained artist Michael Curtis and compiled by a former Michigan Law School Chapter President, the commendations include a message of gratitude and a wax seal featuring the Federalist Society's logo. See an example at left.

If you are a graduate of the Class of 2022 and served as an officer in your law school's Federalist Society chapter, you may request your own commendation at fedsoc.org/commendations.



Student Spotlight



Tristan Silva

2L at Scalia Law School
Student Division Law Fellow

“

This year was my second time attending the NLC and it was, by far, the greatest event of the year. I had the honor of meeting Justice Alito before his speech at the Scalia Dinner, and Justice Barrett ended the night perfectly with her tribute to Judge Silberman. At the end of the day, there is no greater place to enjoy a weekend and meet likeminded, intelligent friends who I will carry with me for the rest of my life. ”



Tristan joins classmate Johnathan Baur and alumnus John Madigan at the National Lawyers Convention.

STUDENT DIVISION



Members of GMU Scalia Law's Chapter participate in a Service Project.



University of Miami Chapter President Randy Fitzgerald meets Justice Samuel Alito.



Tennessee Supreme Court Justice Sarah K. Campbell and Georgia Supreme Court Justice Sarah Hawkins Warren spoke to the Duke Student Chapter on Women in the Judiciary.



Student Chapter Highlights

The Corruption of Environmental Rulemakings at the US EPA: Climate Change, Mercury Emissions, and Air Quality
Chicago Student Chapter

The OSHA Vaccine Mandate Case and Student Loan Bailouts
Liberty Student Chapter

Will it Survive? The Constitutionality of Student Loan Forgiveness
Villanova Student Chapter

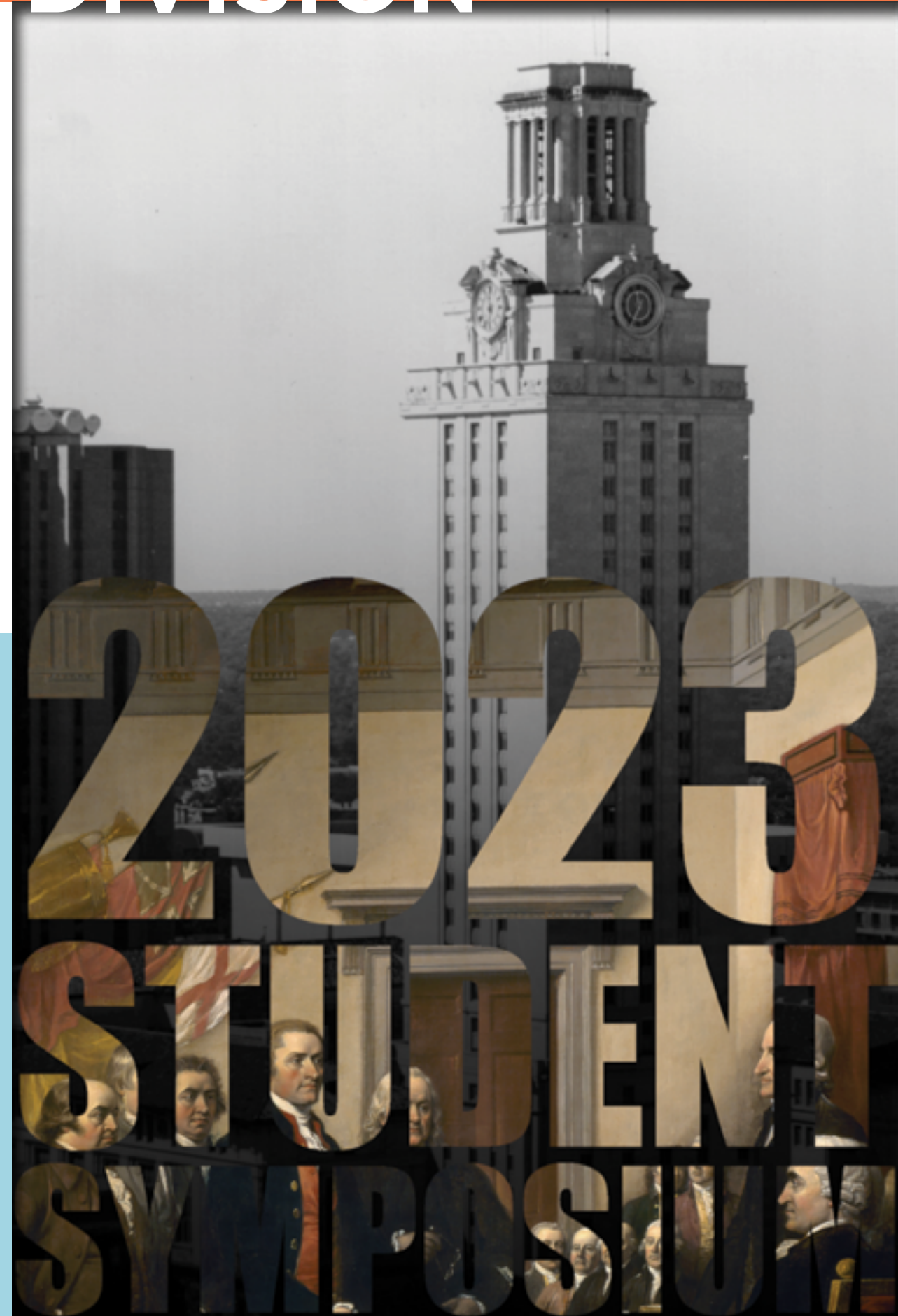
How the Government Uses Fines to Make the Poor Poorer
St. Louis Student Chapter

Life After *Dobbs*
Drake Student Chapter

Criminal Justice Reform: Proposals and Perspectives
Baylor Student Chapter

Can Big Tech be Caught?
George Mason Student Chapter

The Civil War and its Effects on Contemporary Jurisprudence
Florida State Student Chapter



The Student Division and the University of Texas Student Chapter are eagerly preparing to welcome student members to Houston for the 2023 National Student Symposium! The event, which will include a fun and full weekend of programming on the topic of “Law and Democracy,” will feature some of the leading legal voices of today, including Judge James Ho, Prof. Michael Greve, Prof. Joel Alicea, and Judge Edith Jones.



LAWYERS CHAPTERS

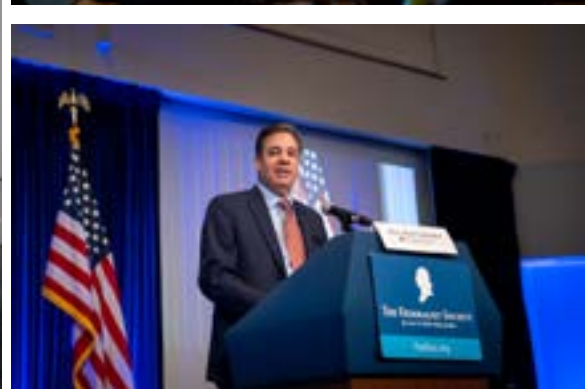
Missouri Chapters Conference
January 20 • Jefferson City



Florida Chapters Conference
February 3-4 • Disney



Western Chapters Conference
January 28 • Reagan Library



Save the Date

Ohio Chapters Conference
April 21 • Columbus

Third Circuit Conference
April 28 • Philadelphia

Wisconsin Chapters Conference
May 5 • Pewaukee

Midwestern Regional Conference
June 16 • Indianapolis



FACULTY DIVISION

24th Annual Faculty Conference



Professors Chad Squitieri (Catholic) and Ilan Wurman (ASU) debate the Major Questions Doctrine with moderator (center) Chris Walker (Michigan).

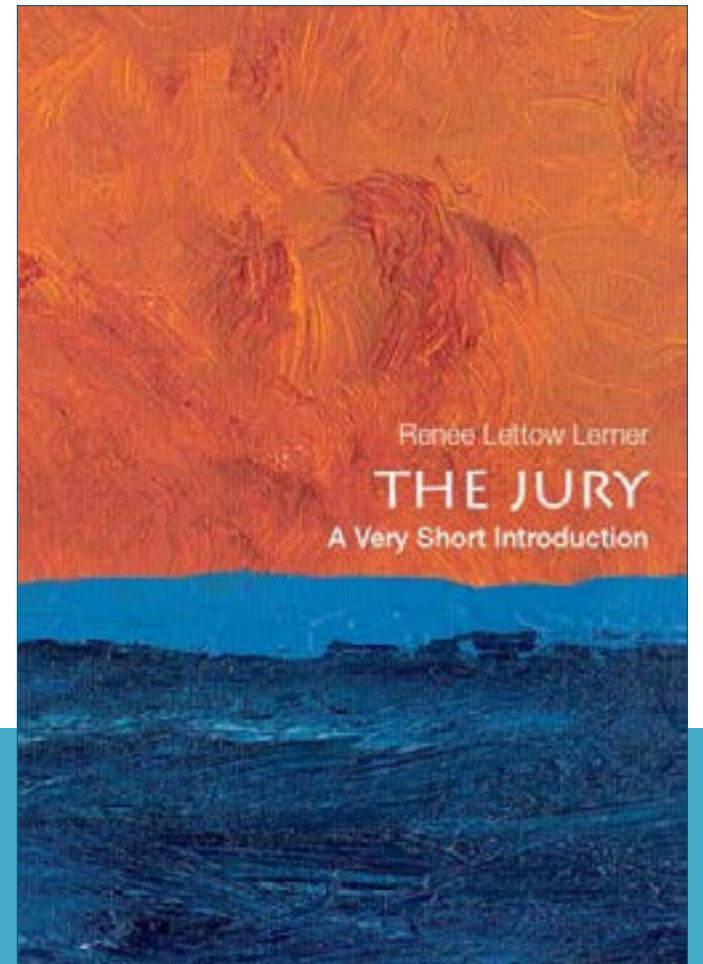


Attendees (from left to right) Mark Kubisch (Pepperdine), Tamar Meshel (Alberta), Natalie Rhoads (Liberty), Stephen Ware (Kansas), and moderator Dan Lyons (Boston College) participate in the “7 Minute Presentation of Works in Progress” at the Annual Faculty Conference.



Thomas M. Cooley Judicial Lecture at the National Archives

Judge Don Willett of the U.S. Court of Appeals for the Fifth Circuit delivered the Thomas M. Cooley Judicial Lecture at the National Archives. The event was cosponsored by the Federalist Society’s Faculty Division and the Georgetown Center for the Constitution.



Prof. Renée Lettow Lerner (GW Law) just published a new book with Oxford University Press, *The Jury: A Very Short Introduction*.



Faculty Breakfast at the NLC

PRACTICE GROUPS



Whither “Neo-Brandeisian” Antitrust Enforcement: A Candid Conversation with Jonathan Kanter

The Biden administration has made aggressive antitrust enforcement a priority, and appointed Jonathan Kanter to be the nation’s chief antitrust law enforcer as the Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice. Though Kanter’s background is in BigLaw, he is a leading advocate of the neo-Brandeisian school of antitrust that seeks to expand the scope and importance of antitrust. His aggressive agenda has yet to be fully revealed; however, the courts do not appear sympathetic and have handed the Division a series of defeats in recently-litigated merger challenges.

At this luncheon event, Rick Rule, the head of the Antitrust Division under President Reagan (and a former partner of Kanter), probed Kanter on what he is hoping to achieve during his tenure and how he is going to deal with the skepticism of the courts.

A Seat at the Sitting

Each month during the Court’s term, a panel of experts convenes to discuss the Court’s upcoming docket sitting by sitting. Our November 2022 panel featured experts Jennifer Weddle (Greenberg Traurig), Margaret A. Little (New Civil Liberties Alliance), Alison Somin (Pacific Legal Foundation), and Elyse Dorsey (Kirkland & Ellis) and was moderated by Amy Howe. The panel discussed *Students for Fair Admissions v. Harvard*, *Students for Fair Admissions v. UNC*, *SEC v. Cochran*, *Axon v. FTC*, and *Haaland v. Brackeen*.



Talks with Authors: An Introduction to Constitutional Law: 100+ Supreme Court Cases Everyone Should Know

Professors Randy Barnett and Josh Blackman discussed the most important Supreme Court cases of all time, as featured in their new book, *An Introduction to Constitutional Law: 100+ Supreme Court Cases Everyone Should Know*. Plus, they debuted a new video series, including previews of *Dobbs* and *Bruen*.



Parental Rights and Religious Liberty: Examining New Conflicts Between Parents and the State

In *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court established a clear threshold for unenumerated rights, that they must be rooted in history and tradition and essential to ordered liberty. That decision comes as a new series of conflicts between parents and the state are arising in education and healthcare around the country. Many of these conflicts are over ideas about gender and race and involve parental rights theories. How do those arguments square with existing doctrine? How might they extend existing doctrine? Ryan Bangert, Professor James Dwyer, and Professor Rick Garnett joined us to discuss these questions and more.

PRACTICE GROUPS AT THE NLC

Litigation: Is the National Association of Attorneys General in Need of Reform?

Oramel H. Skinner (Alliance for Consumers), Jonathan Skrmetti (Tennessee AG), Chris Toth (former NAAG), Hon. Stephanos Bibas (3d Cir.) (moderator)

Federalism & Separation of Powers: Render Law Unto Congress and Execution Unto the Executive: The Supreme Court Rebalances Constitutional Power

Prof. Aditya Bamzai (UVA), Hon. Thomas B. Griffith (Hunton Andrews Kurth LLP), Hon. Sally Katzen (NYU), Prof. Nicholas R. Parillo (Yale), Hon. James C. Ho (5th Cir.) (moderator)



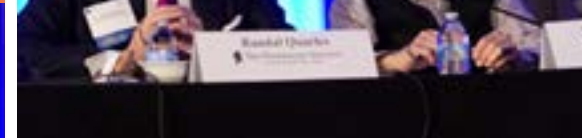
Civil Rights: Students for Fair Admissions v. Harvard: Affirmative Action Goes to Court

Michael A. Carvin (Jones Day), Prof. Gail Heriot (USD), Prof. Eric Segall (GSU), Hon. Kevin C. Newsom (11th Cir.) (moderator)



Financial Services & E-Commerce: Central Bank Digital Currencies: A Tool for Government Control?

Hon. Randal Quarles (former Federal Reserve), Prof. Steven L. Schwarcz (Duke), Prof. Todd Zywicki (Scalia Law), Hon. Joan Larsen (6th Cir.) (moderator)



Corporations, Securities & Antitrust: Woke, Smoke, or Smart: Regulators Push for ESG

Jonathan Berry (Boyden Gray & Associates), Dalia O. Blass (BlackRock), Douglas C. Geho (House Judiciary Committee), Hon. Christine S. Wilson (Commissioner, FTC), Hon. Andrew Oldham (5th Cir.) (moderator)



Administrative Law & Regulation: The Major Questions Doctrine: West Virginia v. EPA

Ian Gershengorn (former Acting U.S. SG), Prof. Jennifer Mascott (Scalia Law), Prof. Tom Merrill (Columbia), Yaakov M. Roth (Jones Day), Hon. Edith H. Jones (5th Cir.) (moderator)

Free Speech & Election Law: Is Executive Soft Power a Threat to Free Speech?

Prof. Enrique Armijo (Elon), Mark Chenoweth (New Civil Liberties Alliance), Joe Cohn (Foundation for Individual Rights and Expression), Michael Ellis (Rumble), Hon. Britt Grant (11th Cir.) (moderator)

Professional Responsibility & Legal Education: The Judge's Role in Choosing a Successor

Prof. Josh Blackman (South Texas Law), David Lat (Original Jurisdiction), Rob Luther III (Jones Day), Michael Fragoso (Chief Counsel to the GOP Leader), Hon. Stephen A. Vaden (Court of Int'l Trade) (moderator)



Labor & Employment Law: Regulatory Elephants in Statutory Mouse Holes?

Hon. Eric S. Dreiband (former AAG for Civil Rights), Hon. Ondray T. Harris (former OFCCP director), Brian E. Hayes (former GOP Labor Policy Director), Steven P. Lehotsky (Lehotsky Keller), Cheryl Stanton (BrightStar Care), Hon. Michael B. Brennan (7th Cir.) (moderator)



International & National Security Law: The Russian Invasion of Ukraine and International Law, Order, and Security

Michael Allen (Beacon Global Strategies), Hon. Marshall S. Billingslea (former U.S. Dep't of State), Maj. Gen. Charles J. Dunlap Jr. (Duke), Prof. Angela Stent (Brookings), Hon. Raymond Kethledge (6th Cir.) (moderator)

Criminal Law & Procedure: What Can Be Done About Violent Crime?

Thomas Abt (Council on Criminal Justice), Paul Carrillo (Giffords Law Center), Hon. Erica H. MacDonald (former Minn. U.S. Attorney and district judge), Rev. Mark V. Scott (Azusa Christian Community), Hon. Amul Thapar (6th Cir.) (moderator)



Intellectual Property: Competition and Innovation Policy for Tomorrow

Hon. Makan Delrahim (former AAG for Antitrust), Prof. Christine Haight Farley (American Law), Hon. Andre Iancu (former U.S. PTO), Hon. F. Scott Kieff (former U.S. International Trade Commission), Hon. Ryan T. Holte (Court of Federal Claims) (moderator)

Dobbs, Roe, Casey, & the Rule of Law

Prof. Mary Anne Case (Chicago), Prof. David Cole (ACLU), Prof. Sherif Girgis (Notre Dame), Carrie Severino (JCN), Hon. Lisa Branch (11th Cir.) (moderator)

Environmental Law & Property Rights: Environmental Law After *WV v. EPA*: Can the Biden Administration's "Whole of Government" Approaches Survive Judicial Review?

Sean Donahue (Donahue & Goldberg), Derrick Morgan (Heritage), Lindsay See (West Virginia SG), Hon. Lawrence VanDyke (9th Cir.) (moderator)



Religious Liberties: Religious Liberty and Education: Kennedy, Carson, and Parental Rights

Prof. Nicole Garnett (Notre Dame), Prof. William P. Marshall (UNC), Erin Murphy (Clement & Murphy), Hon. Raymond Kethledge (6th Cir.) (moderator)



After Bruen: What's Next in the States

Stephen Halbrook (Independent Institute), Prof. William Merkel (Charleston), Prof. Mark Smith (King's College), Hon. Steven J. Menashi (2d Cir.) (moderator)

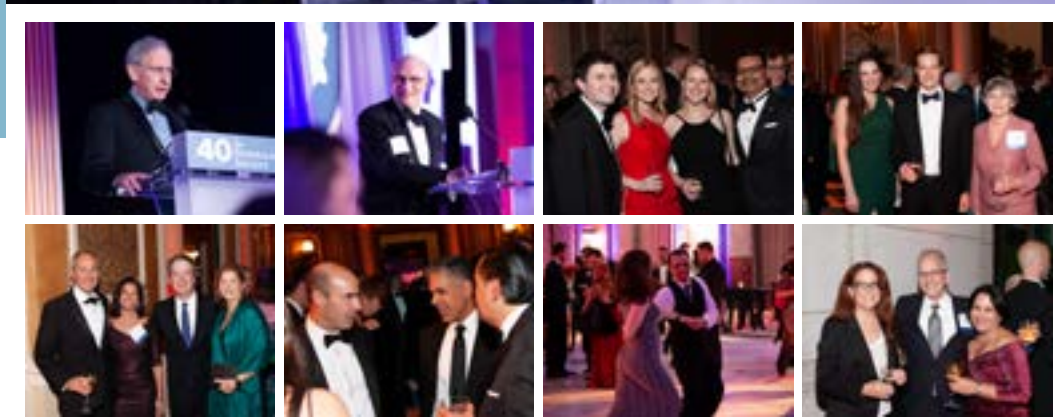


Telecommunications & Electronic Media: The Largest Ever Federal Infusion of Broadband Funding: Necessary Investment or Waste of Taxpayer Money?

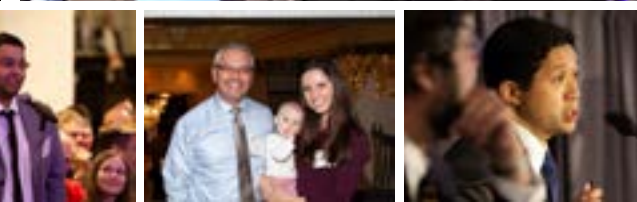
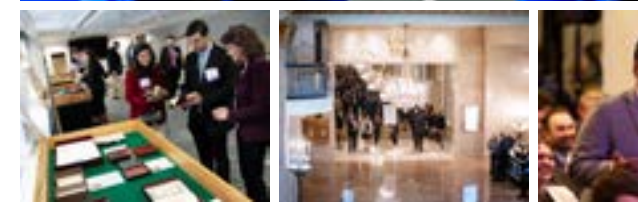
Shirley Bloomfield (NTCA), Veneeth Iyengar (Connect LA), Hon. Michael O'Rielly (former FCC), Hon. Jeffrey S. Sutton (6th Cir.) (moderator)

NATIONAL LAWYERS CONVENTION

Annual Antonin Scalia Memorial Dinner



This year, to celebrate the Federalist Society's 40th anniversary, the Scalia Dinner featured a special presentation that included a chat among the Society's founders about the early days, along with remarks by Justice Samuel Alito, Barbara Smith, Leonard Leo, and Justice Amy Coney Barrett. Former Michigan Supreme Court Justice Stephen Markman was the evening's emcee.



The 2022 NLC opened with an address by 11th Circuit Judge William H. Pryor.

Professor Richard Epstein delivered the 2022 Barbara K. Olson Memorial Lecture.

The Legal Profession and Constitutional Culture: Prof. Jamal Greene, Prof. Tara Grove, Ashley Keller, Prof. John McGinnis, Hon. Patrick J. Bumatay (moderator)

Lawyers, the Adversarial System, and Social Justice: Lisa Blatt, Hon. Paul D. Clement, Kannon Shanmugam, Hon. Seth Waxman, Hon. S. Kyle Duncan (moderator)

The Mission of Law Schools: Dean Mark Alexander, Prof. Joshua Kleinfeld, Prof. Paul G. Mahoney, Dean Dayna Matthew, Hon. Neomi Rao (moderator)

Annual Rosenkranz Debate: RESOLVED: The U.S. Constitution limits the role of state courts and executives in redistricting under Article I, Section 4, Clause I. Prof. Akhil Reed Amar v. Prof. John Yoo

Senator Mike Lee addressed the NLC on Friday morning.

Hon. A. Raymond Randolph delivered the 2022 Hon. Robert H. Bork Memorial Lecture.



REGULATORY TRANSPARENCY PROJECT

New Video Releases



Creatures of Statute

The Federalist Society's Regulatory Transparency Project and Capitol Hill Chapter hosted a three-part lecture series on how the administrative state functions in modern American government. Part One was entitled *Administrative Agencies in Practice* and featured Boris Bershteyn, Paul Ray, and Hon. Stephen Vaden. Part Two was called *Administrative Agencies and Policymaking*, and it featured Hon. Lisa Branch, David Fotouhi, and Richard Pierce. Part Three, *Congress' Responsibility to Answer the Major Questions*, featured Sarah Binder, Daniel Flores, and Hon. Trevor McFadden.



Featuring Jerry Brito, Rohan Grey, David Kinitsky, Caitlin Long, Stephen Mihm, and Lee Reiners

Recent Live Events



Regulating the New Crypto Ecosystem

RTP hosted a live event featuring a discussion of cryptocurrency regulation among Jerry Brito, SEC Commissioner Hester Peirce, Todd Phillips, Ryan Selkis, and J.W. Verrret.



The Evolution of Antitrust Laws Relating to College Athletics with Babette Boliek



Should the Government Limit Copyright Protection for E-Books? with Adam Mossoff



How Do Regulations Affect Delivery Drones? with Brent Skorup

A Global Energy Crisis and the Federal Energy Regulatory Commission: A Discussion of Challenges and Opportunities

This important discussion was held at the Mayflower Hotel in Washington, DC, and it featured FERC Commissioner James Danly, Michael Buschbacher, Jennifer Chen, Marc Spitzer, and Jim Wedeking.



Other Recent Releases

Event: Stopping Clean Power: Local Roadblocks and Energy Permitting
James Coleman, Robert Glicksman, Sanjay Patnaik (cosponsored with the American Enterprise Institute)

Paper: The Coming Onslaught of "Algorithmic Fairness" Regulations
Neil Chilson, Adam Thierer

Webinar: The Future of NEPA Reform
David Adelman, Michael Buschbacher, James Coleman

Webinar: Courthouse Steps Oral Argument: *Axon v. Federal Trade Commission*
Ashley Baker, Ronald Cass, Henry Su, Svetlana Gans

Podcast: The Implications of AI Innovation and Regulation
Jennifer Huddleston, Hodan Omaar, Adam Thierer

Podcast: An Agenda for Congress
Gail Heriot

Podcast: Government Obstacles to Over The Counter Medicines
Michael Cannon, Christina Sandefur

Podcast: High Energy Prices, Public Policy & Possible Solutions
James Coleman



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Coming Soon from FedSoc Studios

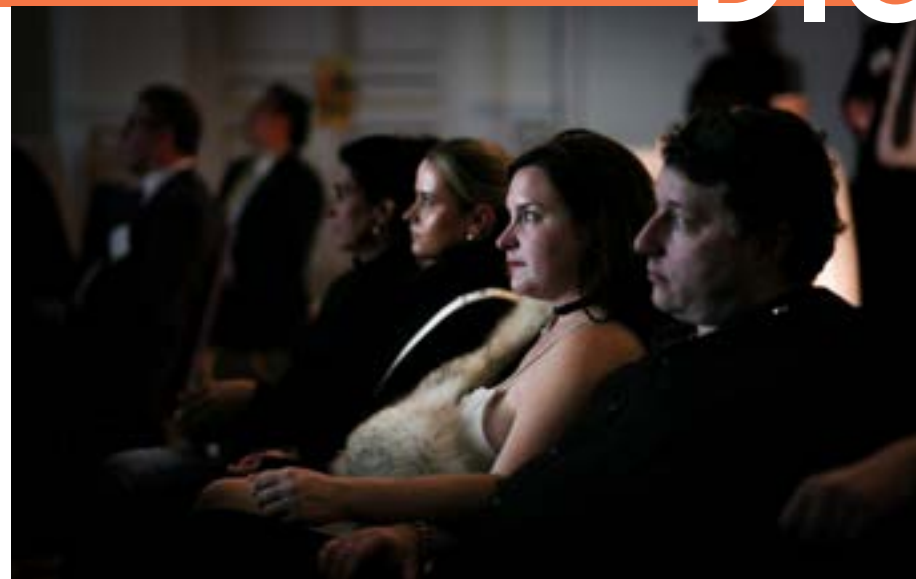
With several new documentaries currently in production, FedSoc Studios has a full calendar for 2023. Below are exclusive previews and behind-the-scenes photos for two of these upcoming films: "Katz on the Internet" and "United States of Emergency."

FedSoc Studios Showcase

FedSoc Studios hosted its second annual showcase on Friday, November 11, 2022 as a part of the 2022 National Lawyers Convention.

The triple feature included the world premiere of "Bitcoin Cowboys: Will Wyoming Become the Next Crypto Capital?" and lively Q&A sessions with the directors for "Image of American: Frederick Douglass and the Right to Vote" and "Madison and the Fight for the Constitution."

All three films are now live on The Federalist Society's YouTube channel. Please subscribe to catch all the latest from FedSoc!



Katz on the Internet: Privacy in the Digital Age

An in-depth look at how the third party doctrine affects digital privacy in the 21st century. Though the Fourth Amendment provides protections against "unreasonable searches," do these guardrails also apply to information given to third-parties such as Google, Facebook, or any other online service? Find out from our experts featuring law professors, privacy advocates, and former prosecutors.



United States of Emergency: Wisconsin's Authority to Lockdown

This is the first in our series on emergency & police powers during the pandemic. This first episode focuses on the renewed debate regarding the nature, scope, and limits of state police powers, specifically state emergency action. A state supreme court case in Wisconsin, in which a taxpayer challenged the Governor over his repeated extension of the COVID-19 emergency declaration, provides an interesting showcase for the competing interests and warring perspectives both in favor and against sweeping state action.



THE FEDERALIST SOCIETY PRESENTS

THE SECOND ANNUAL FEDSOC STUDIOS SHOWCASE

The Best Films of 2022

ADMIT ONE

National Lawyers Convention
November 11, 2022

Chinese Room
Doors open at 7:00pm

<p>MADISON AND THE FIGHT FOR THE CONSTITUTION</p>  <p>RUN TIME: 11 MINUTES</p>	<p>BITCOIN COWBOYS: WILL WYOMING BECOME THE NEXT CRYPTO CAPITAL?</p>  <p>RUN TIME: 24 MINUTES</p>	<p>IMAGE OF AN AMERICAN: FREDERICK DOUGLASS AND THE RIGHT TO VOTE</p>  <p>RUN TIME: 16 MINUTES</p>	<p>SHOW STARTS AT 7:30PM</p> <p>Featuring the premiere of <i>Bitcoin Cowboys: Will Wyoming Become the Next Crypto Capital?</i></p>
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FREEDOM OF THOUGHT

Work Different at the NLC

During the 2022 NLC, the Freedom of Thought Project sponsored a panel titled *Work Different: Finding The Opportunities That Match Your Priorities* featuring:

- Sumi Thomas, VP of Legal Professional Affairs, Blackstone Legal Fellowship
- Stephanie Holmes, Founder, BrighterSide HR, LLC
- Andrea Lucas, Commissioner, U.S. EEOC
- Roger Severino, VP for Domestic Policy, Heritage Foundation; Senior Fellow, Ethics & Public Policy Center
- Moderator: Kate Todd, Partner, Ellis George Cipollone

The panel discussed how the legal industry has been slow to adopt workplace innovations. Conventional paths often are still package deals with unwelcome tradeoffs – especially when priorities change over the course of a career.

COVID has changed our thinking on remote work, but beyond conventional full-time work – in or out of the office – there’s more room for innovation. Often, the challenge is bridging the information gap – connecting individual attorneys with the innovative opportunities that match their new priorities and make the best use of their skills.

The panelists have all been on the cutting edge of this challenge, finding and creating opportunities that make the most of their time and talents. How did they find “outside the box” opportunities as their priorities changed? How can young attorneys build the skills and relationships that will prepare them for a better range of options? And how can we support attorneys looking for the chance to put their skills to good use?

Moderator Kate Todd asked the panel, “What advice would you give your younger self?” Here is Sumi Thomas’s answer:

One thing I’ve learned is to lean into the strengths and the gifts I think all of you in this room have, no matter what your profession or where you are now.

I bet you can look at yourself, honestly even in elementary school, and say where did you lean and what were those gifts. Even little things like, was I more organized than the other students, or how did I think, or was I really good at putting friend groups together or inviting people into groups?

All of us have those little things that we know about each other that I guarantee that you can see from the time you were a child.

One other thing I would tell my younger self is to never look at your career as a ladder you climb. So often you will see people who want to go straight to the top. Look at it as a climbing wall because sometimes you will go up, sometimes you will go down, sometimes you’re going to go a totally different direction that you didn’t even imagine.

I think it takes the pressure off when you see a wide expansive space in this profession versus saying next rung, next rung, next rung.

Are you interested in learning more about Freedom of Thought? Use this QR code to sign up for more information!



Watch the full panel on our YouTube page using this QR code!

EXTERNAL RELATIONS

Arizona Symposium on Originalism

Arizona has a robust state constitution. At this symposium, appellate judges and justices, prominent practitioners, and academics surveyed Arizona’s constitutional landscape through the lens of original meaning, focusing on: structure and separation of powers, individual rights with federal cognates, and several provisions unique to the Arizona Constitution. The symposium was co-sponsored by the Phoenix Lawyers Chapter.



State Court Docket Watch

State Court Docket Watch features articles by FedSoc experts describing important new state supreme court decisions and their potential effects on the shape of state law. If you would like to join the conversation and submit a summary of an important state supreme court case, email statecourts@fedsoc.org for more information.

In his SCDW article on *Texas Department of State Health Services v. Crown Distributing LLC*, Cory Liu writes, “the Texas Supreme Court held that a Texas prohibition on manufacturing or processing hemp for smoking did not violate the Texas Constitution’s guarantee of the due course of law, which protects only the right to engage in ‘common,’ ‘lawful’ occupations.”

Use the QR code to read more!



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