

The Magazine of the Federalist Society

The Federalist Paper

July 2011

www.fed-soc.org

SPRING
ISSUE

INSIDE:
Student, Lawyers &
Faculty Division
Updates

30th Annual Student
Symposium Report

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.”

Directors/Officers

Steven G. Calabresi, *Chairman*
Hon. David M. McIntosh, *Vice Chairman*
Gary Lawson, *Secretary*
Brent O. Hatch, *Treasurer*
Eugene B. Meyer, *President*
...
T. Kenneth Cribb, *Counselor*

Board of Visitors

Hon. Robert H. Bork, *Co-Chairman*
Lillian BeVier
Christopher DeMuth
Hon. Lois Haight Herrington
Hon. Frank Keating
Robert A. Levy
Hon. Michael B. Mukasey
Hon. Theodore B. Olson
Hon. Wm. Bradford Reynolds
Gerald Walpin

Hon. Orrin G. Hatch, *Co-Chairman*
Hon. Elaine D. Chao
Hon. C. Boyden Gray
Hon. Donald Paul Hodel
Harvey C. Koch
Hon. Edwin Meese, III
Hon. Gale Norton
Andrew J. Redleaf
Nicholas Quinn Rosenkranz

Staff

President

Eugene B. Meyer

Executive Vice President

Leonard A. Leo

Lawyers Division

Dean Reuter, *Vice President, Practice Groups Director*
Lisa Ezell, *Vice President, Lawyers Chapters Director*
Juli Nix, *Deputy Director*
David C.F. Ray, *Associate Director*
Hannah De Guzman, *Assistant Director*
Thomas Kraemer, *Assistant Director*
Jennifer Derleth, *Assistant Director*

Jonathan Bunch, Vice President, State Courts Project Director

Maureen Wagner, *Deputy Director*
Allison Aldrich, *Associate Director*

Pro-Bono Center Director

Peggy Little

Development

Emily Kuebler, *Deputy Director*
Sophia Mason, *Assistant Director*

Office Management

Rhonda Moaland, *Director*
Matt Nix, *Assistant Director*

Alumni Director

Kendra Kocovsky

Senior Vice President & Faculty Division Director

Lee Liberman Otis

Anthony Deardurff, Deputy Director

Barrett Young, *Associate Director*

Student Division

Peter Redpath, *Vice President, Director*
Daniel Suhr, *Deputy Director*
Kate Beer, *Associate Director*
Alexandra Bruce, *Assistant Director*

International Law and Sovereignty Project

James P. Kelly, III, *Director*
Ken Wiltberger, *Deputy Director*

Publications Director

Paul Zimmerman

Finance Director

Douglas C. Ubben, *Vice President*

Information Technology Director

C. David Smith, *Vice President*

Membership Director

Matthew Daniel

LETTER FROM THE EDITOR

Dear Friend of the Society,

We are pleased to bring you the spring 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.

In February, scholars, students, and practitioners gathered in Charlottesville for the Federalist Society's 30th Annual Student Symposium, hosted by the University of Virginia School of Law. This year's Symposium topic was "Capitalism, Markets, and the Constitution." We have included in this issue a survey of each of the panels, speeches, and other events of the Symposium by Clifford Chad Henson of the University of Illinois College of Law Student Chapter.

The Federalist Society's Lawyers Chapters were particularly active at the beginning of this year, hosting events on such topics as the war on terrorism, judicial elections, and the constitutionality of the health care law. The Faculty Division continued its successful *Law & Liberty* colloquia series, co-hosted with the Liberty Fund. It held events in California, Minnesota, and Virginia over the recent months.

The Society's new Law School Alumni Chapters have also been generating interest. They have been hosting a number of events aimed at helping Federalist Society alumni reconnect and organize for future meetings.

As always, we invite and encourage friends and members to send in comments and suggestions—and look forward to hearing from you!

Features

July 2011



(above) U.S. Supreme Court Justice Clarence Thomas congratulates the Columbia Student Chapter (left to right: Jake Beiswenger, Jeff Ober, Lauren Barlow, Branden Berns, Ammon Simon, Walton Dumas, Michael Arnold, Brittani Yriarte, Jonathan Berry, Mac Stone) after it wins the James Madison Award for Chapter of the Year at the 2011 Student Symposium. (at right) The Silicon Valley Lawyers Chapter hosts U.S. Supreme Court Justice Samuel Alito, where he offered remarks and answered questions from lawyers and students in attendance.

Student Division

Chapters Update	4
Student Symposium Recap	6

Lawyers Division

Chapters Update	16
Practice Groups Update	20
State Courts Project Report	22
International Law & Sovereignty Project Report	23
Alumni Chapters	26
Faculty Division Report	27

Student Division

Chapters Update

by Alexandra Bruce

During the course of the 2010-2011 academic year, over 70,000 people became familiar with the ideas of the Federalist Society on law school campuses across the country. The Federalist Society Student Chapters provided attendees a side of various legal arguments that otherwise may never have been presented on these campuses. With over 1200 panels, debates, and speeches, the Federalist Society had an average of more than six events at every accredited American law school. This is quite an accomplishment.

Law schools have been recognizing the success of our Student Chapters in bringing debate to their

campuses by honoring numerous Chapters for their work. Catholic University Law School awarded the CUA Federalist Society Chapter the “Rising Star” award. Western New England and Illinois received the Chapter of the Year awards from their schools. Duke received an award for “outstanding contribution to civic discourse.” Brooklyn Law School’s Chapter received the 2011 President’s Award for its accomplishments. The school explained, “The Federalist Society was able to work with a very small budget, this being their first year back in BLS. Working together with several other groups, the Federalist Society was able to host several in-

formational debates, securing high-profile speakers and guests. One of the major things considered by the executive board was the collaboration and involvement of other student organizations. The Federalist Society co-sponsored several events with other organizations fostering a sense of community between the students and the student leaders.”

Leading legal scholars visited our Student Chapters to debate current issues facing the legal community. Health care reform continued to be a popular topic. Fordham University hosted an “Obamacare” debate with Ilya Shapiro and Nelson Tebbe of Brooklyn Law. This event drew in over 125 students.



Prof. David Moore of Brigham Young University Law School visits with officers from the Roger Williams Student Chapter, where he discussed the topic “Should U.S. Courts Ignore International Law?” in March.

Roger Pilon packed a New York Law School auditorium with his debate titled “From the Tea Party to the Congress to the Court: The Constitution is Back in Vogue.”

Former Attorney General Edwin Meese visited Catholic University to give a speech on originalism and the Constitution. Students asked questions and met with General Meese personally after the event. Judge Kenneth Starr visited with 140 students at Houston in March to discuss and answer questions from students about “The Westboro Baptist Case and the Public Square.” Giving our members the opportunity to discuss issues and meet with prestigious members of the conservative legal community allows them to gain a better understanding of these complex issues.

This year’s Student Symposium was held this February at UVA. It was a huge success with over 600 students in attendance. The topic of “Capitalism, Markets and the Constitution” made for an enlightening and educational weekend. Attendees were able to meet like-minded students and expand their knowledge of current issues.

An exciting aspect of this year’s Student Symposium was the addition of the “Feddies,” awards given to Chapters who showed exceptional leadership, generated interest, and made huge impacts on their campus. The Feddie awards

included the James Madison Award for Chapter of the Year, Alexander Hamilton Award for Most Improved Chapter, Samuel Adams Award for Membership Growth, and Tom Paine Award for Creative Publicity.

Each of our nominees and winners deserve a great deal of recognition and appreciation for the efforts they have made in improving the conservative legal debate on their campuses. The nominees included: Northwestern, Yale, Columbia,



(left to right) William Haun of Catholic University’s Columbus School of Law Student Chapter, former Attorney General Edwin Meese III, and Prof. Robert A. Destro of Columbus School of Law meet at an event at Catholic on originalism and the Constitution.

Ohio State, and Chicago for the James Madison Award; Catholic, Ohio State, Western New England, Rutgers-Newark, and Wyoming for the Alexander Hamilton Award; Virginia, BYU, Inter-American, Harvard, and Oregon for the Samuel Adams Award; and Florida International, Idaho, North Carolina, UC-Berkeley, and Houston for the Tom Paine Award.

Because the Federalist Society’s

Student Chapters have seen one of their most successful years to date, the decision of which chapter would receive the Feddie awards proved difficult. The winners were Columbia School of Law for the James Madison Chapter of the Year, along with Rutgers-Newark for the Alexander Hamilton Most Improved Chapter, UC Berkeley for the Tom Paine Award for Creative Publicity, and BYU for the Samuel Adams Award for Membership Growth. The Chapter attendees from Fed-

die Award-winning schools met and took pictures with Justice Thomas after the Symposium’s closing banquet.

To ensure another successful year, the newly-elected Student Chapter officers will be flying to Washington, D.C. this summer for the Annual Student Leadership Conference. During this conference these chapter leaders will be provided the knowledge and guidance to run an effective Federalist Society Student Chapter.

This conference, along with the diligent work of our student leaders, is vital to continuing our goal of generating interest among law school students around the country. We encourage our newly-elected Chapter presidents seeking information about the conference to visit our website at <http://www.fed-soc.org/chapters/id.681/default.asp>.

30TH ANNUAL STUDENT SYMPOSIUM

by Clifford Chad Henson
University of Illinois College of
Law Chapter

Students, speakers, and members of the Federalist Society met in Charlottesville, Virginia on February 25-26 for the 30th Annual Federalist Society Student Symposium. This year's event, hosted by the University of Virginia, featured invigorating panel discussions, speeches, and debates by distinguished professors, judges, attorneys, and businessmen on this year's featured topic: **Capitalism, Markets, & the Constitution**. The goal of this symposium was to provide a lively intellectual exploration of the connections between markets, liberty, the Constitution, and the role of courts in protecting them. The University of Virginia Chapter of the Federalist Society undeniably succeeded, introducing a veritable pantheon of intellectual giants engaging timely issues in public economics and constitutional interpretation.

Introduction to the Symposium

Ben Massey, the President of the University of Virginia's Chapter of the Federalist Society, kicked off the event on Friday night by welcoming the attendees and introducing **Professor Lillian Bevier** of the University of Virginia School of Law and Federalist Society Board of Visitors. She reminded us that the Federalist Society has not always been a part of the legal landscape; in the beginning, its future seemed doubtful. She then identified two crucial elements that have resulted in the Federalist Society's survival and growth in the more than twenty-five years since she

first participated in a student symposium. The first is the power of the principles the Federalist Society supports: that the state exists to preserve freedom, that separation of powers is crucial to preserve that freedom, and that the court's role is to say that the law is rather than what it ought to be. The second, and perhaps more important, is that the Federalist Society provides an important and unique forum for civilized debate that centers on ideas rather than persons. It is by staying true to the principles and remaining committed to providing a forum for open debate about ideas that the Federalist Society can continue to not only survive, but thrive.

Debate: Economic Freedoms and the Constitution

Immediately following Professor Bevier's introduction to the symposium, the attendees were treated to a spirited debate sponsored by the Templeton Foundation. Devin Debacker of the University of Virginia introduced the moderator, **Judge Debra Ann Livingston** of the United States Court of Appeals for the Second Circuit. Judge Livingston stated that the conventional wisdom of constitutional interpretation is that the Constitution went seriously off-course when protecting economic liberties during the *Lochner* era. The panelists then took up broad questions underlying that scrutiny of the *Lochner* era: does the Constitution protect economic liberties, and is it desirable for a constitution to do so?

Professor Randy Barnett of Georgetown University Law Cen-

ter opened the debate by answering these questions in the affirmative. He argued that the Constitution does protect economic liberties, defined as the rights to acquire, use, and possess property and engage in contract. His first argument was that these rights are among those referenced by the Ninth Amendment, which specifies that the enumeration of certain rights does not deny or disparage others. Professor Barnett provided evidence that the rights retained by the people, not to be denied or disparaged by the government, are natural rights, and that natural rights were commonly understood to include economic rights. Referencing journals, draft papers, and legal documents contemporaneous to the enactment of the Bill of Rights, Professor Barnett presented the position that economic liberties were viewed as central rights—rights of the same order of importance as those in the First Amendment. He asserted that the best evidence indicates that the very distinction between “economic” and “personal” liberties is anachronistic: the Founders did not recognize any division, considering both categories part of “natural rights.”

Professor Barnett's second argument was that the Civil War Amendments protect economic rights. The Thirteenth Amendment, prohibiting involuntary servitude, was seen as giving Congress the power to protect economic liberty for all Americans. The Civil Rights Act of 1866 granted all slaves the right to contract, among other things, to the same extent as other citizens. Professor Barnett ar-

gued that under then-existing understandings of slavery, slavery is ultimately a question of self-ownership and the right to contract one's own labor. Any restriction on that right would be seen as a degree of slavery. Congress's federalism fight with President Andrew Johnson, and the subsequent passage of the 14th Amendment, made it clear, according to Professor Barnett, that Congress had the authority to ensure that the rights possessed by citizens would not be infringed by the states. These rights are not trumps, however; the concept of "rights" as absolute side constraints on government behavior is itself anachronistic. Rather, he said, these rights may be reasonably regulated just as freedom of speech may be reasonably regulated, but these rights do exist and deserve greater protection than they have received.

Professor Jeffrey Rosen of The George Washington University Law School took a decidedly different view, urging the libertarians to resist Professor Barnett's "siren call" of an aggressive and activist pro-liberty jurisprudence. Professor Rosen maintained that courts should not be in the business of second-guessing Congress and should generally seek to reduce the role of judicial action in the field of economics. He began by identifying three strands of judicial conservatism: traditional judicial restraint, an activist perspective that embraces the role of courts in discovering unenumerated rights, and a "tea party conservatism" strain in favor of striking down post-New Deal economic regulation but embracing a sort of social conservatism.

While praising the first form as courageous, Professor Rosen argued that the second and third strands of judicial conservatism would create a great deal of social upheaval. A large number of foundational laws, as well as virtually all trappings of the administrative/regulatory state, would disappear. The first problem with this, said Professor Rosen, was identified by Justice



Prof. Lillian Bevier of the University of Virginia School of Law and the Federalist Society Board of Visitors greets the attendees at the 30th Annual Federalist Society Student Symposium.

Holmes in his dissent in *Lochner*: there is no text in the Constitution authorizing the courts to engage in this endeavor. To the framers, the Fourteenth Amendment applied only to civil rights or "privileges or immunities" and not to most of the business of government. Given the world we live in now, with a welfare state and broad support for public interest legislation intended for the advantage of certain classes of people, a presumption of liberty is going too far in protecting economic rights. The second problem,

according to Professor Rosen, was identified in Justice Harlan's *Lochner* dissent: reasonable people can disagree about what constitutes appropriate economic legislation, and judges should defer to Congress in the face of uncertainty because they lack any special competence to evaluate the economic consequences of regulation. Even if the nineteenth-century view of permissible legislation survives, it is difficult to distinguish between permissible regulations (i.e. regulating a danger to public safety) and impermissible redistribution (i.e. rent-seeking) in the guise of valid legislation. Because of this difficulty, asserted Professor Rosen, deference to the legislature is a principled policy that gets the Court out of an area where it can do little good and much harm. Courts should only second-guess Congress when those courts can make arguments based on the text and history of the Constitution that can be embraced by both sides of political spectrum. The liberty of democratic majorities to debate hotly-contested issues is at stake, and this is a liberty worthy of protection.

Professor Barnett responded that conservatives should be wary of taking advice from a progressive telling conservatives how to be conservative, and that the pleas for restraint would hardly hamstring a liberal audience from pursuing its agenda. He said that judicial restraint is the admirable admonition that judges should follow the law—including the *entire* Constitution of the United States. The Ninth Amendment and Privileges or Immunities clause should be enforced

no less than the other parts of the Constitution, and it is not appropriate for judges to ignore them. While the enforcement of these provisions does limit the ability of democratic majorities to enact their preferences into law, the point of a constitution is to restrict the democratic process, which gets its legitimacy from the very restrictions on naked majoritarianism that distinguish it from mob rule. Judges, stated Professor Barnett, can and should enforce these restrictions.

Professor Rosen countered that it is now liberals who are taking an incrementalist approach and disdaining the courts as a tool of effecting policy change. Moreover, this traditional conservative and new liberal approach is consistent with the expectations of Congress following the enactment of the Civil War Amendments. Congress did not anticipate the expansive application of these amendments to prohibit congressional legislation.

Panel: Economic Theory, Civic Virtue and the Meaning of the Constitution

Taking a cooler (but no less intellectually invigorating) tone, our moderator and four panelists engaged in a lively exchange about how the Constitution addresses issues of economics and civic virtue. The panel discussion began with Brinton Lucan introducing the moderator, **Judge J. Harvie Wilkinson III** of the U.S. Court

of Appeals for the Fourth Circuit. Judge Wilkinson pointed out that while the Constitution does not lay out an economic theory in sense of Adam Smith or John Maynard Keynes, and the Constitution is not taught as such in economics classes, it contains a number of economic references. The Framers were undoubtedly aware of and concerned with economic matters. They fought a war at least partially



Prof. Jeffrey Rosen (left) of The George Washington University Law School and Prof. Randy Barnett (right) of Georgetown University Law Center debate the topic “Economic Freedoms and the Constitution” as Judge Debra Ann Livingston of the U.S. Court of Appeals for the Second Circuit moderates.

about taxation without representation. They drafted a Constitution that speaks to economic subjects: taxing, spending, coining money, regulation of commerce, just compensation for takings, obligations of contract, and others. But superficially these references are very different. Some speak to the powers of Congress, others to prohibitions laid on the states. Some provisions are concerned with macroeconomic principles, others with microeconomics. Judge Wilkinson asked if there is a tie that binds these apparently-eclectic provisions. Does the commitment to self-government suggest that the true message of

the Constitution is that the management of the economy is to be left to the people and democratic institutions? And where does civic virtue come into play?

The first speaker to address these weighty issues was **Professor G. Edward White** of the University of Virginia School of Law. He argued that the generation that framed the Constitution had certain attitudes about political economy that did not disengage “economics” from the way it functions within the particular form of society. The economic contents of the Constitution were enacted with two problems in mind: (1) the tendency of unicameral legislatures to sow faction and demagoguery and (2) the tendency of state power to be exercised parochially rather than with the common

good of the nation in mind. The Constitution’s economic contents can be divided into three categories. First, the Constitution references private rights—such as contracts, due process, and just compensation—that restrain unicameral legislatures from assaulting private rights. Second, the Constitution contains federalism provisions, granting to the federal government and taking from the states powers that were likely to be used to serve parochial interests at the expense of the common good. Third, there were provisions related to slavery. The Constitution embodied a strong commitment to private

property rights in slaves and made numerous distinctions between slaves and other persons.

Following Professor White, **Professor Renee Lerner** of the George Washington University Law School provided her vision of the Constitution's treatment of economic theory and civic virtue. She began by asking: did the Framers have a common, cohesive theory of economics in mind; is it relevant; and is it in the Constitution? Prof. Lerner believes that they did share a set of views and that these views permeate the Constitution, manifesting themselves not only in odd clauses but in structural features designed to further their economic views. The delegates to the Constitutional Convention were largely devotees of Adam Smith and Montesquieu, informed in particular by the colonists' negative experience with mercantilist policies restricting the colonists from trading with partners outside England. The agrarians were absent: Thomas Jefferson was in Paris and Benjamin Franklin was in his dotage. John Adams, a Machiavellian, was in England. James Madison, Alexander Hamilton, and others were familiar with the pro-trade school of economic thought, and those views informed their creation of a Constitution. While direct enactment of a school of economic thought is not present, it is difficult to even conceive of what directly enacting a school of economic thought into a political document would look like, said Professor Lerner. Rather, pro-trade views were inserted into the Constitution indirectly. These included the interstate and foreign commerce clauses, as well as diversity jurisdiction for federal courts to protect foreign merchants.

Professor James Ely of Vanderbilt University Law School critiqued Justice Holmes's view of a neutral Constitution. While the Constitution does not advocate a laissez-faire approach to economics, treating the Constitution as embodying either an absolute prohibition on government regulation or *carte blanche* for any regulation a bare majority of politicians can endorse is a false dichotomy, Professor Ely asserted. It is particularly hard to square the agnostic view of Holmes with the expressed views of the Framers on numerous provisions of the Constitution or Bill of Rights. The movement to establish a new government was indeed fueled by the need for a central government to defend the interest of the nation abroad and advance the economy domestically through, among other things, establishing a central currency that could not be inflated by local interests. Moreover, the Lockean delegates linked property rights and individual rights, viewing property rights as central to any scheme of rights protection. Referencing evidence similar to Randy Barnett, as well as pointing to the Framers' own economic activities, Professor Ely argued that the Framers were aware of and supported a robust free market. Whatever the differences in their views, the Framers ultimately envisioned substantially free markets resting on private property rights as the foundation of their budding nation's economic future. Justice Holmes anticipated new jurisprudence, but did not accurately report the views of the Framers.

Professor Nelson Lund of George Mason University School of Law addressed the issue of economic perspectives in the Constitution in a different fashion.

According to Professor Lund, applying economic theory to the marketplace is inadequate. It applies to government itself, and the Framers certainly had an economic theory of government. They recognized that the major problem with men governing men is obliging government to control itself. They answered this challenge by using ambition to counter ambition, making each of the powerful institutions—the executive and legislative branches—dependent on the other. With the judiciary, however, the Founders took the opposite approach by insulating it as much as possible. Alexander Hamilton believed that in addition to having little real power, judges would have more civic virtue than other politicians. The culture of English common law judges supported an ideal of the judge: modesty, self-restraint, studiousness, and caution were considered particularly judicial virtues. In reality, though, judges all seem concerned with moving the law; just as academics seek to be “relevant,” judges seek to be “influential.” Professor Lund ended by offering four proposals to rein in the Justices of the Supreme Court. First, Congress should require judges to issue opinions anonymously. Second, Congress could eliminate the discretionary nature of the Supreme Court's docket and require at least half of the docket to be taken on the recommendation of the circuit court. Third, Congress could take the Justices' personal law clerks and replace them with a general clerk pool. Finally, Congress could, bring back circuit riding—have the Justices sit on circuit courts of appeal—and make them remember what it is to be a real judge who is

expected to follow the law and can be reversed.

Panel: Federalism and Interstate Competition

Saturday morning began with the second panel discussion of the symposium, this time focusing on federalism. The moderator and panelists discussed the politics and policy of what has come to be known as “interstate competition.” Ms. Lauren Prieb introduced the moderator, **Hon. Gregory G. Katsas**, former Assistant Attorney General for the Civil Division of the U.S. Department of Justice and currently a partner at Jones Day. Mr. Katsas outlined the general theory of federalism as interstate competition: in many ways, state governments are like market competitors—as long as people and property can freely cross state lines, states (like businesses) must compete as providers of services, which requires them to act as innovators (“laboratories of experiment”) to attract citizens and prevents them from engaging in rent-seeking behavior through the extraction of taxes from an immobilized citizenry. If the proponents of interstate competition are correct, we might expect to see citizens flourish as states work to meet their needs in diverse ways, from engaging in experiments with taxpayer-funded health insurance to “specializing” in providing an ideal mix of services for particular groups of citizens (e.g. gay marriage). Noting that the problems with interstate competition may be similar to the perceived problems with markets, Mr. Katsas asked three questions for the panelists to discuss: is the analogy of state governments to market competitors a good one, is this what the framers

had in mind, and does interstate competition fail in some areas?

Professor Jonathan Adler of Case Western Reserve University School of Law opened the discussion by arguing that interstate competition fosters better policy, but need not be tied to pro-market policy preferences. His first argument was that favoring interstate competition is not the same as favoring market-oriented policies in any substantial field of regulation. Rather, market-oriented policies would dominate only if those policies were more successful at attracting citizens and businesses than other policies. His second argument was that the structure of the Constitution embodies a presumption of decentralization. The power of the federal government is highly constrained, with the states left to handle the vast majority of cases. It makes sense, then, to presume that state government resolutions are preferable and the burden of proof should be on those who seek to justify federal intervention. Third, he argued that the benefits of such a default position are substantial. States are restricted from adopting sub-optimal policies due to the threat of exit, disciplining policymakers and encouraging innovation while taking advantage of the superior knowledge and incentive structure attendant to decentralized government. While Prof. Adler acknowledged that the threat of negative externalities may justify federal intervention, it is important to compare the harms with the reality of federal intervention, which often falls short of perfection, rather than merely assuming intervention is appropriate whenever theoretically justified. Finally, Prof. Adler maintained that the notion that interstate competition

encourages a “race to the bottom” holds up neither theoretically nor empirically. States are competing with each other on more than one dimension, and need to attract companies (and workforces) across industry sectors, even if their primary concerns are financial ones.

Professor Clayton Gillette of the New York University School of Law began by making a statement of the case for federalism: federalism induces jurisdictions to offer the bundles of goods and services most congenial to residents at the lowest possible tax price, thus maximizing the satisfaction of individuals’ preferences. Moreover, decentralization of governmental power reduces corruption. The homogeneity of subdivisions reduces monitoring costs and thus minimizes logrolling. One oft-overlooked corollary of federalism, however, is fiscal federalism. In order for the federalism story of benefits through interstate competition to work, one assumes that states will spend funds made in pursuing their objectives and internalize the costs without subsidies from the central government or the unlimited ability to print or borrow money. As it happens, however, the failure of a state financially could wreak havoc on the fiscal integrity of other states’ and the national governments. Between the national government existing as a source of bailouts for states and the subsidization of states through tax policy, the national government cannot credibly disassociate itself financially from any state. This, in some areas, justifies regulation necessary to keep the taxpayers of other states from paying for the failed experiments of one state.

Professor John McGinnis of the Northwestern University School of Law broke from policy concerns to speak about federalism and rights. Under his view of federalism, interstate competition can help us learn what rights are key to human flourishing. A good society will seek to maximize freedoms without turning rights into “license”—that which deranges other social good. The line between liberty and license is hard to draw, and different states will draw that line in different ways, leading to different consequences that will inform the decision-making of other states and provide different bundles of benefits to its citizens. Some rights should be enforced federally; the high degree of consensus required to put a right in the U.S.

Constitution gives us some confidence in the wisdom of those rights. Rights like free speech and freedom of movement are essential to the federalist framework. But for most issues, it is best to reduce the social tension that results when everyone is forced to live under the same rules regardless of their own preferences.

Professor Louis Michael Seidman of Georgetown University Law Center argued that the case for federalism is political to its core: preference for the one locus of discretion over another is deeply tied to the actual political decisions one expects to be made. Different loci

of power have, over time, had different relationships to substantive justice, and Prof. Seidman believes we would be much better off talking about our disagreement about substantive justice. Constitutionality is not particularly relevant: the appropriate division of authority should not be read off of a text written by deeply flawed authors in a different context unrecognizable as the country we live in today. Neither can political economy deliver on its



Prof. Louis Michael Seidman (left) of Georgetown University Law Center and Prof. Clayton Gillette (center) of the New York University School of Law discuss “Federalism and Interstate Competition.” Hon. Gregory G. Katsas (right), former Assistant Attorney General for the Civil Division of the U.S. Department of Justice and current partner at Jones Day, moderates.

promise to provide a technocratic solution. There is no particular reason to stop at the state level, and the logic of federalism as a vehicle for maximizing individual preferences argues for a radical libertarianism rather than a conservative view of government.

Speech: The U.S. Financial Crisis: Causes and Consequences

Following the Saturday morning panel, the symposium attendees were treated to a speech by **John Allison**, the former Chairman and CEO of BB&T Corporation, on the root causes of the recent financial crisis. Howard Husock of the

Manhattan Institute introduced Mr. Allison.

Mr. Allison claimed that the financial crisis was caused primarily by government policies. The proximate cause of the crisis was housing policy, which encouraged subprime lending under the guise of affordable housing, leading to a deflationary burst in residential real estate and subsequently decreased liquidity in capital markets when the bubble collapsed. Mr. Allison did not stop there, however, identifying policies by the Federal Reserve, FDIC, Fannie Mae, Freddy Mac, and the SEC that contributed to the financial meltdown.

The more important problems, according to Mr. Allison, are philosophical rather than economic. When policy decisions

are driven by a pragmatic desire to obtain a short-term goal, and an altruist moral code disarms those used as the means to achieve it by condemning their assertion of a right to the fruits of their production, asserted Mr. Allison, the groundwork is laid for a vast array of social programs that neither achieve their goals nor recognize the rights of human beings. The idea of a “right” to affordable housing—a good that exists by virtue of the labor of human beings—contributed to the housing bubble by encouraging the policies that rewarded subprime lending to people representing poor risks.

Because the root cause of our social problems is the philosophic outlook of the individuals within that society, Mr. Allison argued that individual efficacious and ethical action is where the solution must lie. He stated that a moral person should neither take advantage of others nor be taken advantage of; such a person should act as a trader who provides value to others for value received. To achieve the success we want in life, he told the audience to strive for reason, purpose, and self-esteem—the three objectivist values—and commit to a lifetime of learning. By continually seeking the perfection of self, and understanding what makes us valuable to ourselves and each other, we can effect the change we wish to see.

Panel: The Welfare State and American Exceptionalism

Following Mr. Allison's speech, the symposium continued with a panel discussion of the welfare state and American exceptionalism. Matthew Glover introduced the moderator, **Judge Brett Kavanaugh** of the U.S. Court of Appeals for the D.C. Circuit.

Professor Jeremy Rabkin of George Mason University School of Law spoke first. Arguing that our enemies apparently believe us to be nearly omnipotent, Prof. Rabkin asked what it is that has made America powerful, rich, and successful, using the recent discussions about the wisdom and constitutionality of ObamaCare as a vehicle for discussion. The first factor he identified is that Americans embrace personal responsibility and

religion, resulting in a strong work ethic and a belief that we do not need a great deal of assistance from a government to survive and thrive. The second feature is the distinct federalism of the United States: the large number of states ensures that they cannot easily coordinate and



John Allison, former Chairman and CEO of BB&T Corporation, speaks on "The U.S. Financial Crisis: Causes and Consequences."

play a role in setting federal policy, but may push back against federal power. The third feature is our social acceptance of the importance and stability of the Constitution. Our Constitution is hard to change, stable, and long-lasting—and is taken seriously. Americans care about rights upon which the courts have never ruled. Americans' adherence to the Constitution can lead to unusual results, such as antitrust and patent litigation being adjudicated by juries, but the Seventh Amendment guarantees a jury trial and so there is a jury trial. Our Constitution, according to Professor Rabkin, is one for people who believe they are in charge of their own destiny,

and is afforded respect for that very reason. Debates about policy will continue, and will be framed in constitutional terms.

Professor Neomi Rao of George Mason University School of Law analyzed American exceptionalism by looking at our exceptional concept of human dignity rooted in negative rights. This concept is linked in many ways to our Constitution, which is a charter of negative rights and liberties. This is manifest not only in specific provisions, but the political and moral culture more generally, which tends to frown upon the expansive provision of goods and services by the government. This emphasis on negative rights has implications for our view of dignity—what it means to be fully recognized as human. In Europe, dignity involves being part of a community and is linked with social welfare rights and a certain standard of living. Under this view, if a person cannot provide himself with the material

conditions necessary for dignity, others must provide it for him. In America, however, dignity is a function of freedom to act rather than a sense of community or standard of living. Government respects the dignity of citizens by treating them equally and refraining from interfering in their speech, religion, etc. This reflects our history and the traditional relationship between individuals and government that underlies our constitutional system. When judges and politicians protect this relationship, they are protecting a uniquely American perspective on dignity and thus rights. While it would be naïve to claim that this traditional American narrative of

dignity and rights is the only vision with any traction, Professor Rau believes that it keeps a narrow lead. But unless we maintain a social and political culture to sustain this traditional view, we may lose what makes America unique. In this respect, Professor Rau argued, exceptionalism depends on us.

Professor William P. Marshall of the University of North Carolina School of Law spoke about the health care bill, asserting that nothing in the Constitution prohibits the government from providing health care to every American. The constitutional objection to health care reform, then, is an objection about the propriety of *constitutional* government action at variance with our *constitutional culture*, embodied by two principles Americans embrace. The first of these principles is rugged individualism—an embrace of the narrative of the individual who decides for himself what goals to pursue and how. Our ancestors came in search of more opportunity and fewer wars and made something for themselves here, causing Americans to be optimistic about their own chances and relate the success of one to the success of all. There are growing challenges to this narrative, said Professor Marshall. As our society has become more globally integrated and complex, more resources are required to be successful. Moreover, according to Professor Marshall, the increasing power of corporations and globalization of economic challenges

makes it possible for some corporations to do well at the expense of, rather than because of, American prosperity. The second principle is a distrust of government, which Professor Marshall believes is probably healthy. However, the consolidation of resources in corporations gives those corporations a great deal of power, and Americans distrust private corporate power as much

introduced the final moderator, **Judge Diane Sykes** of the U.S. Court of Appeals for the Seventh Circuit. Judge Sykes explained the purpose of the panel: to explore the role of judiciary from a structural standpoint. She asked what judicial model and legal system best protect economic rights and perpetuate a sound economic system.

Professor Paul Stephan of the University of Virginia School of Law addressed the question of whether financial crises, which are predictable in their occurrence but not in their timing and severity, create a reason for judges to alter the *ex ante* expectations of parties created under the private law of property and contract. The first justification offered for judicial interference is that other branches are unable to deal with the problem due to some structural



Prof. William P. Marshall (left) of the University of North Carolina School of Law participates in a panel about “The Welfare State and American Exceptionalism” with Prof. Jeremy Rabkin (right) of George Mason University School of Law.

as government. The federal government can act as an important check on the excesses of corporate power that the states are impotent to curb. Just as much as Americans distrust government, they distrust private power and celebrate equal opportunity. When we think of where to cut government, Professor Marshall asserted, cutting programs that help the disadvantaged eliminate barriers to entry that are beyond their control is a poor place to start.

Panel: Economic Uncertainty and the Role of the Courts

After a lively discussion, the last panel discussion of the symposium began. Joseph D’Agostino

issue. This is not the case in the U.S., however, where Congress and the President *did* respond, albeit, Professor Stephan said, not in an optimal way, without the sky falling. The second justification is that courts are less prone to capture. The problems with this argument are that (1) it is difficult to differentiate capture from normal operations of Congress and (2) it is based on a naïve conception of how civil litigation works, where the judiciary can be captured because judges are not omniscient and attorneys are not of uniform quality. Therefore, according to Prof. Stephan, judges should not upset privately-created expectations.

Dean Paul G. Mahoney of the University of Virginia School of Law, discussed what institutional arrangements guarantee—or create—security of property. There is good reason, according to Dean Mahoney, to believe property rights produce human flourishing based on comparisons of one jurisdiction across time or multiple jurisdictions at the same time. Different efforts to measure property rights, such as political risk services and economic freedom indexes, generate measures correlating highly with prosperity. While there is some question about the causal story on prosperity, secure property rights, and freedom-generating institutions, there is little question that there are two common and mutually-reinforcing “packages”

of institutions and outcomes. The first package consists of constrained government, secure property rights, and prosperity. The second package consists of unconstrained government, unprotected property, and poverty. A mixture of these, such as we currently see in China, is not mutually reinforcing and, said Dean Mahoney, creates tension that is likely to lead to political conflict. This relationship may not be linear, however. At some prosperity point, the marginal voter may be more interested in stability than growth. Paradoxically, then, the success of property protection may invite its own demise.

The panel’s final speaker was Professor Todd Zywicki of George

Mason University School of Law, who explored whether private property should be equally protected in times of economic crisis as in other times. He concluded that private property should be given more protection for a few reasons. The first is that the world is in a constant state of flux, and given the levels of disequilibrium and difficulty of coordination, law should be stable to minimize the number of variables



Prof. Todd Zywicki (left) of George Mason University School of Law and Dean Paul G. Mahoney (right) of the University of Virginia School of Law discuss “Economic Uncertainty and the Role of the Courts.”

a person must deal with. Second, the riskiness associated with variable rules makes transacting more expensive as the risk of ex-post modification is priced in ex-ante. Third, rule modification provides opportunities for politicians to pick winners and losers in the market while opportunistic corporations engage in lobbying to shut out competition. Finally, interventions based on sympathy create moral hazard; when large corporations can make a profit but not suffer a loss, they are gambling with the house’s money rather than taking an efficient and prudent risk. This is empirically verified in the case of home foreclosure laws. For these reasons, in time of crisis, we want

stronger rules and less capacity for government intervention in market transactions.

Student Symposium Banquet

After the final panel, Symposium attendees gathered at The Boar’s Head for a reception followed by the Student Symposium Banquet. The banquet featured the Federalist Society Student Division’s inaugural presentation of the “Feddies,” awards given to various Student Chapters in recognition of their leadership and the interest they generated for the Society over the course of the last year (see the Student Division Chapters Update for more information on the nominees and winners of the Feddies).

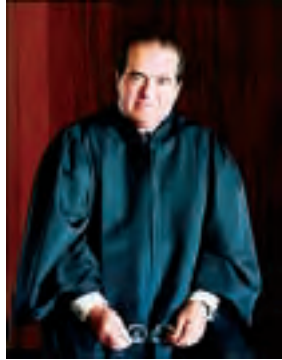
Next, Joseph Bingham of the University of Chicago Law School Chapter presented the annual Paul M. Bator Award to Professor Brian T. Fitzpatrick of Vanderbilt University Law School in recognition of his excellence in legal scholarship, commitment to teaching, concern for students, and the significant public impact he has made. Finally, Professor Lillian BeVier introduced the banquet’s keynote speaker, U.S. Supreme Court Associate Justice Clarence Thomas, who participated in a question and answer session with Leonard Leo, Executive Vice President of the Federalist Society, and Professor Caleb Nelson of the University of Virginia School of Law, who had clerked for Justice Thomas on the U.S. Supreme Court.

The Federalist Society's Federalism & Separation of Powers Practice Group Presents:

2011 Separation of Powers CLE Course

Thursday, September 1 & Friday, September 2, 2011

Lake Tahoe, CA



Supreme Court Associate Justice **Antonin Scalia** and Professor **John Baker**, Distinguished Scholar in Residence at Catholic University of America School of Law and Professor Emeritus at Louisiana State University School of Law, will teach a ten-hour CLE course on the courts, standing, the non-delegation doctrine, and appointments and removal, as they relate to the separation of powers. **Registration is only open to current dues-paying members of the Federalist Society.**

Registration Information:

- **\$375 - Private Sector members**
- **\$325 - Government, Non-Profit, Faculty members**
- **\$275 - Student members** (*Students must be current Federalist Society law student members. There are a limited number of student seats available for this event.*)

Registration fee includes CLE materials, course taught by Justice Scalia and Prof. Baker, two continental breakfasts & two evening receptions. Registrants will receive the CLE materials in advance, which are expected to be read before the course. Registration fee does not include travel or lodging.

Lodging Information:

To reserve accommodations for the conference, please contact the Ritz-Carlton at 800-514-4685 (please specify "The Federalist Society" when making the reservation). Registrants must secure hotel rooms no later than **August 10, 2011** in order to ensure availability of discounted room rate of \$205 per night.

Please visit fed-soc.org for further details and registration. Contact Juli Nix at juli.nix@fed-soc.org or 202-822-8138 with any questions.

LAWYERS CHAPTERS HOST JUSTICE ALITO, SENATOR TOOMEY, AND HONOR FORMER ATTORNEY GENERAL MICHAEL MUKASEY

by Lisa Ezell

The Federalist Society's lawyers chapters sponsored one of their busiest programmatic seasons in recent years, hosting an all-star slate of speakers including United States Supreme Court Justice Samuel Alito, Senator Pat Toomey, former Secretary of Defense Donald Rumsfeld, former Attorney General Michael Mukasey, former United Nations Ambassador John Bolton, and former Secretary of Homeland Security Michael Chertoff, amongst many others. What follows is a recap of recent programming for the lawyers chapters.

The **Silicon Valley** Lawyers Chapter launched its 2011 programmatic activity with Supreme Court Justice Samuel Alito as its first guest. Over 150 lawyers and students attended the luncheon, where the Justice offered remarks and took questions from the audience. In May, the **St. Louis** Lawyers Chapter was also honored to host Justice Alito, who met with chapter members at a breakfast meeting. He delivered brief remarks before answering questions from the attendees.

Several chapters hosted speakers discussing foreign policy and the war on terrorism. The **New York City** Lawyers Chapter commemorated its 25th anniversary with a dinner honoring former Attorney General Michael Mukasey. He was the fourth recipient of the Chapter's James Madison Award,

which was offered to him "In appreciation for his Distinguished service to New York and the nation." The crowd of over 150 gathered at the New York Yacht Club for the dinner, which featured an introduction by Andy McCarthy. General Mukasey then offered a substantive policy address on the war on terrorism and the Obama Administration's foreign policy, which will be published on the Federalist Society's website. The **Dallas** Chapter also hosted General Mukasey for a February address.

The **Chicago** Lawyers Chapter hosted four programs this spring, including a reception at the University Club with guest Donald Rumsfeld, who discussed his memoir *Known and Unknown*. Over 125 lawyers attended the event, in which the former Secretary of Defense offered brief remarks and answered a number of questions from the crowd. Secretary Rumsfeld discussed his impressions of the various Presidents he served, including Presidents Nixon, Ford, and George W. Bush. He also offered his observations concerning the death of Osama bin Laden as well his views on the Supreme

Court's role in the war on terror. He remarked how many foreign challenges are unanticipated, noting that no one in the Senate asked him about Osama bin Laden during his confirmation hearing. Secretary Rumsfeld signed his book and met with many attendees in receptions before and after his presentation. In other activity, the **Chicago** Lawyers Chapter also hosted a panel discussion on honest services reform, a tavern debate on the "Battle of the Sexes," and co-hosted a program on "Can the State Stop Collective Bargaining? Wisconsin, Ohio and the Constitution—A Courtroom Style Debate on the One of the Great Labor Law Issues of Our



Former Attorney General Michael Mukasey speaks at the New York City Lawyers Chapter's 25th Anniversary dinner after receiving the Chapter's James Madison Award.

Time.”

In March, former United Nations Ambassador John Bolton addressed a crowd of over 100 Miami lawyers. Bolton discussed the Obama Administration’s foreign policy record and offered his thoughts on the recent upheaval in Libya. He sharply criticized the Obama Administration’s sluggishness in its efforts to remove a weakened Gaddafi without United Nations support. He also discussed the protests in Egypt and elsewhere in the Middle East.

In May, the Silicon Valley Lawyers Chapter hosted former Secretary for Homeland Security Michael Chertoff in a luncheon speech to about fifty local lawyers and students. Secretary Chertoff also offered wide-ranging remarks about the implications of the death of Osama bin Laden, the war on terrorism, and privacy issues that affect many in the tech community.

The Michigan Lawyers Chapter hosted its annual dinner in April in Dearborn, honoring the state’s two new members of the Michigan Supreme Court, Justices Mary Beth Kelly and Brian Zahra. 160 lawyers attended the event. The chapter honored Justice Stephen J. Markman of the Michigan Supreme Court with its Grano Award, “which is presented to a Michigander of note who has exhibited a great respect for the rule of law, a deep appreciation of the separation of powers, and a dedication to the

principle that ours is a government of laws, and not of men.” The award is in honor of Wayne State University Law Professor Joseph D. Grano, who was a founder of the Michigan Lawyers Chapter and a mentor to many of its members. His son, Daniel Grano, is currently serving as the Michigan Lawyers Chapter president. The dinner also featured remarks by Michael Gadola, who is the legal counsel to Michigan Governor Rick Snyder. Gadola



Florida Supreme Court Justice Ricky Polston (second from left) meets with Tampa Bay Chapter President Morgan Streetman (left) and former Chapter Presidents Matt Allen (center), Ed Page (second from right), and Circuit Judge Tom Barber (right).

discussed judicial appointments in Michigan, and he encouraged young lawyers to become involved with the lawyers chapter.

The Los Angeles Lawyers Chapter hosted its second annual dinner. The chapter honored local attorney and long-time Federalist Society chapter leader Henry Weissman and Judge Sandra Ikuta of the U.S. Court of Appeals for the Ninth Circuit. 130 people were in attendance, with six firms and companies sponsoring tables.

The San Francisco Lawyers Chapter hosted Senior Judge Lau-

rence Silberman of the United States Court of Appeals for the District of Columbia. Judge Silberman addressed “phony concerns and real concerns” about judicial ethics. Judge Silberman contrasted “phony” concerns about Justices Clarence Thomas and Antonin Scalia’s alleged presence at seminars funded by the Koch brothers with Justice Sandra Day O’Conner’s “campaign against state court elections,” which he described as a

“real ethical concern.” He cited her participation in an Iowa conference opposing judicial elections and her participation in robo calls in Nevada, voicing her opposition to a referendum on judicial elections. Justice O’Conner, although retired from the Supreme Court, continues her judicial service by sitting on courts of appeals. Judge Silberman concluded, “It is my view that, without regard to the particularly hot

political context in Iowa or the campaign in Nevada, the issue of whether state court judges should be chosen or ratified by election, or chosen solely by appointment, is a political issue on which serving federal judges should not take a position publicly one way or the other. That is a real ethical issue, unlike the phony ones I discussed earlier.” Judge Silberman’s remarks will be published and a link will be made available on the Federalist Society’s website.

Several chapters focused on

issues related to state judicial selection. The **Iowa** Lawyers Chapter hosted a panel discussion with Commissioner Guy Cook of the Iowa State Judicial Nominating Commission, Iowa State Representative Chris Hagenow, Iowa State Representative Kurt Swaim, and Professor Stephen J. Ware of the University of Kansas School of Law. They discussed the future of judicial selection in Iowa in the wake of November's election, in which three Iowa Supreme Court justices were not retained by voters. Panelists opined on the merits of various legislative proposals to change Iowa's judicial selection system. The

Madison and **Milwaukee** Lawyers Chapters hosted John Fund of *The Wall Street Journal*, who previewed April's state supreme court race. His talk focused on "An End to Wisconsin Nice? Voter Fraud and Voter Anger." Post-election, the **Milwaukee** Chapter hosted a talk by Marquette University School of Law Professor Rick Esenberg, who discussed "By Any Means Necessary: Law as Politics By Other Means—A Reflection on the Wisconsin Supreme Court Race" before a crowd of over forty lawyers. Several chapters featured remarks from appellate and state supreme court justices as well. In February, the **Tampa** Lawyers Chapter hosted Florida Supreme Court Jus-

tice Ricky Polston, who spoke to over sixty lawyers and local judges on judicial decision-making. The **Atlanta** Lawyers Chapters hosted Georgia's two newest court of appeals judges, former Atlanta Chapter President Judge Keith Blackwell and former Macon Chapter

on "Liberty, the Constitution and the Washington State Supreme Court." The **Triangle** Lawyers Chapter hosted a program on the North Carolina Supreme Court's recent jurisprudence.

Two chapters hosted their states' newly elected state attorneys general. The **Atlanta** Lawyers Chapter hosted Sam Olens, and the **Wichita** Lawyers Chapter hosted Derek Schmidt. Both the **Nashville** and **Memphis** Lawyers Chapters hosted panel discussions on the method of appointment that Tennessee employs in selecting its state attorney general. The discussions centered on a new white paper published by the Federalist Society on this



The Chicago Lawyers Chapter hosts former Secretary of Defense Donald Rumsfeld (center) in May to discuss his memoir Known and Unknown.

President Judge Stephen Dillard. The **Dallas** Lawyers Chapter also hosted a forum with several justices serving on the Texas Fifth District Court of Appeals. The **Birmingham** Lawyers Chapter hosted a panel discussion with newly-elected and reelected Alabama Supreme Court Justices, including Justices Mike Bolin, Tom Parker, and Justice Kelli Wise. Chapters also addressed the jurisprudence of their respective state supreme courts. The **Puget Sound** Lawyers Chapter hosted a discussion with Institute for Justice attorney Michael Bindas, Freedom Foundation General Counsel Michael J. Reitz, and Association of Washington Business general counsel Kristopher I. Tefft

topic co-written by Ammon Smartt and Keith Randall.

The constitutionality of health care legislation continued to be a hot topic, with several chapters hosting speeches and debates on the litigation. The **Portland** Lawyers Chapter hosted Clint Bolick of the Goldwater Institute, and the **Birmingham** Lawyers Chapter hosted Professor Jonathan Adler of Case Western School of Law for speeches on this issue. Two new lawyers chapters hosted their inaugural events on this topic, including the **South Bend** Lawyers Chapter, which hosted Ken Klukowski, and **Jacksonville**, which hosted Doug Bandow of the Cato Institute. The **Philadelphia** Lawyers Chapter co-hosted a debate with the

Villanova Student Chapter between David Rivkin of Baker & Hostetler and Professor Rand Rosenblatt of Rutgers-Camden. The **Sacramento** Lawyers Chapter hosted a debate between Tim Sandefur of the Pacific Legal Foundation and Professor Leslie Jacobs of McGeorge School of Law. The **Lexington** Lawyers Chapter hosted a debate between Professors Paul Salamanca and Nicole Huberfeld of

the University of Kentucky College of Law. The **Louisville** Lawyers Chapter hosted Washington State Attorney General Rob McKenna, a party to the state attorney general suit, on “The Future of Federalism: State Challenges to the Constitutionality of the Individual Health Insurance Mandate.” The **Cleveland** Lawyers Chapter also hosted a debate attracting over seventy lawyers be-

tween Professor Jessie Hill of Case Western School of Law and Ohio State Senator Larry Obhof on the constitutionality of health care. The **Long Island** Lawyers Chapter also hosted former New York Lieutenant Governor Betsy McCaughey on this topic.

In other events of note, the **Philadelphia** Lawyers Chapter hosted Senator Pat Toomey, who spoke about financial and budgetary issues. Senator Toomey called for the Obama Administration to consent to substantial spending cuts to

win congressional approval to borrow more money. The **Richmond** Lawyers Chapter hosted a discussion on competing philosophies of constitutional interpretation. University of Richmond Professor Gary L. McDowell was joined by Professor Henry L. Chambers of the University of Richmond School of Law and Jamie Radtke, a United States Senate candidate, to discuss

United States District Court for the Eastern District of Kentucky; and Professor Douglas A. Berman of Ohio State University Moritz College of Law. The **Washington, D.C.** Young Lawyers Chapter sponsored its third consecutive sold-out event with Congressman Justin Amash, a freshman member from Michigan. The **Charlotte** Lawyers Chapter hosted United States Congress-

man Sue Myrick, who discussed current events including the capture of Osama bin Laden and the budget crisis. Former Solicitor General Greg Garre addressed the **Rochester** Lawyers Chapter on the recent Supreme Court Term. Cleveland State Law Professor David Forte gave presentations to the **Tampa, Columbus, and Orlando** Lawyers Chapters on Sharia Law.

Spring highlights include the **Boston** Lawyers Chapter’s annual Shakespeare performance. This year’s theme is “Justice and Mercy in Shakespeare’s Merchant of Venice.” The performance will take place on June 21 at Boston’s Cutler Majestic Theater. The **Washington, D.C.** Lawyers Chapter’s annual United States Supreme Court round-up is scheduled for July 12. For more information on these events, as well as all other lawyers chapter programs, please visit www.fed-soc.org.



The Philadelphia Chapter and its president Judd Serotta (left) host Senator Pat Toomey (right) in May for remarks on financial and budgetary issues.

and debate Professor McDowell’s book, *The Language of Law and the Foundations of American Constitutionalism*. The book argues against the concept of a “living” Constitution and in support of what the author describes as the moral foundations of originalism. The **Cincinnati** Lawyers Chapter hosted a panel discussion on federal sentencing issues with guests Jennifer Coffin, a Federal Public Defender; Judge Jeffrey S. Sutton of the Sixth Circuit Court of Appeals; Judge Amul R. Thapar of the

Practice Groups Update

by Hannah De Guzman, Juli Nix & David C.F. Ray

On March 21, the **Administrative Law & Regulation Practice Group** hosted a program on the President's executive order that would begin a review to "make sure we avoid excessive, inconsistent and redundant regulation" and would review "the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive." The panel of experts examined and discussed the new direction outlined by the Administration. Panelists included Hon. Ronald A. Cass of Cass & Associates, PC; Hon. E. Donald Elliott of Willkie Farr & Gallagher LLP; Hon. Sally Katzen of Podesta Group; Prof. Jeffrey S. Lubbers of the American University Washington College of Law; and Judge A. Raymond Randolph of the U.S. Court of Appeals for the District of Columbia Circuit as the moderator.

The **Civil Rights Practice Group** produced a podcast on birthright citizenship discussing the proper interpretation of the Citizenship Clause of the 14th Amendment, and to what extent states can seek to control or alter birthright citizenship. The podcast featured Dr. John C. Eastman of Chapman University School of Law; The Honorable James C. Ho of Gibson Dunn & Crutcher LLP and Former Solicitor General

of Texas; and Mr. Dean A. Reuter, Vice President and Director of Practice Groups for the Federalist Society as the moderator.

On March 14, the **Criminal Law & Procedure Practice Group** cosponsored a panel discussion with



Judge A. Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit moderated a panel discussing the President's executive order seeking to avoid "excessive, inconsistent and redundant regulation."

the Chicago Lawyers Chapter on the future of the Honest Services statute. Panelists included Mr. John Elwood of Vinson & Elkins & former Assistant Solicitor General of the United States; Mr. Ronald Safer of Schiff Hardin LLP and co-counsel in *United States v. Black*; Mr. Brian Murray of Jones Day and petitioner's counsel in *Weyhr-*

auch v. United States; and Mr. Gil Soffer, of Katten Muchin Rosenman and former Deputy Assistant Attorney General of the United States, as the moderator.

The **Environmental Law & Property Rights Practice Group** published a paper analyzing the NRC's delay of judicial review of the Yucca Project termination written by Mr. C.J. Milmoie, a nuclear industry consultant and Senior Policy Counsel for the U.S. Nuclear Infrastructure Council. The practice group also hosted a Teleforum with Prof. Richard Epstein of New York University Law School, who spoke on regulatory takings and private property rights.

On March 17, the **Financial Services & E-Commerce Practice Group** hosted a Teleforum with FCIC Commissioner and American Enterprise Institute Scholar Peter Wallison. The Financial Crisis Inquiry Commission was appointed by Congress and the Administration to "examine all causes, domestic and global, of the current financial and economic crisis." The Commission released its majority report on January 27, 2011. On the call, Mr. Peter Wallison provided an explanation for his dissent from the majority report and answered questions from callers.

The Federalist Society's Practice Groups and various local Law-

yers Chapters have co-sponsored several technology panels. On April 6th, the **Intellectual Property** and the **Litigation Practice Groups** hosted a panel in San Diego discussing the *Microsoft v. i4i* Supreme Court case. The panelists included University of San Diego School of Law Prof. David McGowan, Mr. Joseph R. Re of Knobbe Martens Olson & Bear LLP, and Mr. John L. Rogitz of Rogitz & Associates, with U.S. District Court for the Southern District of California Judge Marilyn L. Huff moderating.

On Monday, May 9th, the San Francisco Lawyers Chapter and the **Corporations, Securities and Antitrust, Intellectual Property, Litigation, and Telecommunications Practice Groups** hosted a retrospective of the Microsoft Consent Decree, titled “*U.S. v. Microsoft*, 10 Years Later: Who Won, Who Lost, and Did It Matter?” with Prof. Phillip Malone of Harvard Law School’s Berkman Center for Internet and Society, Cyberlaw Clinic, and Mr. Rick Rule, Partner at Cadwalader, Wickersham & Taft LLP who represented Microsoft in settlement with the U.S. Department of Justice. Judge Douglas H. Ginsburg of the U.S. Court of Appeals, D.C. Circuit, who sat on the appellate panel for the Microsoft antitrust cases, served as moderator.

On June 1st, the **Intellectual Property and Litigation Practice Groups** and the Boston Lawyers Chapter co-sponsored a panel discussing “Patent Enforcement

in the 21st Century” featuring Mr. Erik P. Belt of McCarter & English, LLP; Mr. Jerry Cohen of Burns & Levinson LLP; Prof. F. Scott Kieff of the George Washington University Law School; and Prof. Michael J. Meurer of Boston University School

of Chicago Law School; Mr. Berin Szoka, President and Founder of TechFreedom; and Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit serving as moderator.

On June 13th, the **Intellectual Property** and the **Telecommunications Practice Groups** and the Dallas Lawyers Chapter hosted a discussion of the YouTube fair use lawsuit involving Viacom and Google featuring Prof. Stanley J. Liebowitz of the University of Texas, Dallas School of Management, and Prof. David Gordon Post of Temple University Law School, moderated by Mr. Cameron W. Kinvig, President of the Federalist Society’s Dallas Chapter.

On April 8th, the **Intellectual Property Practice Group** posted a Practice Groups podcast discussing “Just a Minor Fix in Patent Reform? Qui Tam Actions and the

False Marking Statute.” The podcast featured Mr. Trevor K. Copeland of Brinks Hofer Gilson & Lione, Mr. Arthur Gollwitzer of Floyd & Buss LLP, and Prof. Elizabeth I. Winston of The Catholic University of America Columbus School of Law, with organizer and moderator Prof. Adam Mossoff of the George Mason University School of Law.

The **International & National Security Law Practice Group** has continued to be among the most active of our practice groups. In April, the **International** group posted a podcast debate on the President’s authority to engage mili-



Prof. John O. McGinnis of Northwestern University School of Law participated on a panel in April on state governments and collective bargaining.

of Law, with Prof. David S. Olson of Boston College Law School serving as moderator.

The **Corporations, Securities and Antitrust, Intellectual Property, and Telecommunications Practice Groups**, and the Chicago Lawyers Chapter held a panel on June 9th discussing “The First Amendment Online: Search, Privacy & Personalization,” which included Prof. Richard A. Epstein of New York University School of Law; Prof. James Grimmelman of New York Law School’s Institute for Information Law and Policy; Prof. Jonathan Masur of Uni-

tarily in Libya. The debate featured University of Virginia School of Law Professor Saikrishna Prakash; Baker & Hostetler partner David B. Rivkin, Jr.; Temple University-Beasley School of Law Professor Peter J. Spiro; and former U.S. Department of State Legal Advisor Edwin D. Williamson, now of Sullivan & Cromwell. Former U.S. International Trade Commissioner Ronald A. Cass, now President of Cass & Associates and Dean Emeritus of Boston University School of Law, served as the moderator.

In May, the **International** group hosted another podcast debate on various questions and issues emanating from the WikiLeaks release of classified documents. Participants included Floyd Abrams of Cahill Gordon & Reindel; former Assistant U.S. Attorney for the Southern District of New York Eric Snyder, now of Kobre & Kim; and Hudson Institute Senior Fellow Dr. Gabriel Schoenfeld, who is also a Resident Scholar at the Witherspoon Institute. Jamil N. Jaffer of Kellogg, Huber, Hansen, Todd, Evans & Figel, who serves on the practice group's executive committee, moderated this discussion.

The **Labor & Employment Practice Group** is sponsoring vari-

ous events, co-hosted with Lawyers Chapters, on collective bargaining by public employee unions. The first event, titled "Can the State Stop Collective Bargaining? Wisconsin, Ohio and the Constitution—A Courtroom Style Debate on One of the Great Labor Law Issues of Our Time," occurred in April in Chicago, featuring former U.S. Department of Labor Wage and Hour Division Administrator Tammy D. McCutchen, now of Littler Mendelson; Northwestern University School of Law Professor John O. McGinnis; and Stephen A. Yokich of Cornfield and Feldman, with Chicago-Kent College of Law, Illinois Institute of Technology Professor Martin H. Malin moderating.

The **Professional Responsibility & Legal Education Practice Group** recorded a podcast book review and discussion of Cato Institute Senior Fellow Walter K. Olson's latest book, *Schools for Misrule: Legal Academia and an Overlawyered America*. The podcast featured an interview of Mr. Olson by Mr. James A. Haynes, who serves on the practice group's executive committee, and who also is part of the Baltimore Lawyers Chapter leadership. Mr. Haynes and Mr. Ol-

son discussed how well law schools prepare students for the practice of law and whether the agenda of the law school academy invariably surfaces as legislative and public policy proposals.

In March, the **Religious Liberties Practice Group** held a joint event with the Georgetown University Law Center Student Chapter examining the role and scope of conscience protections in the medical and pharmaceutical professions. Debate participants included Georgetown University Law Center Professor M. Gregg Bloche, who also serves as the Co-Director of the Georgetown-Johns Hopkins Joint Program in Law and Public Health; University of Chicago Medical School Professor Farr A. Curlin, who is also an associate faculty member at the MacLean Center for Clinical Medical Ethics; Catholic University of America Columbus School of Law Professor Robert A. Destro; and Case Western Reserve University Professor B. Jessie Hill. The debate was moderated by Catholic University of America Columbus School of Law Professor Mark L. Rienzi, who also serves on the practice group's executive committee.

STATE COURTS PROJECT

by Allison Aldrich

In early 2011, the State Courts Project was most active in Wisconsin, New Jersey, and North Carolina. Our local chapters hosted events, our experts participated in radio and print journalism interviews, and the Society again added value to state-wide conversations about the role of the court and judicial selection.

In Wisconsin, the state supreme court received unprecedented attention when the debate over Governor Walker's law restricting collective-bargaining power became an issue in the Wisconsin Supreme Court race. Because the court is perceived as closely divided (4-3), the race between incumbent Justice David Prosser and challenger JoAnne

Kloppenborg was quickly cast as a referendum on Governor Walker's policies. The increased interest gave Wisconsin experts an opportunity to provide valuable educational commentary in the form of op-eds, television appearances, and radio interviews on the role of courts.

In New Jersey, experts used the New Jersey Supreme Court vacancy

and the court's recent decision in *Abbott v. Burke*—ordering the state to spend an additional \$500 million on schools—as inflection points to discuss the proper role of the New Jersey Supreme Court. In addition to publishing several white papers relating to those issues, the Society hosted a media briefing call for Professors Earl Maltz and Robert Williams of Rutgers University School of Law, to debate the case and the proper role of courts in tax

and spending matters. Just days after the court's decision, the New Jersey Senate Judiciary Committee approved Governor Christie's nominee for a supreme court seat that has been vacant for more than a year due to the Senate President's refusal to hold hearings. The Society will continue to add value to that debate by making experts available to debate the role of the Governor and the Senate in judicial selection, as well as the importance of judicial

philosophy as criteria for appointment.

In May, the State Courts Project released its spring edition of *State Court Docket Watch*. This edition featured in-depth analysis of California's Unfair Competition Law and New York's tort liability law. It also highlighted decisions in North Carolina, Pennsylvania, and New Jersey.

INTERNATIONAL LAW & SOVEREIGNTY PROJECT

by Ken Wiltberger

From hosting European Sovereignty Network (“ESN”) members for the first time at a Federalist Society Student Symposium, to participating in ESN-sponsored events throughout Central and Eastern Europe, to coordinating the 2011 Law and Economics Conference in Vienna in April, the International Affairs Division has had a robust outreach and programming schedule over the past several months.

2011 Federalist Society Student Symposium

The Federalist Society's 30th Annual Student Symposium, held February 25-26 at the University of Virginia School of Law, became an international event as we wel-

comed a group of ESN members from Central and Eastern Europe, including law students Mark Boris Andrijanić from Slovenia's



U.S. Supreme Court Justice Clarence Thomas (center) meets with Mark Boris Andrijanić (left) of Slovenia; Igor Sokolar (second from left) of Croatia; Ken Wiltberger (second from right), Deputy Director of International Affairs at the Federalist Society; and Ovidiu Calinescu (right) of Romania at the 30th Annual Federalist Society Student Symposium at the University of Virginia School of Law in February.

Academic Lawyers Association; Igor Sokolar from Croatia's Iustitia; and Ovidiu Calinescu from Romania's Law & Leadership Association, to Charlottesville.

This year's Symposium theme, “Capitalism, Markets, and the Constitution,” was fitting for this particular group of students, whose

countries, in many ways, are still suffering the effects of decades of Communism, including judicial and political corruption and crony capitalism. While all of the panels at this year's Symposium were excellent, of special note for our Network partner members was the panel “The Welfare State and American Exceptionalism,” as it drew

several comparisons between the United States and Europe. The students thoroughly enjoyed getting to know their academic and ideological peers on this side of the

Atlantic and meeting U.S. Supreme Court Justice Clarence Thomas at the Symposium Banquet, where Justice Thomas served as the keynote speaker. We look forward to welcoming law students from ESN member organizations to Federalist Society Student Symposiums for many years ahead.

Central and Eastern Europe

In early February, Hristina Runceva, a member of Macedonia's Parliament and a law professor at Ss. Cyril and Methodius University, Macedonia's top university, visited Washington, D.C. as part of a delegation from her country. During her time in the city, Hristina met with several Federalist Society staffers at the national office, including Executive Vice President Leonard Leo, with whom she discussed starting a new Federalist Society-type organization in Macedonia.

In March, Professor Nathan Sales of George Mason University School of Law joined Jim Kelly, the Federalist Society's Director of International Affairs, for a judicial reform and national sovereignty "road show" sponsored by three member organizations of the ESN. In Bratislava, Slovakia, Professor Sales took part in a Forum for Lawyers-sponsored panel discussion that focused on judicial independence and corruption, with a comparative

analysis of U.S.-Slovakia conditions. Professor Sales discussed the steps that states in the U.S. take to ensure that judicial candidates are well-qualified and the procedures states use to avoid corruption in the assignment of cases to judges. In addition to Professor Sales, the panel featured Forum for Lawyers

features of the Croatian system.

Finally, at the University of Craiova in Romania, Professor Sales served on the panel "The Impact of the European Commission's 2010 Cooperation and Verification Mechanism (CVM) Report on Romanian Justice," as part of the Bucharest-based Law & Leadership Association's inaugural event, "Romania—A Continued Reform."

Professor Sales offered his thoughts on what judicial reform means in the U.S., how it affects the legal system, and how it relates to the political sphere. The event also included the panel "Is Romania Doing Enough to Protect National Sovereignty?" moderated by Mr. Kelly. The



Prof. Nathan Sales (far left) of George Mason University School of Law and James P. Kelly (far right), the Federalist Society's Director of International Affairs, with members of Romania's Law & Leadership Association.

founder and attorney Lucia Papayova, Bratislava attorney Viliam Karas, and Maria Kolikova from Slovakia's Ministry of Justice.

Later, in Zagreb, Croatia, Jim Kelly was joined by University of Zagreb professor Alan Uzelac on a panel sponsored by Iustitia that considered the issue of whether and how Croatia's sovereignty is being compromised as it attempts to comply with European Union directives on the issue of judicial reform. The panel addressed the qualifications, appointment, election, training, ethics, and removal of judges in the U.S. and, where applicable, compared those topics with existing

panel considered whether Romania is doing enough to defend its national sovereignty in the face of European Union, Council of Europe, and United Nations directives and decisions, particularly as they regard corruption and judicial reform.

Mr. Kelly also spoke at an event at the University of Warsaw in Poland co-sponsored by ESN member Ius et Lex Association and Utriusque Iuris, a student organization interested in scientific problems concerning various branches of law, especially Roman law, as well as contemporary issues that combine the disciplines of law, morality, and religion. He gave a presentation in

his capacity as President of Solidarity Center for Law and Justice, P.C., on “The Future of Capitalism in the Age of Globalization and Transnationalism” to an audience of law professors and students. The event addressed the issue of whether supporters of economic freedom can convince the general public and their elected representatives to reject the nascent global welfare state and support a capitalist system rooted in the voluntary exercise of ethical conduct and social solidarity on the part of businesses, their shareholders, consumers, and other stakeholders.

Following this event in Warsaw, ESN member Jagiellonian Club; the Krakow-based Ars Legis, a group of Christian lawyers that offers free legal counseling and promotes stronger ethics in the legal profession; and the Aurea Libertas Institute, which organizes scientific seminars in order to promote Poland’s heritage of classical political thought, co-sponsored an event featuring a talk on human rights issues in Krakow, Poland. At this event, Mr. Kelly explained his “Matrix of Human Rights Governance Networks” to a group of law students, lawyers, and other members of the public at Tischner European University. After Mr. Kelly’s initial talk, Professors Maciej Dybowski from Adam

Mickiewicz University in Poznan, Poland and Ireneusz Kamiński from Jagiellonian University in Krakow offered a Polish perspective on the issues Mr. Kelly had raised.

At an evening panel discussion in Bratislava, a group of experts spoke on “Liberty, Solidarity, and Subsidiarity: Slovakia’s Advantage in Building the Moral Foundation of Freedom in the Modern Economy” to an audience of students, lawyers,



The Federalist Society hosts the 2011 Law and Economics Conference at Schloss Neuwaldegg in Vienna, Austria, with courses taught by Federalist Society Co-Founder, Board Chairman, and Northwestern University School of Law Prof. Steven Calabresi; Prof. John McGinnis of Northwestern University School of Law; and Jim Kelly, the Federalist Society’s Director of International Affairs.

journalists, and other professionals. The panel included Mr. Kelly, who participated in the event on behalf of ESN member Central European Business and Social Initiative; Lukas Krivosik, an investigative journalist and law school graduate; and Martin Stochmal, the financial director of Slovakia’s Cargo Railway operator. The latter two panel participants together gave the Slovak perspective on the subjects raised

in the talk.

2011 Law and Economics Conference

With the 2011 Law and Economics Conference (“LEC”), held April 15-17 at Schloss Neuwaldegg, the Federalist Society continued its successful series of Vienna, Austria-based international conferences for Central and Eastern European law students and young professionals.

The 2011 LEC saw forty-five participants, representing twelve countries (including Kosovo for the first time) in attendance and featured courses led by Federalist Society Co-Founder, Board Chairman, and Northwestern University School of Law Professor Steven Calabresi; John McGinnis, also of Northwestern University School of Law; and Jim Kelly. The lecturers facilitated discussions about the role of the legal system

in promoting economic prosperity, the economics of American federalism, the cause and economic effects of rent-seeking by special interest groups, and the commercial implications of the governance of economic rights by the UN, EU, and other actors.

On the last day of the LEC, the Federalist Society hosted the inaugural meeting of the ESN. This

first meeting, designed to facilitate long-term cooperation and communication among the ESN members, provided a forum for member representatives to introduce their respective organizations' histories, missions, and activities and to discuss how they could work together, and with the Federalist Society, to

promote conservative and libertarian ideas in Central and Eastern Europe.

The International Affairs Division looks forward to a very active schedule over the next few months. Of note, plans are underway to reach out to conservative and libertarian lawyers and law students

in Georgia, Israel, and Ukraine with the hope that new Federalist Society-type organizations will be launched in these countries. To learn more about the Federalist Society's international activities, please contact Jim Kelly at jkellyiii@fed-soc.org and Ken Wiltberger at kenw@fed-soc.org.

LAW SCHOOL ALUMNI CHAPTERS

by Kendra Kocovsky

The Federalist Society has been engaging in a push to develop its newest initiative, Law School Alumni Chapters, beginning with the fourth annual Law School Alumni Breakfasts at the National Lawyers Convention last November. This is in fact the fourth year the Society have held these breakfasts, and we used them this year to raise awareness and interest in the budding chapters at the Columbus School of Law at Catholic University, the University of Chicago Law School, Columbia Law School, George Washington University Law School, Harvard Law School, University of Michigan Law School, Stanford Law School, the University of Texas School of Law, Vanderbilt University Law School, the University of Virginia School of Law, and Yale Law School. Coming off the interest generated by the breakfasts, the Society has been putting together Alumni Boards to help lead the new groups.

Most notably the University of Virginia group has gotten off to a busy start. It hosted its first official event, even before the alumni breakfasts, on October 28, 2010. The group hosted Trevor Potter, an attorney at Caplin & Drysdale, a UVA Law graduate, and the former

General Counsel to McCain for his 2000 and 2008 presidential bids, at the Old Ebbitt Grill for lunch. Mr. Potter spoke about the then-upcoming midterm elections and campaign finance. Approximately thirty UVA alumni in the Washington, D.C. area attended the lunch.

The group went on to host a lunch for UVA Law alumni at the annual Student Symposium in February. This year, the 30th annual Symposium was hosted by UVA Law School and its current Federalist Society chapter. At the Saturday lunch, alumni caught up, reminisced about their time at the school, and heard about the Alumni Chapter.

Only a few weeks after returning from the Student Symposium in Charlottesville, UVA Law Alumni chairs Trevor, '06, and Kelly, '08, McFadden hosted a cocktail reception at their home in Arlington, Virginia for more than forty guests. The featured guest was Hon. Ronald J. Tenpas '90, the former Assistant Attorney General of the Environment and Natural Resources Division. Mr. Tenpas spoke on climate change regulations and institutional responsibilities. Much of his talk focused on what role each branch of the government should play in formulating and enforcing climate

change policy and laws. The event went so well that the McFaddens are planning to arrange another event this summer for UVA Law alumni and current students who are working in the Washington, D.C. area during the 2011 summer.

A second school that has begun hosting alumni events is Stanford Law School. As part of the Stanford Law School Alumni Reunion weekend this past fall, the Stanford alumni chapter had an informal dinner at a member's house. Those present were able to catch up with alumni from around the country and to speak with the dean, faculty members, and current students.

Another school that has started its Alumni Chapter in earnest is Yale Law School. The student chapter keeps in close contact with its alumni through regular emails and newsletters. In addition, in early April, Hon. & Mrs. Gerald Walpin; Hon. & Mrs. Michael B. Mukasey; Mr. & Mrs. Robert Giuffra; and Mr. & Mrs. George Conway hosted over fifty alumni and current students for a cocktail reception. The Walpins kindly hosted the event at their New York City home. Many prominent Yale alumni were present and enjoyed meeting recent graduates and the current students.

FACULTY DIVISION PREPARES FOR A PRODUCTIVE SUMMER

by Anthony Deardurff

The Faculty Division looks forward to a productive summer, with plans in place for additional faculty colloquia and timely commentary as the Supreme Court prepares to wrap up its 2010-2011 Term.

We continue to host a variety of faculty colloquia. These bring together small groups of law professors, potential scholars, and practitioners to spend a day and a half engaged in discussion and debate on a particular legal topic. Participants review a carefully selected set of readings beforehand and come prepared to engage in conversation on the topic at hand. As part of our continuing *Law and Liberty* colloquia series co-sponsored with the Liberty Fund, we hosted “Economic Crisis and Freedom” on March 11-12 in La Jolla, California. This colloquium considered the effects of economic crises on individual liberties and on popular perceptions of the proper role of government. Among other things, faculty and law graduate participants discussed the tendency of government to expand during a financial crisis and the likelihood (or not) of experiencing a subsequent retrenchment. The next installment in the *Law and Liberty* series, “Liberty and Constitutional Jurisprudence,” took place on June 3-4 in Minneapolis, Minnesota—and we expect to host three more colloquia in the series by year’s end. Additionally, on April 29-30 we sponsored a separate colloquium on “The Corporate Criminal” in Warrenton, Virginia. This colloquium brought together

legal academics, law graduates, and practitioners to debate whether, and if so, under what theory, the law should subject a corporation to criminal liability. Participants in all these colloquia thoroughly enjoyed the experience. We look forward to continuing to provide a forum for thoughtful consideration of important legal questions.

The Faculty Division also continued its recent practice of sponsoring a social event at the annual



Prof. Brian Fitzpatrick of Vanderbilt University Law School spoke at the 30th Annual Student Symposium in February on “Preparing to Become a Law Professor” and was awarded the Paul M. Bator Award for his work.

meeting of the American Law and Economics Association. This year, we hosted a luncheon on May 21 at Columbia Law School in New York City, as well as organizing a theater party for faculty members to go see Tom Stoppard’s *Arcadia*, produced by none other than Nick Rosenkranz of Georgetown Law School and the Federalist Society’s Board of Visitors.

In an effort to reach out to students interested in legal academia, at the 30th Annual Student Sym-

posium held this past February at the University of Virginia School of Law, the Faculty Division sponsored a well-attended panel on “Preparing to Become a Law Professor.” Professors Randy Barnett (Georgetown Law Center), Brannon Denning (Cumberland School of Law), Brian Fitzpatrick (Vanderbilt University Law School), and Renee Lettow Lerner (The George Washington University Law School) each shared their experiences and insights on preparing for a career in the legal academy.

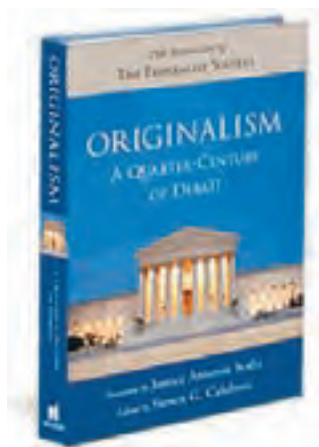
As the 2010-2011 Supreme Court Term approaches its conclusion, the Faculty Division and Practice Groups continue to draw upon faculty and practitioner expertise in order to provide web-based analysis of recent decisions and, where appropriate, hold press calls. Accordingly, anyone looking for helpful commentaries on recent decisions by the high court can listen to our “SCOTUScast” podcasts posted on the Federalist Society website at <http://www.fed-soc.org/publications/page/scotuscast>.

Finally, the Faculty Division is pleased to announce the recipients of the Searle Young Legal Scholars Research Fellowships for the 2011-2012 academic year: Professor Jody Madeira of the Indiana University Maurer School of Law and Professor Richard Ekins of the University of Auckland, New Zealand. These fellowships are designed to allow junior law faculty members with heavy teaching loads and relatively low research budgets to take a semester-long leave in order to work on a significant piece of scholarship.

The Federalist Society
for Law and Public Policy Studies

1015 18th Street, N.W., Suite 425
Washington, D.C. 20036

NEW AT THE FEDERALIST SOCIETY



Some of the greatest legal experts of the past twenty-five years address the original meaning of the Constitution.
www.fed-soc.org/originalism

*Multimedia Archive:
Watch video or listen
to audio from all the
Federalist Society events
you miss*



*Podcasts on Supreme Court
Decisions — available
through iTunes and the
Federalist Society website*

