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FALL
ISSUE

INSIDE:
Student, Lawyers & Faculty
Division Updates

REPORTS from the
State Courts Project &
International Law and
Sovereignty Project

THE FEDERALIST NO. 78



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

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LETTER FROM THE EDITOR

Dear Friend of the Society,

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

The Federalist Society Lawyers Chapters and Practice Groups have been busy hosting events, recording podcasts, and publishing articles on a wide variety of topics, including the individual health insurance mandate, the confirmation of Elena Kagan to the U.S. Supreme Court, and the Court's decision in *Citizens United*, as well as other decisions from the Court's last Term. On the eve of state judicial elections across the country, the State Courts Project has generated discussion over the role of the courts in over a dozen states through the use of media, events, and publications.

The International Law & Sovereignty Project co-sponsored the 2010 Law and Security Conference in Vienna, Austria, at which law professors and attorneys offered courses on such subjects as the role of the United Nations in the War on Terror and the balance between security and civil liberties. The Faculty Division hosted its first three entries in its Law and Liberty Series, bringing together small groups of professors, practitioners, and students to discuss important texts.

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

Features



November 2010

(right) Judge Diane Sykes of the U.S. Court of Appeals for the Seventh Circuit speaks to the Madison Lawyers Chapter at its inaugural event.
(below) Students from Catholic University Columbus School of Law Chapter visit with U.S. Supreme Court Justice Clarence Thomas.



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Lawyers Division

Chapters Update

by Lisa Budzynski Ezell

The Federalist Society's Lawyers Chapters hosted dozens of programs this summer, featuring a variety of speakers on such topics as the Elena Kagan nomination, health care reform, campaign finance and the *Citizens United* decision, and the United States Supreme Court's recent Term.

The nomination of Elena Kagan to the United States Supreme Court was one of the most popular topics this summer, with several chapters offering programming discussing her nomination and the confirmation process.

The Los Angeles Chapter hosted a discussion with Professor Robert J. Pushaw of Pepperdine University Law School and Prof. Adam Winkler of UCLA School of Law on "The Next Justice?: The Kagan Confirmation Hearings and Where She Might Take the Court." Rachel Brand,

Counsel at WilmerHale, spoke to Milwaukee lawyers about "What to Expect During Elena Kagan's Confirmation Hearing." Brand offered insights based on her experience as Assistant Attorney General for Legal Policy

confirmation hearing would be conducted along with what questions would be asked. The Dallas Chapter also hosted an event with two lawyers familiar with the workings of the confirmations process: Chip Roy, a

former Senior Counsel Senate Judiciary Committee, and John Elwood, a former senior Deputy of the Office of Legal Counsel at the Department of Justice. The New York City Chapter hosted a discussion with Ed Whelan, president of The Ethics & Public Policy Center, and Barry Friedman, the Vice Dean and Jacob D. Fuchsberg Professor of Law

at New York University. They discussed "What's Right (and Wrong) with the Confirmation Process...And Elena Kagan." The following day, Whelan discussed his observations on the confirmation process in a speech



Former U.S. Attorney General Michael Mukasey speaks to the Sacramento Chapter shortly after September 11, 2010 on "The War on Terror: Where We Are and How We Got There."

at the United States Department of Justice during the George W. Bush Administration. She discussed how Kagan would likely be prepped behind the scenes, how courtesy visits with Senators would be arranged, and how the

before the **Long Island** Chapter. Whelan also discussed the Kagan nomination in a speech to the **Piedmont Triad** Chapter. Finally, Whelan also debated Professor Brian Fitzpatrick of Vanderbilt Law School on the merits of the Kagan nomination in an event hosted by the **Nashville** Chapter. Ilya Shapiro of The Cato Institute also discussed the nomination in a speech to the **Puget Sound** Lawyers Chapter.

Supreme Court round-ups of the 2009-10 Term were also popular programs for chapters this summer. These annual programs are among many chapters' highest-attended events of the year. The **Chicago** Chapter hosted a round-up with Ted

Cruz, the former Solicitor General of the State of Texas; Professor Eugene Kontorovich of Northwestern School of Law; Michael A. Scodro, the Solicitor General of Illinois; and Judge Gary Feinerman of the U.S. District Court, Northern District of Illinois. **Austin** lawyers hosted Greg Coleman of Yetter Coleman and Ed Dawson, also of Yetter Coleman, for that chapter's annual round-up. The **Los Angeles** Chapter hosted its annual round-up with Dean Erwin Chemerinsky of the University of California, Irvine School of Law and Professor John Eastman of

Chapman University School of Law. Judge Sandra Ikuta of the U.S. Court of Appeals for the Ninth Circuit served as moderator for this event. Former United States Solicitor General Greg Garre delivered the **Washington, D.C.** Chapter's annual Supreme Court Round-Up before several hundred attorneys and summer associates. The **Houston** Chapter

Choper of University of California Berkeley, and Professor John C. Yoo of University of California Berkeley. The **Cincinnati** and **Columbus** Chapters hosted their annual round-up with Benjamin C. Mizer, the Ohio Solicitor General. Mizer also addressed the past year's jurisprudence of the Ohio Supreme Court. Kannon Shanmugam, of Williams & Connolly and a former deputy in the Solicitor's General Office during the Bush Administration, also offered a roundup of the U.S. Supreme Court's term in **Indianapolis, Kansas City, and Wichita.**

Several chapters addressed the constitutionality of the recently adopted health care reform legislation. The **Atlanta** Chapter hosted United States Congressman Tom Price for a speech on "The Patient Protection and Affordable Care Act: A Unique View from a Physician Congressman." Representative Price spoke about his perspectives on patient-centered health care reform versus government-centered health care reform. The **Greenville** Chapter hosted former congressman and presidential candidate Bob Barr, who discussed the prospects for the legislation. The **Portland, Oregon** Chapter co-sponsored a debate with the



Rachel Brand, Counsel at WilmerHale, speaks to the Milwaukee Chapter on Elena Kagan's confirmation hearing.

hosted Judge Sylvia Matthews of the 281st District Court; Allyson N. Ho, a Partner at Morgan, Lewis & Bockius LLP; and Professor Matthew J. Festa of South Texas College of Law for its annual round-up. Both the **Atlanta** and **Nashville** Chapters hosted Kevin C. Newsom, a Partner at Bradley Arant Boult Cummings LLP and the former Alabama Solicitor General, for Supreme Court round-ups as well. The **San Francisco** Chapter hosted a panel discussion with Professor Vikram Amar of the University of California Davis, Professor Jesse H.

American Constitution Society on “Federal Health Care Legislation: Reasonable Reform or Unconstitutional Overreach?” Participants included Prof. James Huffman, of Lewis & Clark Law School and a candidate for U.S. Senate, and Simon Lazarus, the Public Policy Counsel for the National Senior Citizens Law Center. The **Mississippi** Chapter hosted a panel discussion on “Is ObamaCare Good for Patients, Doctors, Employers, & State Budgets?” The program featured Ilya Shapiro, a Cato Institute Senior Fellow in Constitutional Studies, who commented on the legal, political and practical impact of the legislation before moderating a question-and-answer format

with Mississippi State Medical Association President Dr. Randy Easterling, Venture Technologies Founder and CEO Gerard Gibert, and Federal Policy Director to Governor Haley Barbour Marie Thomas Sanderson. The **Columbus** Chapter hosted a debate with Maurice Thompson, the Executive Director of the 1851 Center for Constitutional Law, and Professor Dan Kobil of Capital University Law School on the question “The Healthcare Mandate: Is It

Constitutional?” **Philadelphia** lawyers hosted John S. Hoff, a Trustee of the Gale Institute, for a speech on “Health Care Reform: Understanding and Challenging the New Law.” The **Los Angeles** Chapter hosted a debate on “The Constitutional Health of the 2010 Affordable Health Care for America Act” with David B. Rivkin Jr.,



(left) Andrew Cook, President of the Madison Chapter of the Federalist Society, and (right) Justice Michael Gableman of the Wisconsin Supreme Court attend the Madison Chapter’s inaugural event with Judge Diane Sykes of the U.S. Seventh Circuit Court of Appeals.

of Baker & Hostetler LLP and the counsel for plaintiffs in *Florida v. U.S. Department of Health & Human Services*, vs. Professor Jonathan D. Varat of UCLA School of Law. Bob Barr also addressed the constitutionality of health care in remarks to the **Greenville** Chapter. The **Colorado** Chapter heard from its State Solicitor General, Daniel D. Domenico, on “Constitutional Challenges to Federal Health Care Legislation and Prospects for Federalism.”

The **Sacramento** Chapter hosted former United States Attorney General Michael Mukasey shortly after the ninth anniversary of the September 11 terrorist attacks. General Mukasey spoke on “The War on Terror: Where We Are and How We Got There” before a capacity crowd.

Chapters also addressed the topic of immigration reform, particularly in light of the recent Arizona legislation. The **Charlotte** Chapter hosted former Jim Pendergraph, a DHS-ICE official and former Mecklenburg County Sheriff. Pendergraph described the origin of his interest in the issue, shared photos from his trip to the border, and discussed some bold solutions,

including a possible challenge the *Plyler v. Doe* decision guaranteeing a K-12 education for children who are illegal aliens. The **Philadelphia** Chapter hosted former Chapman Law School Dean John Eastman, who discussed his views on birth-right citizenship.

The fall elections, particularly those that will elect new justices on state supreme and appellate courts, are of great interest to many Federalist Society chapters. Both the **Piedmont Triad** and **Raleigh**

Chapters hosted North Carolina judicial candidate forums. Participants included Judge Barbara Jackson, who is running for the state supreme court; incumbent Judge Sanford L. Steelman, Jr.; incumbent Judge Rick Elmore; challenger Steven Walker; incumbent Judge Ann Marie Calabria; challenger Judge Jane Gray; incumbent Judge Martha Geer; and challenger Dean Poirier. All candidates for the seats were invited. **The Piedmont Triad** event was videotaped and can be viewed on the Federalist Society's Youtube page, <http://www.youtube.com/user/TheFederalistSociety>. The **Atlanta** Chapter hosted a similar candidate forum for those running for the Georgia Court of Appeals. Candidates that appeared at this forum included Antoinette Davis, Adrienne Hunter-Strothers, Chris McFadden, Stan Gunter, and David Schaeffer.

In this election year, campaign finance issues and the *Citizens United* decision continued to be popular topics. The **Philadelphia** Chapter hosted a debate on "*Citizens United* and the Future of Campaign Finance Reform" with Hans von Spakovsky of The Heritage Foundation and Doug Kendall of the Constitutional Accountability Center. Von Spakovsky also spoke about the case in an event hosted by the **Miami** Chapter. He debated Professor Michael R. Masinter of Nova Southeastern University. The **Long Island** Chapter hosted Jim

Bopp, the Legal Advisor to Citizens United and General Counsel to the James Madison Center for Free Speech. Shannen Coffin, former counsel to Vice President Dick Cheney, offered his take on *Citizens United* in a speech to the **New Orleans** Chapter.

The financial crisis and its continuing repercussions continued to be a hot topic with lawyers this summer. The **Cleveland** Chapter hosted Professor J.W. Verret of George Mason University School of Law for a talk on "Uncle Sam In The Boardroom: The Impact Of Bailouts On Corporate Governance." The **Birmingham** and **Piedmont Triad** Chapters both hosted John Allison, the former CEO and Chairman of the Board of BB&T Corp. He offered his thoughts on the "Causes and Cures of the Financial Crisis" before sold-out events in both cities.

The **Madison** Chapter hosted its inaugural event, with about fifty lawyers attending a sold-out speech by Judge Diane Sykes of the United States Court of Appeals for the Seventh Circuit. The chapter next hosted former United States Solicitor General Paul Clement in September for a Supreme Court preview. Clement also offered his thoughts on the recent term and previewed the upcoming term in a speech to the **Milwaukee** Chapter.

The **Los Angeles** Chapter hosted its first annual banquet, with over 130 Los Angeles lawyers and students in attendance.

The Chapter honored Chief Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit as the first recipient of the Los Angeles Federalist Society Public Service Award, and he served as the keynote speaker. The inaugural Los Angeles Federalist Society Lawyer of the Year Award was presented to Debra Wong Yang, partner at Gibson, Dunn & Crutcher LLP and former U.S. Attorney for the Central District of California.

The **Boston** Chapter hosted its annual Shakespeare and the Law program. This year, the chapter performed a staged reading of Henry V, with special guests Professor John Yoo, former White House Chief of Staff Andy Card, syndicated columnist Jeff Jacoby, Former Lieutenant Governor Kerry Healey, several district court judges, and many others. Over 400 attended the event. Following the reading, participants engaged in a lively discussion of the role of patriotism, the treatment of enemy combatants, the use of torture, the trial of foreign terrorists, and other topics.

The new Supreme Court Term, the November elections, immigration reform and the Arizona law, the Dodd-Frank bill, and health care reform litigation are all topics the lawyers chapters will be addressing this fall. Please visit www.fed-soc.org for an updated calendar of Lawyers Chapters programming from around the country.

STATE COURTS PROJECT

by Allison Aldrich

The Federalist Society's State Courts Project continues to spark discussion and debate over role of courts issues and jurisprudence of state supreme courts. In more than a dozen states, State Courts experts are continuing to raise these issues with media appearances, publications, polling, and events.

Legal experts in Alabama, California, Illinois, Michigan, Nebraska, New Jersey, North Carolina, Ohio, Tennessee, Texas, and Washington have authored white papers examining the role of the state supreme court, jurisprudence of the courts, and other important issues. As of this writing, the State Courts Project has released "The Washington Supreme Court and the State Constitution: A 2010 Assessment," authored by Michael J. Reitz of the Evergreen Freedom Foundation, Michael Bindas of Institute for Justice, and Professor David K. DeWolf of Gonzaga Univer-

sity School of Law. The white paper, which provides a close examination of the court's record in the areas of property rights, the

Also released was a New Jersey white paper authored by Earl M. Maltz, professor of law at Rutgers School of Law, on "Temporary

Assignments to Fill Vacancies on the New Jersey Supreme Court." In addition, the State Courts Project has published a special edition of *State Court Docket Watch* which provides in-depth analysis of California 17200, an initiative adopted in California in 2004 that restricts private lawsuits against a company only to those where an individual is actually injured by and suffers a financial loss due to an unfair, unlawful, or fraudulent business practice.

In North Carolina, our State Courts experts hosted two widely-attended judicial candidates forums in which competing candidates for the supreme court

and court of appeals discussed their judicial philosophy, the proper role of courts, and current issues facing the North Carolina



N.C. Court of Appeals Judge Ann Marie Calabria (left) and Wake County District Court Judge Jane Gray (right) speak at the Federalist Society's North Carolina Appellate Judicial Candidate Forum on Sept. 21. Photo courtesy of The John Locke Foundation.



Former Court of Appeals Judge Charlie Wiggins (left) and Justice Richard B. Sanders (right), candidates for the Washington Supreme Court, participate in a Federalist Society debate on Sept. 28.

Privileges or Immunities Clause, and individual liberties, has also been selected for publication in the Gonzaga Law Review.

judicial system. In September, experts in Washington State hosted a lively debate featuring opposing candidates for the Washington State Supreme Court.

The Federalist Society is also looking forward to releasing state-wide polls in key states. These will

examine Americans' sentiments toward state courts issues and will provide an inflection point for media.

With media coverage and public attention garnered from the State Courts Project's polling results, white papers, and events,

the Society is looking forward to seeing an unprecedented amount of discussion and debate over the proper role of courts, types of judicial selection methods, and judicial philosophy.

INTERNATIONAL LAW & SOVEREIGNTY PROJECT

by Ken Wiltberger

The Federalist Society followed up on its highly successful Law and Sovereignty Conference in March with the 2010 Law and Security Conference, held August 1-4 at Schloss Neuwaldegg in Vienna, Austria. The Conference, co-sponsored by the Educational Initiative for Central and Eastern Europe (EICEE), featured courses led by eminent U.S. law professors and international law attorneys, including Professors Jeremy Rabkin and Nathan Sales of George Mason University School of Law, and Jim Kelly, Director of International Affairs for the Federalist Society.

The lecturers offered current insights into, and facilitated discussions about, the roles and responsibilities of international bodies such as the United Nations in the war on terror, the proper balance of security measures and civil and religious liberties, and

regional security measures taken by the United States and the nations of Europe. Of note, the Federalist Society welcomed over forty participants representing



Professor Jeremy Rabkin of George Mason University School of Law speaks at the 2010 Law and Security Conference at Schloss Neuwaldegg in Vienna, Austria in August.

twelve countries to the event. We were especially proud to have had students from Bulgaria, Slovenia, and Ukraine, countries not represented at our first conference, in attendance. During the Conference, Jim Kelly and Ken Wiltberger met separately with

representatives from some of the Federal Society's new "partner" organizations in Central and Eastern Europe to discuss their upcoming projects and to supplement Jim and Ken's understanding of the political and legal climates in the organizations' respective countries. In these discussions, numerous ideas about collaborative opportunities between their organizations and ours were exchanged, culminating, for example, in a possible Law and Liberty Conference to be held in Poland each year. We look forward to collaborating on numerous projects

with these groups in the coming months and years.

With strong encouragement from the leaders of our new "partner" organizations in Europe, following the Conference, the Federalist Society launched a "European Sovereignty Network"

section on its Global Governance Watch website. ESN features links to conservative legal and public policy organizations in Europe and serves to monitor the work of the European Court of Human Rights, European Commission, and other pan-European institutions and report on issues regarding national sovereignty, individual freedom, and the rule of law. The Federalist Society encourages its members to visit this exciting new feature of our website and provide us with any comments or criticism.

In September, Ken Wiltberger traveled to Slovenia and discussed the history and activities of the Federalist Society with the leaders of Akademsko društvo Pravniki (“Academic Lawyers Society”), a Ljubljana-based national organization of conservative lawyers and law students that hosts public debates on current legal issues. Later, Ken visited students who had participated in our Vienna conferences from the University of Zagreb in Croatia and talked about the formation of a student organization similar to the Federalist Society at their Faculty of Law. The students are very excited about this opportunity and told Ken that they hope to start the necessary legal process to form such an organization in October.

Following the meetings in

Slovenia and Croatia, Ken traveled to London to meet with Stephen Fiamma and Thomas Jones, the leaders of our London Chapter, and to attend the 2010 European Resource Bank meeting. The European Resource Bank is the largest annual congress of free



Professor Nathan Sales of George Mason University School of Law speaks at the 2010 Law and Security Conference.

market think tanks in Europe. The meetings bring together representatives of many European and American economic, legal, and public policy organizations, as well as academics, policy experts, elected officials, and others who are interested in the debate over problems posed to the European free economies and in the future of individual liberty in Europe. A highlight of the 2010 meeting was a special session called the Think Tank “Dragon’s Den,” modeled after the British television show, where American and European think tanks competed for 5,000

British Pounds in funding for a project each was launching. The Federalist Society is pleased to announce that the Common Sense Society, our “partner” organization in Budapest, Hungary, won the competition for its Constitution Project, an initiative that aims to raise public awareness about key constitutional concepts and debate the essential questions of Hungary’s political principles.

Looking ahead, in mid-October, Jim Kelly and Ken Wiltberger will have meetings with several members of the European Conservatives and Reformists Group (ECR Group) in Brussels to introduce them to the work of the Federalist Society and to discuss their vision of the future of conservatism in Europe. The ECR

Group is a coalition of center-right political parties in the European Parliament, including Poland’s Law and Justice Party. Finally, in late October and early November, Ken Wiltberger will meet with leaders of conservative organizations, law students, and young legal professionals in Bulgaria, Estonia, Lithuania, Macedonia, Romania, and Serbia in anticipation of establishing new partnerships and facilitating the creation of student and professional organizations similar to the Federalist Society in these countries.

Student Division

by Alexandra Bruce

Over 70,000 people attended Federalist Society Student Division events around the country during the 2009-2010 academic year. Our Law School Chapters hosted almost 1500 events, many of which were panels and debates featuring multiple speakers. Largely responsible for this success are our incredible chapter officers. These determined law student leaders give a tremendous amount of time and energy to orchestrate and carry out each of these events.

In order to continue the immense success of our student chapters, the National Office hosts a Student Leadership Conference each July in Washington, D.C. This year's SLC brought together 195 chapter officers from Maine to Hawaii, all eager to surpass the milestones of the previous year. During the three-day conference these officers are instructed on the best practices for running an effective student chapter, how to handle problems that may arise,

and how to generate interest in the Federalist Society among the students on their campuses.

The conference attendees were treated to a panel addressing "Opportunities for Public Interest Litigation" with Jordan Lorence of the Alliance Defense Fund, Kevin J. Hasson of the Becket Fund for Religious Liberties, and Clark Neily from the Institute for Justice. Former Solicitor General of Texas Ted Cruz and Federalist Society Co-Founder David McIntosh also provided encouraging addresses to the conference.

There were a variety of social events throughout the weekend, including a Supreme Court reception with a special guest of honor, Justice Clarence Thomas.

The Student Leadership Conference provided the recently-elected chapter officers with the confidence and motivation needed to lead our student chapters into the most successful year we have seen.

Chapters have already begun to plan and host speeches and

debates on upcoming Supreme Court cases and the Court's recent decisions. For a list of upcoming events on law school campuses around the country, please visit <http://www.fed-soc.org/events/>.

Students are not only encouraged to attend their campus events but are also invited to volunteer at the National Lawyers Convention and attend the annual Student Symposium. The National Lawyers Convention will be hosted in Washington, D.C. at the Mayflower Hotel November 18-20. The National Office will send out information on volunteer opportunities for students soon.

The Student Symposium will be held in Charlottesville at the University of Virginia February 25-26, 2011. Students who attend the Symposium are eligible for a half-travel expense reimbursement. More information regarding this year's Symposium will be provided as the date nears.

FEDERALIST SOCIETY ANNOUNCES FOUR NEW ADDITIONS TO BOARD OF VISITORS

The Federalist Society is pleased to announce the addition of four members to its Board of Visitors. The new members are former U.S. Attorney General Michael B. Mukasey, now a partner with Debevoise and Plimpton in New York City; former U.S. Secretary of Labor Elaine L. Chao, now a Distinguished Fellow at the Heritage Foundation; Christopher DeMuth, current

senior fellow and former president of the American Enterprise Institute; and Gerald Walpin, a longtime New York attorney and former Inspector General for the Corporation for National and Community Service who is rejoining our board.

Other Board of Visitors members include co-chairmen, the Hon. Robert H. Bork and the Hon. Orrin Hatch; Professor

Lillian BeVier; the Hon. C. Boyden Gray; the Hon. Lois H. Herrington; the Hon. Donald Paul Hodel; the Hon. Frank Keating; Harvey Koch; Robert A. Levy; the Hon. Edwin Meese, III; the Hon. Gale Norton; the Hon. Theodore B. Olson; Andrew J. Redleaf; the Hon. Wm. Bradford Reynolds; and Prof. Nicholas Quinn Rosenkranz.

Practice Groups Update

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

In June, the **Federalism and Separation of Powers Practice Group** hosted a podcast on “Judicial Activism.” With the nomination of Elena Kagan to the U.S. Supreme Court, there was a great deal of discussion about the proper role of the courts in general, and “judicial activism” in particular. Our panel of experts included Georgetown University Law Center Professor Randy Barnett; University of California, Irvine School of Law Founding Dean Erwin Chemerinsky; Stanford Law School Professor and Supreme Court Litigation Clinic Co-Director Pamela Karlan; and Ethics and Public Policy Center President Edward Whelan III. The discussion was moderated by Chapman University School of Law Professor John Eastman. The participants examined the definition of “judicial activism,” its usefulness as a term in discussing the decisions of the Court, whether the term is invoked unfairly or unevenly by critics of the Court from all sides, and whether there is a more useful term.

The **International & National Security Law Practice Group** has continued its high level of activity during the spring and summer. In July, the group presented a panel examining the International Criminal Court after the Kampala conference, particularly focusing on the relationship of the United States to the ICC. The panel included former Assistant U.S. Secretary of State for International Organizations Brian Hook, Hu-

man Rights Watch International Justice Division Director Richard Dicker, George Mason University School of Law Professor Jeremy Rabkin, and Case Western Reserve University School of Law Professor Michael Scharf, and it was moderated by former U.S. Department of State Legal Adviser Edwin Williamson.

The International group also recently published a New Federal Initiatives Project paper on “Federal Cybersecurity Programs,” authored by Adam Pearlman of the International Group’s Executive Committee.

The **Free Speech and Election Law Practice Group** hosted an Election Law Podcast Series this year, beginning with a podcast in late April on *Citizens United v. Federal Election Commission* discussing the January 21, 2010 Supreme Court decision. The Court struck down as inconsistent with the First Amendment a provision of the Bipartisan Campaign Reform Act regarding independent expenditures by corporations that the FEC had said would forbid the airing of advertisements about a documentary about Hillary Clinton. The podcast participants were Loyola Law School (Los Angeles) Professor Richard Hasen and Institute for Justice Senior Attorney Steve Simpson, with UCLA of Law Professor Eugene Volokh serving as moderator.

In May, the Free Speech group hosted a podcast discussing “*Doe v. Reed* and the Role of Anonymity in a Democracy” after

the U.S. Supreme Court had heard oral arguments in April in *Doe v. Reed*, which considered whether petition signatures should be disclosed to public parties under Washington State’s Public Records Act. The podcast participants included American Enterprise Institute Research Fellow John Fortier and Institute for Justice attorney Robert Frommer, along with moderator Allison Hayward. They discussed whether people who sign political petitions to place measures on the ballot have a right to privacy, association, belief, or speech that would prevent disclosure of their names and perhaps other personal information, the level of scrutiny the Court should use in examining these questions, and whether the public has a right (perhaps to police authenticity, to study patterns of support, or from mere curiosity) to know who signed particular petitions. In September, the Free Speech group also hosted a podcast discussing issues of redistricting with E. Mark Braden of Baker and Hostetler, Anne Lewis of Strickland Brockington Lewis, and Columbia University School of Law Professor Nathaniel Persily, moderated by the Heritage Foundation’s Hans von Spakovsky.

The **Religious Liberties Practice Group** continued to be most active in the New Federal Initiatives Project, producing papers that offered an updated overview of the appointees to the President’s White House Office on Faith-Based and Neighborhood Partner-

ships by former Associate Director for Legal Affairs in the White House Office of Faith-Based and Community Initiatives Rebecca Dummermuth; one on embryonic stem cell research by Notre Dame University Law School Professor O. Carter Snead; one on restrictions on religious expression as recommended by the Faith-Based Advisory Council by Stuart Lark, a partner at Holme Roberts & Owen LLP; and one on abortions in military facilities by Americans United for Life Senior Vice-President and Senior Counsel William Saunders.

The **Professional Responsibility & Legal Education Practice Group** helped expand the on-line reach of the practice groups by recording two fascinating podcasts. The first was by Associate Dean for Administration and Professor of Law Richard Redding of Chapman Law School. He discussed the book he recently edited, *The Politically Correct University*. The second podcast was a discussion between George Washington University Law School Professor Thomas Morgan and Columbia University School of Law's Anthony Davis, moderated by former Indiana University School of Law Professor William Hodes. Professor Morgan and Mr. Davis examined the future of the legal profession, with a focus on the way new technologies, the automation of assorted legal transactions, and the demand for affordable routine legal services are revolutionizing the legal profession.

The **Administrative Law and Regulation Practice Group** hosted a podcast on the Consumer Product Safety Commission featuring CPSC Commissioners Nancy Nord and Robert Adler, moderated

by Hal Stratton. The Consumer Products Safety Improvement Act of 2008 mandated the promulgation of over forty new regulations by the CPSC, comparable to as many regulations as have been promulgated under the significant safety acts enacted since the CPSC's inception. This act also provided all fifty state attorneys general with new enforcement powers over several aspects of the federal product safety laws. The commissioners provided analysis and commentary on past legislation and the Consumer Product Safety Enhancement Act of 2010 currently pending in Congress. The speakers also provided their views on what has been the most significant change or impact to the agency since the enactment of the CPSIA, discussing the merits of revisions to the CPSIA.

The **Criminal Law and Procedure Practice Group** commissioned a paper analyzing the criminal provisions in the cap and trade bill written by Joseph Ditkoff, and one on the U.S. Sentencing Commission's proposed amendments to the Organizational Guidelines by Michael Huneke. Other papers include "The Explosion of the Criminal Law and its Cost to Individuals, Economic Opportunity, and Society" by William Maurer & David Malmstrom and "Parallel Proceedings: Constitutional Questions" by Lizette Herraiz & Brian Field. Both are available online as part of the Debate Over Criminalization Special Project. The Criminal Law group also produced a podcast on the recently-decided honest services cases (*Skilling v. U.S.*, *Black v. U.S.*, and *Weybrauch v. U.S.*) featuring John Cline, former Special White

House Counsel William Otis, and Louisiana State University Law Center Professor John Baker, Jr., with James Dunlop of Jones Day as the moderator.

The **Civil Rights Practice Group** produced a podcast debate on *Northwest Austin Municipal Utility District Number One v. Holder* and the future of the Voting Rights Act, which featured Gregory Coleman of Yetter, Warden & Coleman LLP, and Laughlin McDonald of the ACLU Voting Rights Project, with Center for Equal Opportunity President and General Counsel Roger Clegg as the moderator. The Civil Rights group also commissioned a paper examining the constitutional and legal questions arising from the rescission of the use of the Model Survey to demonstrate compliance with Title IX by Ms. Alison Schmauch, a paper on the Dodd-Frank Financial Regulation Bill, focusing particularly on its use of racial, ethnic, and gender classifications and preferences by Roger Clegg, and a paper on the proposal to establish a U.S. Commission on Civil and Human Rights by Baruch College Professor Kenneth Marcus.

The **Corporations and Securities Practice Group** produced a paper on the constitutional implications of expanding the FTC's rulemaking and enforcement authority written by Joshua Wright. The Corporations group, together with the **Financial Services Practice Group**, produced a podcast on the issue of bankruptcy and forum shopping, in light of *Marshall v. Marshall*, moderated by Fifth Circuit Judge Edith Jones. It featured New York University School of Law Professor Troy McKenzie, University of

Pennsylvania Law School Professor David Skeel, and George Mason University School of Law Professor Todd Zywicki. *Marshall v. Marshall* involved the effort of actress Anna Nicole Smith to recover from the estate of her deceased husband J. Howard Marshall, which soon evolved into what could be one of the most complex and meaningful bankruptcy disputes in history. The speakers discussed the issue of forum shopping related to the *Marshall* case and the role of bankruptcy judges and courts generally.

The **Environmental Law and Property Rights Practice Group** produced a podcast on the topic of “Individual Property Takings: *Stop the Beach Renourishment v. Florida Department of Environmental Protection*,” which featured Columbia University School of Law Professor Thomas Merrill and Kent Safriet of Hopping Green & Sams, with Pacific Legal Foundation Director of Litigation James Burling as the moderator. The Environmental group also produced papers providing expert analysis and com-

mentary on the constitutional and legal questions arising from the EPA’s endangerment rule finding written by Jeffrey Clark and on the American Power Act or the “Discussion Draft” of the New Climate Change Bill written by Alec Rogers and Jeffrey Wood.

The **Financial Services and E-Commerce Practice Group** hosted a conference call briefing on financial services reform in May, a podcast version of which is available online, featuring John Douglas of Davis Polk & Wardwell LLP, Ely & Company, Inc. President Bert Ely and American Enterprise Institute fellow Peter Wallison. Federalist Society Practice Groups Director Dean Reuter served as the moderator. The speakers discussed pending financial services reform proposals. After their initial remarks, the speakers answered questions from call-in participants. One focus of the discussion involved Mr. Douglas’ New Federal Initiatives Project paper titled “President Obama Proposes Size and Activi-

ties Limits for Financial Institutions.” The Financial Services group also produced papers on the national interest rate ceiling on credit cards by Todd Zywicki and Jeffrey Frank, the Senate version of the Financial Services Reform Bill by John Shu of Stradling Yocca Carlson & Rauth, and regulation of payment card interchange fees, also by Todd Zywicki and Jeffrey Frank.

The **Intellectual Property Practice Group** hosted a podcast discussing “Patents in the Supreme Court: *Bilski v. Kappos*.” On the final day of the 2009 Term, the U.S. Supreme Court released its long-anticipated decision in *Bilski v. Kappos*. George Washington University Law School Professor John F. Duffy and Boston College Law School Professor David S. Olson discussed the implications of the decision, and gave insight into the case. The podcast was organized and moderated by George Mason University School of Law Professor Adam Mossoff.

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Faculty Division

The Faculty Division heads into the fall after a busy summer of activities. We were pleased to host the first three entries in our series on Law and Liberty, co-sponsored with the Liberty Fund. These conferences bring together small groups of faculty members, law students, and practitioners to engage in a day and a half of conversation revolving around important sets of readings. In June, in Cambridge, Massachusetts, we held “Constitutional Economics,” which considered the role of economic liberties in the creation and design of the Constitution of the United States and their relevance to constitutional law today. In August, in Denver, Colorado, we held “Hayek on Law, Legislation, and Liberty,” which focused on the crucial themes of Friedrich A. Hayek’s work—the relationships between desirable social and economic order, law, liberty and justice—as set out in his three-volume treatise. Both of these events were attended by law faculty and academically-inclined students and recent graduates. In

September, in Atlanta, Georgia, we held “The Federalists, the Anti-Federalists and the Constitution They Created,” which considered the arguments between the Federalists and the Anti-Federalists about the Constitution of 1789 and the extent to which the hopes and fears of each group have proven ill-founded or prescient. This conference was attended primarily by practicing lawyers and a few law faculty. Over the coming months we will be hosting three more of



(left to right) Stephen Dillard of James Bates Pope & Spivey in Macon, Georgia; Keith Blackwell of Parker, Hudson, Rainer & Dobbs LLP in Atlanta, Georgia; Wendy Keefer of Keefer & Keefer in Charleston, South Carolina and Adjunct Professor at the Charleston School of Law; and Sasha Volokh, Assistant Professor at Emory Law School discuss “The Federalists, the Anti-Federalists and the Constitution They Created” in Atlanta, Georgia.

these events.

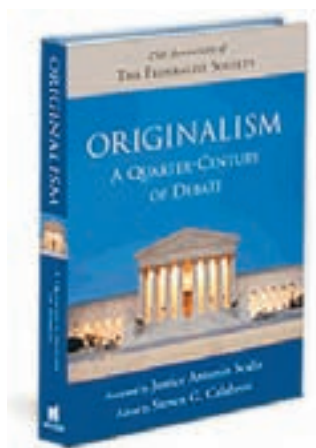
The Division has also been active in other legal forums, hosting receptions at the annual meetings of the American Law and Economics Association (ALEA) and the Southeastern Association of Law Schools (SEALS). In addition, the Division hosted a panel discussion at SEALS on the constitutionality of the individual mandate in the health care legislation. Participants

included Professors Randy Barnett (Georgetown), Jack Balkin (Yale), and Gillian Metzger (Columbia) and Mr. Dave Kopel (Independence Institute). Audio from this event is available at http://www.fed-soc.org/publications/pubid.1929/pub_detail.asp.

Also earlier in the summer, the Division announced the recipients of this year’s Olin-Searle-Smith Fellowships, which offer young legal scholars the opportunity to spend a year working full time on writing and developing their scholarship with the goal of entering the legal academy. This year’s Fellows are Logan Beirne (who will take his Fellowship at Yale Law School), Nathan Chapman (at Stanford Law School), Marie Gryphon (at Harvard Law School), and Erin Sheley (at Georgetown University Law Center).

Finally, the Division has continued to work with Practice Groups to maintain a variety of online programming, including our SCOTUSCast series of podcasts on important cases at the Supreme Court, as well as “Originally Speaking,” our online debate series. Recent Originally Speaking topics have included *Citizens United v. FEC* and the nomination of Elena Kagan to the Supreme Court.

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