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WINTER
ISSUE

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Student, Lawyers &
Faculty Division
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Lawyers Convention
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THE FEDERALIST NO. 78



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

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LETTER FROM THE EDITOR

Dear Friend of the Society,

We are pleased to bring you the winter 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 hosted another successful National Lawyers Convention in November, with over 1800 attendees coming to Washington, D.C. to hear a number of prominent scholars and practitioners attending to speak about important issues in the law.

Our Student and Lawyers Chapters also hosted a number of successful events on a variety of topics, including the challenges to the recent health-care legislation and the Dodd-Frank financial reform law. The Faculty Division hosted one of its best-attended conferences ever in January, with over eighty faculty members from forty different law schools coming together at its 2011 Annual Faculty Conference.

This year, the University of Virginia hosts the annual Federalist Society Student Symposium on February 25-26. The topic of the Symposium is “Capitalism, Markets, and the Constitution.” Programming information and a link to register can be found at the following address: www.fed-soc.org/symposium. We are excited about the Symposium and look forward to seeing many of you there! We will include a survey of the event in the next issue of *The Federalist Paper*.

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

Features



February 2011

(right) U.S. Supreme Court Associate Justice Antonin Scalia speaks during an interview with Jan Crawford at the 2010 National Lawyers Convention. (below) Kenneth Cuccinelli (fourth from left), Attorney General of Virginia, visits with the board of the Washington, D.C. Young Lawyers Chapter at the chapter's inaugural event in November.



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Student Division

Chapters Update

by Alexandra Bruce

The fall semester has been extremely eventful at each of our over 200 student chapters. So far, our enthusiastic students have hosted more than 600 programs and reached more than 40,000 people.

The national office is not alone in noticing the outstanding work of Federalist Society student volunteers. Many chapters have received a great deal of news coverage in local papers and school websites. For instance, the top three news stories on Western New England's website are their most recent Federalist Society events.

Many interesting topics were the focus of the majority of Federalist Society Student Chapter debates. The Arizona immigration law, health-care reform, and *Christian Legal Society v. Martinez* were some of the most popular debate topics for the Fall Semester.

Health-care reform drew in large crowds as a debate topic for many schools including UVA, Michigan, Columbia, Louisiana State, Western New England, and Yale. One of the largest Federalist Society student events this fall was Karl Rove's discussion of the effects of Obamacare given to a crowd of over 500 at Yale Law School.

Another popular debate topic was the Arizona immigration law. The Berkeley Law Chapter organized a debate entitled "Did the Federal Judge in the Arizona Im-

migration Case Get It Right?" The debate participants included John Eastman of Chapman Law and David Sklansky of Berkeley Law. Over 220 students and faculty attended this stimulating debate. The Arizona immigration case proved to be a popular topic for Brigham Young, Kansas, Chicago, Columbia, Boston, and Tulane, where crowds were often in excess of 100.

Many distinguished judges visited our chapters this semester. Judge Douglas Ginsburg, United States Court of Appeals for the District of Columbia, attracted a large crowd of students at Catholic University this September. Judge Ginsburg gave the assembled students a detailed history of the development of the law in Western Civilization. Judge Ginsburg also allowed the students ample time to ask questions after his enlightening speech. Judge Alex Kozinski of the 9th Circuit Court of Appeals spoke to the students at Stanford and Berkeley this fall. Judge Kozinski's discussions drew in crowds of over 100 at each school. Judge Diane Sykes of the 7th Circuit Court of Appeals spoke to students at Duke and William Mitchell law schools. The visits of these renowned judges greatly aided our active volunteers in recruiting bright new minds to the Federalist Society.

This November the Federalist Society brought 200 law school students to our nation's capital city

for the National Lawyers Convention. Student volunteers were able to listen to panels focusing on popular issues and enjoy receptions and luncheons with many distinguished Federalist Society members throughout the three-day conference.

The Federalist Society will be hosting its 30th annual Student Symposium this February 25-26, 2011 at the University of Virginia. The topic of the conference is "Capitalism, Markets, and the Constitution." Prominent speakers will participate in debates and act as moderators throughout the two-day conference. They include Hon. Brett M. Kavanaugh, U.S. Court of Appeals for the D.C. Circuit; Hon. William H. Pryor, Jr., U.S. Court of Appeals for the 11th Circuit; Hon. J. Harvie Wilkinson, U.S. Court of Appeals for the 4th Circuit; and John Allison, former Chairman and CEO of BB&T Corporation. After enjoying many enlightening panels throughout the weekend students will attend a banquet featuring Justice Clarence Thomas. This will surely be the highlight of another very successful year for our student chapters. Visit our website for details: www.fed-soc.org/symposium.

This fall has proven to be one of the strongest semesters for our student chapters. The student volunteers who have dedicated enormous amounts of time and effort to organizing stimulating events and recruiting well-known speakers are to be congratulated for the success of the Society as a whole.

Lawyers Division

by Lisa Ezell

The Federalist Society’s lawyers chapters organized a busy fall programming schedule, hosting dozens of programs over the last several months. What follows is an overview of their activities.

Programs discussing the constitutional challenge to the health-care legislation were some of the most popular programs of the last few months. In **Richmond**, Virginia Attorney General Kenneth Cuccinelli discussed Virginia’s challenge to the legislation before a crowd of over seventy lawyers. General Cuccinelli was also the inaugural speaker at the **Washington, D.C.** Young Lawyers Chapter, which hosted its first event in November on the eve of the lawyers convention. Over 100 attended the launch of the new chapter. Virginia’s Solicitor General, Duncan Getchell, discussed the challenge in a speech to the **Charlotte** Lawyers Chapter. Professor Scott Broyles of Charlotte School of Law delivered initial remarks providing background on the constitutional issues. Duncan further distilled the issues involved and offered insight into the current status of the legal challenge to Obamacare. The **Portland, OR** Lawyers Chapter hosted Ilya Shapiro of The Cato Institute. He spoke on “The Constitutionality of ObamaCare.” The **Madison** Lawyers Chapter hosted

a panel discussion on “The Constitutionality of the Federal Health Care Law” the week after Wisconsin announced it would join the Attorneys General lawsuit. Participants included J.B. Van Hollen, the Wisconsin Attorney General; Professor Ilya Somin of George Mason University School of Law; and State Representative Jon Richards, the Ranking Chairperson for the Assembly Health Committee.

The **Boston** Lawyers Chapter hosted a forum discussing the constitutionality of Dodd-Frank. About sixty-five lawyers attended the program, including administration officials, corporate financial services attorneys, and MBA students. Panelists examined the significance of the consumer aspects of Dodd-Frank as well as the constitutional aspects and provoked some great questions. Brian Brooks of O’Melveny and Myers framed the discussion by placing Dodd-Frank in the historical con-



Michael Barone of the Washington Examiner and Fox News previewed the 2010 elections for the Charlotte Lawyers Chapter.

text, going back to 1789.

The **New York City** Lawyers Chapter hosted a discussion on “Drones and Targeted Killings Abroad: What is Legal and Who Decides?” Panelists included Ben Wizner, the Litigation Director of the ACLU National Security Project; Professor Michael W. Lewis of Ohio Northern University, Claude W. Pettit College of Law; and Judge P. Kevin Castel of the United States District Court, Southern District of New York. The debate focused on issues of targeted killings and the use of drones in Pakistan and Ye-

men with a specific focus on the Aulahi. Over 100 attended the program. In **Connecticut**, Kevin J. O'Connor, the former U.S. Assistant Attorney General, spoke on "Bringing Terrorists to Justice: The Use of Military Commissions vs. Federal Courts."

The fall elections provoked several chapters to schedule programs discussing the campaign finance system. Before a crowd of over fifty attendees, the **Madison** Lawyers Chapter hosted Professor Brad Smith of Capital University Law School, Lester Pines of Cullen Weston Pines & Bach, and Professor John Coleman of the

University of Wisconsin for a discussion on "*Citizens United*: The Future of Campaign Finance and Political Speech." Professor Smith framed the issue and discussed the merits of the decision, while Lester Pines offered a more critical view of the decision. Professor Coleman went beyond the legal arguments and criticized a number of myths associated with the supposed negative side of campaign spending. He predicted that *Citizens United* would do very little to increase advertising, and, even if it did, it would not substantially matter to the electorate. Professor Brad Smith also spoke to the **Minnesota** Lawyers Chapter. The **Chicago**

Lawyers Chapter hosted Hans A. von Spakovsky, a Senior Legal Fellow at the Heritage Foundation and a former Commissioner on the Federal Elections Commission. He discussed "Voter Fraud and the November Election." Other chapters more generally previewed the fall elections and their implica-



(left to right) Prof. Ilya Somin of George Mason University School of Law, Wisconsin State Representative Jon Richards, and Wisconsin Attorney General J.B. Van Hollen discuss "The Constitutionality of the Federal Health Care Law" in Madison.

tions. **Charlotte** hosted commentator Michael Barone of the *Washington Examiner* and Fox News, and **Washington, D.C.** hosted Byron York, also of the *Washington Examiner*.

Several chapters discussed the New Black Panthers voter intimidation case. The **Cleveland** Lawyers Chapter hosted J. Christian Adams, a former Counsel at the United States Department of Justice's Voting Rights Section. He discussed "Politics, Elections, Voter Intimidation and the Voting Rights Act of 1965." Todd Gaziano, a Commissioner on the U.S. Commission on Civil Rights, spoke to the **Philadelphia** and

Minnesota Lawyers Chapters on "Race-Neutral Enforcement of the Civil Rights Laws?: DOJ and the New Black Panther Party Investigation." Gaziano discussed the Department of Justice's reaction to the New Black Panther Party case, as well as the U.S. Commission on Civil Rights' ongoing investigation.

Gaziano told the chapter that for over a year, he and other members of the Civil Rights Commission requested documents from the Department of Justice in efforts to inquire why the Black Panthers case was voluntarily dismissed against two defendants and

only a narrow injunction requested of the third. He thought the inconsistencies and lack of cooperation could indicate that there was "something to hide."

The **Iowa** Lawyers Chapter hosted a pre-election panel discussion on "Choosing Our Judges: A Panel Discussion on Iowa's Judicial Selection System and the Appropriate Role of Retention Elections." Participants included former Iowa Supreme Court Justice Robert G. Allbee; William C. Brown of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C.; Professor Rachel P. Caufield of Drake University; and Professor Brian T. Fitzpatrick of Vanderbilt

University Law School. Participants discussed the November judicial retention elections in light of the organized campaign against retaining the three Iowa Supreme Court Justice on the ballot. Participants examined whether Iowa's system of justice was being politicized and debated whether Iowa's judicial selection and retention system should be replaced with direct elections or a system modeled after the federal appointment and confirmation process.

California Chapters addressed the state of that state's judiciary and public pensions system through its fall programming. The **Los Angeles** Lawyers Chapter hosted a discussion before the election on "The Future of the California Judiciary: The Potential Effects of a New Justice and a New Governor." Participants included Daniel M. Kolkey of Gibson, Dunn & Crutcher; Lisa Jaskol, the Directing Attorney of the Public Counsel Appellate Law Program; Jeremy B. Rosen of Horvitz & Levy and the co-author of a paper on California's Supreme Court; and Paul Watford of Munger, Tolles & Olson. The **San Francisco** Lawyers Chapter likewise hosted a program on the California Supreme Court with participants Dane R. Gillette, the

Chief Assistant Attorney General at the California Attorney General's Office; Daniel M. Kolkey; and Jeremy B. Rosen. The **San Diego** Lawyers Chapter hosted its City Attorney Jan Goldsmith; Dr. John Eastman of Chapman University School of Law; Michael Zucchet,



Senator Jon Kyl of Arizona speaks to the Phoenix Chapter about the 2010 elections and the Senate's agenda for the next term.

the GM of the San Diego Municipal Employees Association; and Michael Orfield, a former judge of the California Superior Court for a discussion on "The Public Pension Crisis." The week after the election, the **Sacramento** Lawyers Chapter hosted Dan Walters, a political columnist at the *Sacramento Bee*. He discussed "Pensions, Politics and the Polls: What the Election Results Mean for California's Budget and Pension-Liability Issues."

Post-election, several chapters offered programs featuring commentary on the results of the election and what comes next. The **Columbus** Lawyers Chapter featured several local journalists and policy

analysts who analyzed the results of the election, both nationally and in Ohio. John Gizzi of *Human Events* discussed the election results in remarks to the **Mississippi** Lawyers Chapter. The **Colorado** Lawyers Chapter focused on redistricting, with local attorney Sean Gallagher of Polsinelli Shugart, PC offering his perspective. Other chapters turned their attention to the economy and the country's fiscal problems. John Allison delivered well-received remarks to nearly seventy **Charlotte** lawyers on "The U.S. Financial Crisis: Causes and Consequences."

Michael Greve of the American Enterprise Institute addressed the **Washington, D.C.** Chapter on "The Failing States of America—Is Bankruptcy an Option?" Becky Norton Dunlop of the Heritage Foundation reflected upon her experience in the Reagan Administration by discussing "Reaganomics: A Lesson From History on How to Save Our Country" in remarks to the **Tampa** Lawyers Chapter.

The **Phoenix** Lawyers Chapter co-hosted a program discussing Arizona's immigration law. Kris Kobach, the new Secretary of State for Kansas and the author of Arizona's Senate Bill 1070 law, defended the law and predicted similar leg-

islation would pass in other states. He stated that he was confident the law would be upheld and enforced in Arizona. Phoenix Mayor Phil Gordon maintained that the law created less safety and more harm. Phoenix School of Law Professor Steven Gonzales predicated that the law would hurt employment in Arizona, possibly leading to boycotts by the law's opponents. James Carafano of the Heritage Foundation also addressed immigration in a speech to the **Atlanta** Lawyers Chapter on "Building a Better Border."

Other notable events from this fall include the **Dallas** Lawyers Chapter's program with Baylor University President Kenneth Starr, who spoke about "Education and the Law" to over 100 attendees. The **Toledo** Lawyers Chapter hosted its inaugural event with special guest Judge Stephen Murphy of the U.S. District Court of

Appeals in the Eastern District of Michigan. Over forty lawyers attended. The **Columbus** Lawyers Chapter hosted a spirited debate on "Does the U.S. Constitution Require Same-Sex Marriage?" Participants included Professor Jonathan Adler of Case Western Reserve University; Professor Mark Strasser of Capital University Law School; and Edward Whelan, the President of the Ethics and Public Policy Center. Video from that debate can be found online at www.fed-soc.org. The **San Diego** Lawyers Chapter hosted its annual dinner in January, honoring guest Jan Goldsmith, the San Diego City Attorney. **Phoenix** once again hosted Arizona Senator Jon Kyl, who offered his thoughts on the results of the 2010 election and the Senate's agenda for the new congressional term. The **Pittsburgh** Lawyers Chapter hosted a panel discussion on the life of Chief Justice William

Rehnquist. Participants included Herman J. Obermayer, the author of *Rehnquist: A Personal Portrait of the Distinguished Chief Justice of the United States*, and two former Rehnquist clerks, Lee DeJulius of Jones Day and Tom McGough of Reed Smith. The **Chicago** Lawyers Chapter held its first tavern debate of 2011, with chapter members discussing "Resolved: That America's best days are behind us."

Highlighted lawyers chapters events for 2011 include the annual **Western Chapters** Conference at the Ronald Reagan Presidential Library, the **New York City** Lawyers Chapter's dinner commemorating its 25th anniversary, and the **Boston** Lawyers Chapter's annual Shakespeare program, this year on "The Merchant of Venice." Look for more information on these events, and all lawyers chapter programming, on www.fed-soc.org.

Practice Groups Update

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

The **International & National Security Law** Practice Group has been particularly active in this period. In October, the International group once again participated as a sponsor of the International Law Weekend (ILW) of the American Branch of the International Law Association (ABILA). As usual, the International group composed two panels over the three day conference. The first one, "Responsibility to Protect: The Relationship Between Human Dignity and State Sovereignty," included Montreal Institute for Genocide and Human Rights Stud-

ies Director and Concordia University Professor Frank Chalk, George Mason University School of Law Professors Jeremy A. Rabkin and Neomi Rao, and ABILA Formation of Rules of Customary International Law Committee Co-Chairman and Florida State University College of Law Professor Fernando R. Tesón, and was moderated by Hofstra University School of Law Professor Julian Ku. The second panel, "Is Targeted Killing Legal?" was a debate between International Law Association Use of Force Committee Chairman and University of Notre Dame Law School Professor Mary

Ellen O'Connell and Brookings Institution Senior Fellow Benjamin Wittes. The debate was moderated by Center for Law and Counterterrorism Co-Chairman Vincent J. Vitkovsky. Mr. Vitkovsky, who also chairs The Federalist Society's International Group, has worked for the last several years with ABILA to compose various ILW panels, and in 2010, he was invited for the first time to serve as an ILW Co-Chairman.

In December, the International group published another paper in our ongoing New Federal Initiatives Project. The paper, "The Use

of Drones and Targeted Killing in Counterterrorism,” by Ohio Northern University Law School Professor Michael W. Lewis, joined by Mr. Vitkowsky, considered the legality of the use of predator drones in the War on Terror. Professor Lewis then, in January, offered a teleconference briefing on his paper, and then recorded a podcast debate with American Civil Liberties Union National Security Project Litigation Director Ben Wizner on the same topic, moderated by Federalist Society Vice President and Practice Groups Director Dean A. Reuter.

In January, the International group recorded two more podcasts. The first podcast, also moderated by Mr. Reuter, featured Baker & Hostetler partner David A. Rivkin, Jr. and National Review Institute Senior

Fellow Andrew C. McCarthy. Mr. Rivkin maintained that congressional attempts to bar the President of the United States from transferring terrorist suspects to American soil for trial violated the prosecutorial discretion of the President, which Mr. Rivkin asserted is a core of the President’s executive authority and his commander-in-chief power, while Mr. McCarthy argued that no such prosecutorial role under the President’s executive authority exists outside congressional establishment of lower courts and its granting

them jurisdiction to hear cases.

The second podcast, “*Miranda* and Terror Suspects,” featured two S.J. Quinney College of Law at the University of Utah professors, Paul G. Cassell and Amos N. Guiora. Professor Cassell argued that requiring that terrorism suspects be read the standard criminal suspect *Miranda* warning impairs both the federal efforts to investigate and protect the nation from international terrorism. Professor



Prof. Gigi Sohn, President and Founder of Public Knowledge, discusses the topic “Minimizing Risk and Maximizing Reward: IP as Regulatory Policy or Property Right?” on the Intellectual Property panel at the National Lawyers Convention in November.

Guiora responded that carving out a *Miranda* exception for terrorism suspects compromises the value of the *Miranda* warning requirement and grants too much discretion to arresting officers and interrogation officers. The debate was moderated by Sidley Austin partner Richard D. Klinger.

The **Litigation** Practice Group has had an ongoing project examining the federal rules of civil procedure. As part of the project, the Litigation group commissioned four scholarly papers to analyze pro-

posed revisions to those rules. Then, in December, all four scholars, Northwestern University School of Law Professors Ronald J. Allen and Martin H. Redish, Yale Law School Professor E. Donald Elliott, and Marquette University Law School Professor Richard M. Esenberg, delivered joint presentations of their papers during a public forum in Washington, D.C. The forum was moderated by D.C. Circuit Court Judge Merrick B. Garland.

In December, the **Religious Liberties** Practice Group co-hosted a debate with the **Baltimore** Lawyers Chapter on whether laws that require pregnancy clinics to post signs stating that they don’t provide abortions or contraception are a violation of the First Amendment. The debate featured Catholic University Co-

lumbus School of Law Professor Mark L. Rienzi and University of Maryland School of Law Professor Mark Graber.

Also in December, the **Telecommunications & Electronic Media** Practice Group hosted a panel discussion on the authority of the Federal Communications Commission to regulate the Internet. The discussion was preceded by a keynote address from Federal Communications Commissioner Meredith Attwell Baker. The panel included Loyola University New

Orleans College of Law Professor John F. Blevins, Skype Senior Director of Government and Regulatory Affairs Christopher Libertelli, and University of Pennsylvania Law School Professor Christopher Yoo, and was moderated by Technology Policy Institute Vice President for Research and Senior Fellow Scott J. Wallsten.

The **Administrative Law and Regulation** Practice Group commissioned a paper written by Prof. Jonathan Adler, Case Western Reserve University School of Law, on the Regulations from the Executive In Need of Scrutiny (REINS) Act. Last year, the REINS Act

was introduced in the U.S. Senate and House of Representatives (as H.R. 3765 and S. 3826, respectively) to prevent federal agencies from implementing major regulatory initiatives without congressional approval. Given the recent federal court ruling on health care reform legislation and pending litigation, the practice group reissued papers addressing the constitutionality of health care reform and the individual mandate.

The **Civil Rights** Practice Group produced a podcast debate on the issue of birthright citizenship that featured the former Solicitor General of Texas James C. Ho, cur-

rently a partner at Gibson, Dunn and Crutcher LLP, and Dr. John C. Eastman, Director of the Center for Constitutional Jurisprudence at Chapman University School of Law. The Civil Rights group also hosted a call on the financial services reform and affirmative action with Mr.



Hon. Peter J. Wallison of the American Enterprise Institute participates on a panel at the National Lawyers Convention in November on the constitutionality of the Dodd-Frank financial legislation.

Roger Clegg, President and General Counsel of the Center for Equal Opportunity. Mr. Clegg provided his analysis of the financial reform act's provision requiring agencies to "establish an Office of Minority and Women Inclusion" and answered questions from call participants. One focus of the discussion also pertained to Mr. Clegg's paper titled "Race, Sex, and the Dodd-Frank Financial Regulation Bill."

The **Corporations and Securities** Practice Group hosted a well-attended panel discussion titled "The Creeping Federalization of Corporate Governance Law: The Dodd-Frank Bill" at the National

Lawyers Convention in November. The panel featured former Commissioner, U.S. Securities & Exchange Commission Paul S. Atkins, Managing Director of Patomak Partners; Prof. Jeffrey Mahoney of American University Washington College of Law and General Counsel at the Council of Institutional Investors; Mr. Brandon Rees, Deputy Director of the ALF-CIO Office of Investment; Ms. Sarah B. Teslik, Senior Vice President of Policy and Governance of Apache Corporation; and moderator Prof. Lawrence A. Hamermesh, Attorney Fellow, Division of Corporate Finance of the Office of the Chief Counsel at the U.S. Securities and Exchange Commission.

The **Criminal Law and Procedure** Group commissioned a paper analyzing the criminal provisions in the Dodd-Frank Wall Street Reform & Consumer Protection Act written by Ms. Tiffany M. Joslyn, Counsel for White Collar Crime Policy at the National Association of Criminal Defense Lawyers. The practice group also hosted a panel discussion on the over-federalization of crime titled "Expansion of Federal Criminal Power: Too Much or Too Little?" at the National Lawyers Convention in November. The panel featured Prof. John S. Baker,

Jr. of Louisiana State University; Prof. Sara Sun Beale of Duke University School of Law; Mr. Bradford A. Berenson of Sidley Austin LLP; Mr. Noah D. Bookbinder, Chief Counsel for Criminal Justice of the United States Senate Committee on the Judiciary; and moderator Hon. Edwin Meese III of the Heritage Foundation and former United States Attorney General.

The **Environmental Law and Property Rights** Practice Group hosted a panel discussion analyzing the EPA's role and regulatory authority titled "EPA: An Agency Gone Wild or Just Doing Its Job?" The panel boasted speakers with widely differing views including Mr. Jeffrey B. Clark of Kirkland & Ellis LLP; Mr. David D. Doniger of the Natural Resources Defense Council; former General Counsel at the Environmental Protection Agency Roger R. Martella, Jr., now at Sidley Austin LLP; Prof. Rena I. Steinzor of the University of Mary-

land School of Law and President of the Center for Progressive Reform; and moderator Mr. Hill B. Wellford of Bingham McCutchen LLP.

The **Financial Services and E-Commerce** Practice Group hosted a panel discussion on the constitutionality of the Dodd-Frank Financial Services Reform Act at the National Lawyers Convention in November. The panel featured Hon. C. Boyden Gray of Gray & Schmitz LLP and former U.S. Ambassador to the European Union, Prof. Ronald M. Levin of Washington University in St. Louis School of Law, Hon. Peter J. Wallison of the American Enterprise Institute, Prof. Arthur E. Wilmarth, Jr. of The George Washington University Law School, and Judge Carlos T. Bea of the Ninth Circuit Court of Appeals as the moderator.

The **Federalism and Separation of Powers** Practice Group held a discussion in October about the "Government's Duty to Defend the

Law in Court." Several cases have brought to the fore the duty of the executive branch of government, either at the federal or state level, to zealously defend a duly enacted law, initiative or referendum. Our panel of experts discussed how this duty applies generally, as well as in the matters of California's Prop. 8 case, the Defense of Marriage Act litigation, and "Don't Ask, Don't Tell." The panel included Prof. John S. Baker, Jr., Dale E. Bennett Professor of Law, Paul M. Hebert Law Center, Louisiana State University; Prof. Walter Dellinger, Chair of the Appellate Practice, O'Melveny & Myers LLP; Prof. John C. Eastman, Donald P. Kennedy Chair in Law, Director, Center for Constitutional Jurisprudence, and former Dean, Chapman University School of Law; and, as moderator, Mr. Dean A. Reuter, Director of Practice Groups, The Federalist Society.

ANOTHER RECORD YEAR FOR THE STATE COURTS PROJECT

by Allison Aldrich

In 2010 the Federalist Society's State Courts Project took advantage of activities concerning state courts across the country, including California, Illinois, Michigan, and New Jersey, to raise the profile of the public debate over judicial philosophy, methods of selection, and the rule of law.

The State Courts Project improved performance over past years in a number of measurable areas, exposing a greater number of media outlets, non-profits, public officials, opinion leaders, lawyers, and members of the general public to role of courts issues as they relate

to our system of limited, constitutional government. By comparison to 2008, the last year with a large number of state supreme court elections, total media impressions increased by over 4%, from 49.3 million in 2008 to 51.7 million in 2010. By comparison to last year, media impressions increased by more than 12%, from 46.1 million in 2009 to 51.7 million in 2010. In a number of states, Federalist Society members had measurable impact by creating a statewide debate that either would not have occurred at all, or that would have been greatly muted.

In Illinois, California, and Michigan the State Courts Project released white papers examining the jurisprudence of the state supreme courts and opinion surveys examining public attitudes concerning judicial philosophy, methods of selection, and role of courts issues in general.

California state courts experts **Jeremy Rosen** and **Thomas Gede** co-authored "California 2010: The Courts and the Economy," highlighting important areas of law where the California Supreme Court has been strongly divided and has impacted California's business

climate. In Michigan, **Thomas Luden** authored “Recent History of the Michigan Supreme Court,” which analyzes several areas of law that the court has recently considered, especially in areas that directly impact Michigan’s economy. And in Illinois **James Dunlop** and **Tara Fumerton** authored a paper titled “Illinois Supreme Court: An Analysis of Recent Trends,” examining key decisions in recent years that demonstrate the court’s judicial philosophy.

The State Courts Project also released white papers in several other states. In Ohio, state courts scholar **Jacob Huebert** authored “Judicial Elections and Their Opponents in Ohio” examining the history of judicial elections and attempts to eliminate them in Ohio. Discussion

of this paper was bolstered by **Professor Brian Fitzpatrick’s** discussion at Vanderbilt Law, “Should Judges Be Elected?” In North Carolina, **Professor Scott Gaylord** released

“Pro-Law, Pro-Prosperty,” and in Alabama, Jack Park discussed the history and criticism of the state supreme court in his white paper, “Alabama Supreme Court: Role of Court in Key Corporate Cases.”

In addition to white papers, the State Courts Project published a special edition of *State Court Docket Watch* outlining the legal arguments and key players in ongoing litigation efforts across the country.

All of these activities helped generate an unprecedented level of discussion and debate over the proper role of courts, types of judicial selection methods, and judicial philosophy in 2010. With the New Year, we are looking forward to furthering the discussion of these issues around the country.



(left to right) State Courts Scholars Jonathan Watson (Indiana), Robert Numbers (North Carolina), Charles Miller (Iowa), Jonathan Bunch (Vice President, The Federalist Society), and Pepper Crutcher (Mississippi) meet at the National Lawyers Convention in Washington, D.C.

“The North Carolina Supreme Court in 2010: Is it Time for Reform,” which also tackled the issue of judicial selection and challenges to their current system. State court experts **Aaron Streett** and **Evan Young** co-authored “The Twenty-First Century Texas Supreme Court:

INTERNATIONAL LAW & SOVEREIGNTY PROJECT

Whether it was introducing the Federalist Society to members of the European Parliament and leaders of conservative NGOs in Brussels last October or hosting U.S. Supreme Court Associate Justice Samuel Alito at a Paris Chapter event in December, the Federalist Society’s International Division has been very active the past few months and looks forward to a similarly-productive

schedule in the early months of 2011.

Brussels

In early October, Ken Wilberger, Deputy Director of International Affairs for the Federalist Society, met with four members of the European Parliament in **Brussels** to introduce them to our organization and apprise them of our activities in the United States

and Europe. The MEPs were impressed with the Federalist Society’s mission to promote traditional Western legal principles in Central and Eastern Europe, and each expressed a willingness to assist with this endeavor. They included Rafał Trzaskowski from Poland’s Civic Platform Party, Konrad Szymański from Poland’s Law and Justice Party, György Schöpflin from Hungary’s Fidesz Party, and Nirj Deva from

Britain's Conservative Party.

While in Brussels, Ken also met with several high-level Parliament staffers and leaders of like-minded NGOs, informing them about the Federalist Society's work in Europe, and discussing possible opportunities for collaboration. Like the MEPs, these individuals expressed enthusiasm about the Federalist Society's European outreach. They included David Fieldsend, Manager, CARE for Europe; Sophia Kuby, Executive Director, European Dignity Watch; Maria Hildingson, Secretary General, Federation of Catholic Family Associations in Europe; Krzysztof Szczerski, Adviser, European Conservatives and Reformists Group and former Polish Vice Minister of Foreign Affairs; Ben Harnwell, Chief of Staff to Nirj Deva; and Fearghas O'Beara, Adviser to Jerzy Buzek, President of the European Parliament.

Central and Eastern Europe

Following his visit to Brussels, Ken flew to **Bucharest**, Romania, where he discussed plans with Ovidiu Calinescu, the founder of the Law & Leadership Association, an organization with which the Federalist Society is collaborating in that country, for a joint event in March 2011 on judicial reforms.

Next, Ken visited **Sofia**, Bulgaria, where he advised Victor Gugushev, a law student at Sofia University, on the initial steps to launching a student organization at his Faculty of Law. While in Sofia, Ken also met with Svetla Kostadinova, the Executive Director of the Institute for Market Economics, an award-winning free-market think tank, and Petar Ganey, IME's researcher on economic freedom, competition, and tax policy. At the meeting,



(left to right) U.S. Supreme Court Associate Justice Samuel Alito, François Briard, President of the Federalist Society's Paris Chapter, and Judge Jean-Claude Bonichot of the European Court of Justice address the Paris Chapter in December on judicial review and separation of powers.

Svetla and Petar, who are well-connected in Bulgarian political and legal circles, very generously offered to serve as advisers to Victor as he takes the initial steps to launch a new local student organization.

Later, on his visit to **Skopje**, Macedonia, Ken met with Hristina Runceva and Vladinir Gjorcev, two young, conservative, pro-American members of the Macedonian Parliament, and also with leaders of the OHRID Institute, a well-respected free-market think tank in the city. Ken informed Hristina about the

Federalist Society's work in Central and Eastern Europe. Hristina, who is also a law professor at Ss. Cyril and Methodius University, Macedonia's top university, plans to help launch a student organization modeled after the Federalist Society's student chapters at her university. We look forward to assisting Hristina in this endeavor in the months ahead. Next, Ken traveled to **Belgrade**, Serbia to provide technical guidance on launching new student organiza-

tions to University of Belgrade law and political science students Igor Dencic, Slobodan Milenkovic and Ljubomir Bestic, and Masa Kojic, a law student from the University of Novi Sad. Each of these students told us that they are eager to inform their colleagues at

their respective universities about the Federalist Society and to discuss the founding of new student organizations with them and their faculties.

In **Zagreb**, Croatia, Ken met with Karla Rančić, Igor Sokolar, Marin Sladic, Matija Magerl, and Ivan Prskalo, law students at the University of Zagreb and the founders of the Federalist Society's new partner organization in the city, *Iustitia*. Plans are being finalized for a joint event with *Iustitia* on judicial reforms in early March, immedi-

ately prior to our event in Bucharest on the same issue. Ken's final visit in southeastern Europe was a trip to **Ljubljana**, Slovenia. There, he met with Mark Boris Andrižanič, a law student at the University of Ljubljana and an officer of Akademsko društvo Pravniki (ADP) (Academic Lawyers Society), an organization of top Slovenian lawyers and law students that organizes regular public debates on current legal issues. The Federalist Society and the ADP look forward to discussing possible opportunities for collaboration in the very near future.

In November, Ken visited **Riga**, Latvia, where he introduced the Federalist Society to Ieva

dzemelne-Romanovska, Chairwoman of the Latvian Conservative Youth Union and Rinalds Gulbis, President of the Council of the Nordic Conservative Student Union. We are very encouraged by their willingness to recommend law students for our upcoming conferences in Vienna and to discuss possibilities for collaboration in the future. Finally, in **Vilnius**, Lithuania, Ken met with a group of law students from Vilnius University led by Ruta Satrovaite, who reached out to us about starting a student or-

ganization at her Faculty of Law following her participation in our 2010 Law and Security Conference. Ken provided guidance on steps to take to form such an organization and answered numerous questions about the history, structure, and activities of the Federalist Society. We are very pleased that the students are currently discussing the launch of a



Justice Samuel Alito; Leonard Leo, Executive Vice President of the Federalist Society; and Steven Calabresi, Chairman of the Federalist Society's Board of Directors meet with young lawyers in the Federalist Society's Paris Chapter in December.

new organization with the Dean of their Faculty.

2010 National Lawyers Convention

In addition to welcoming our friends from the Paris Chapter again, the Federalist Society invited several young legal and public policy professionals from Central and Eastern Europe to the 2010 National Lawyers Convention in November. Our special guests included Anna Stumpf and Marion Smith from the Common Sense Society in **Budapest**, Hungary;

Agnieszka Matusik from the *Ius et Lex* Association in **Warsaw**, Poland; Judge Irina Popescu from Romania's Law & Leadership Association; and Maciej Brachowicz, a legal adviser to the European Conservatives and Reformists Group in Brussels. During the Convention, we introduced our guests to numerous panelists, Federalist Society members,

and staff. It is our hope and anticipation that these initial introductions, plus those made at future Conventions, will greatly expand the transatlantic dialogue that has already been fostered with our lawyers chapter members in Western Europe.

Paris

A few weeks after the

National Lawyers Convention, in December, the Federalist Society's **Paris** Chapter was tremendously honored to host U.S. Supreme Court Associate Justice Samuel Alito and Judge Jean-Claude Bonichot of the European Court of Justice for a public discussion on the institution of judicial review and the principle of separation of powers. The event, moderated by François Briard, President of our Paris Chapter, featured over 100 members of the French legal society in attendance, along with Northwestern Law Pro-

fessor Steven Calabresi, Chairman of the Federalist Society's Board of Directors; Leonard Leo, Executive Vice President of the Federalist Society; and Jim Kelly, the Federalist Society's Director of International Affairs.

Coupled with his efforts to facilitate the event with Judge Bonichot, Mr. Briard, with the assistance of Stéphane Bonichot, the head of the Paris Chapter's Young Lawyers Division, graciously organized several separate meetings for Justice Alito with France's legal and political

elite, including Michel Mercier, the French Minister of Justice; Jean-Louis Debré, President of the *Conseil Constitutionnel* and all the other members of that Court; Justices Jean-Marc Suave and Dutheillet De Lamothe of the *Conseil d'Etat*; and Didier Le Prado, President of the Supreme Court Bar.

We thank Messrs. Briard and Bonichot and the members and friends of our Paris Chapter for welcoming Justice Alito and his wife, Martha-Ann, to Paris and for making the time they spent there wholly successful and enjoyable.

The Federalist Society looks forward to working with the leaders and members of our Paris Chapter in the many years ahead and deepening the ties between our two nations. Likewise, we look forward to engaging several of the young lawyers who

nia, and Slovakia. Finally, from April 15-17, we will host the 2011 Law and Economics Conference at Castle Neuwaldegg in Vienna, Austria for forty-five law students and young lawyers. The 2011 Law and Economics Conference will

feature courses on, and facilitate discussions about, the role of the legal system in promoting economic prosperity, how judicial and political corruption curbs market growth, and the commercial implications of the governance of economic rights by the

UN, EU, and



Justice Samuel Alito (third from right) and representatives from the Federalist Society meet with Michel Mercier (center), Minister of Justice of France, in December.

were present at the Paris Chapter event in further building out our Brussels Chapter.

Going forward, in February, the Federalist Society will host a small group of select Central and Eastern European law student leaders at the Annual Student Symposium at the University of Virginia, where we will introduce our guests to their peers on this side of Atlantic. In March, Jim Kelly and George Mason Law Professor Nathan Sales will participate in a judicial reform "road show," visiting student and lawyers organizations in Croatia, Roma-

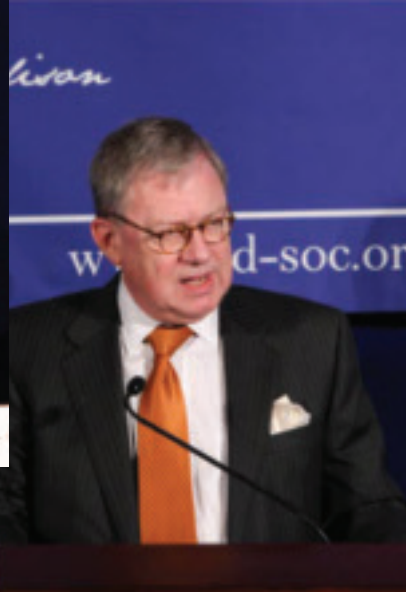
other actors.

Finally, the Federalist Society's Global Governance Watch website continues to increase its readership and leadership in the areas of monitoring UN human rights governance developments, UN treaty committee activities, NGO activities, and European sovereignty issues. During the past few months, lawyers, law students, and law faculty in northern Virginia, Canada, South Africa, Australia, and Kuwait have inquired about GGW.

2010 National Lawyers Convention



Photo Highlights



FACULTY DIVISION EXPANDS PROGRAMMING, DRAWS LARGE CROWD AT ANNUAL CONFERENCE

by Anthony Deardurff

The Faculty Division looks forward to spring after a busy fall and winter that saw the continuation of our Law and Liberty colloquia, a spirited and well-attended Annual Faculty Conference, completion of an updated Conservative/Libertarian bibliography, online programming for the new Supreme Court Term, and the hiring of a new Deputy Director.

Over the past months, we hosted two additional colloquia co-sponsored by the Liberty Fund. Each colloquium brings together a small group of

law professors, potential scholars, and/or 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 both to engage in meaningful conversation and share in fellowship. In October 2010, in Atlanta, Georgia, we held “Natural Law and Property Rights in American Private Law,” which addressed questions relating to the connection between natural law theories and property rights.

Among other things, faculty and law graduate participants (including several of our Olin-Searle-Smith fellows) discussed whether and how natural law justifications for property and the regulation of property differ from those proposed by law

held in January in San Francisco, was one of the best attended faculty conferences in Society history, and garnered many compliments. More than eighty faculty members from over forty law schools came together to listen to and participate in panels discussing a wide variety of current legal issues, including: efforts to compel class-wide arbitration in class action lawsuits; alternative methods of litigation finance; the respective powers of the states and the federal government in immigration matters; and alternatives to originalism as viewed from conservative

and libertarian perspectives. The luncheon debate proved to be a standing-room-only affair, with Prof. Randy Barnett of the Georgetown University Law Center and Prof. Orin Kerr of the George Washington University Law School squaring off over the “Constitutionality of the Individual Mandate” (the individual mandate to purchase health insurance as set forth in recent federal legislation).

In addition, our Young Legal Scholars Paper Competition inaugurated last year gave five promising



(left to right) Prof. Randy Barnett of the Georgetown University Law Center and Prof. Orin Kerr of the George Washington University Law School debate the constitutionality of the health-care legislation's individual mandate at the 2011 Federalist Society Faculty Conference in January.

and economics scholars. In January 2011, we held “Liberty, Responsibility, and the Legal Profession” in Dallas, Texas. This colloquium brought together legal academics and practitioners to consider the tensions between and among the varying roles that lawyers find themselves assuming in society, such as “hired gun” versus “crusader for the public interest.” We expect to host five more colloquia, four co-sponsored with the Liberty Fund by the end of the year.

The 2011 Faculty Conference,

young faculty an opportunity to present their work to the academic community and receive constructive feedback from their senior colleagues. All in all, attendees thoroughly enjoyed this year's gathering, which combined spirited discussion with camaraderie.

The start of 2011 also marks the completion of the Division's two-year endeavor to update, for the first time since 1997, the Federalist Society's online Conservative/Libertarian Bibliography. This topically-organized reading list is intended to provide entering law students

with a readily accessible means of identifying conservative/libertarian legal scholarship in any major field of law. Thanks to the sustained commitment of staff and several dedicated law professors, the update

is complete and in the process of being posted to the Society's website.

With the start of the new Supreme Court Term this past October, the Faculty Division and Practice Groups have also contin-



(left to right) Prof. David Bernstein of George Mason University School of Law and Prof. Patrick Brennan of Villanova University School of Law participate in a panel discussion in the 2011 Federalist Society Faculty Conference discussing alternatives to originalism.

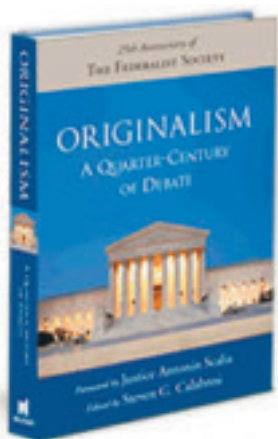
ued to draw upon faculty and practitioner expertise in order to provide web-based previews of upcoming Supreme Court cases and analysis of recent arguments and decisions. Our online programming includes:

SCOTUScast; a series of podcasts providing expert commentary on arguments before, and decisions issued by, the high court; and a panel at the National Press Club on the upcoming Supreme Court Term.

Finally, as outgoing Deputy Director Erin Sheley departed to begin her Olin-Searle-Smith Fellowship at Georgetown University Law Center, the Faculty Division welcomed incoming Deputy Director Anthony Deardurff. Prior to joining the Faculty Division, Anthony worked as a commercial and appellate litigator in the Wash-

ington, D.C. office of WilmerHale, LLP and clerked on the U.S. Court of Appeals for the Eleventh Circuit and the U.S. District Court for the Southern District of Texas.

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