

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

**THE FEDERALIST 78**

**ANNUAL REPORT  
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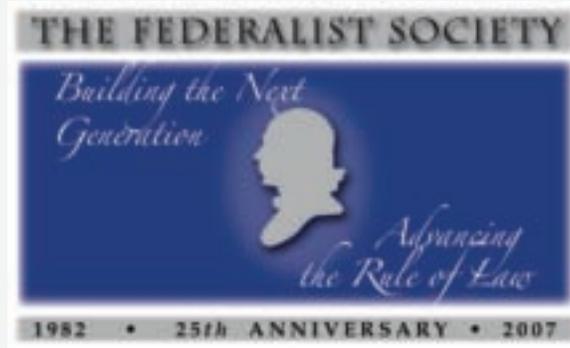
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Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.

The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities.

This entails reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative intellectual network that extends to all levels of the legal community.



*With more than 1,400 people in attendance, the Federalist Society's 2006 Annual Dinner filled the ballroom to capacity at the Marriott Wardman Park in Washington, D.C. last November 16<sup>th</sup> during the National Lawyers Convention. The Society has developed into an organization of more than 40,000 law students, lawyers, academics, judges and others who care about the rule of law, with Student Chapters on every accredited law school campus in America and Lawyers Chapters in every major city. More than 50 of the 140 tables in the room were purchased by the Federalist Society's Supporting Law Firms. The Dinner speaker was U.S. Supreme Court Justice Samuel Alito.*



The Federalism & Separation of Powers panel at the National Lawyers Convention, “Executive Powers in Wartime,” exemplifies the Federalist Society’s tradition of bringing the brightest minds together to debate the most current topics. Judge William H. Pryor Jr., U.S. Court of Appeals, Eleventh Circuit, moderated the panel consisting of: Prof. Richard Epstein, University of Chicago Law School; Dr. Roger Pilon, Vice President for Legal Affairs, Cato Institute; Prof. Geoffrey Stone, University of Chicago Law School; and Prof. John C. Yoo, University of California, Berkeley, Boalt Hall School of Law and formerly of the U.S. Justice Department’s Office of Legal Counsel. The lively exchange on Presidential power and the Iraq war will be published in the April 2007 Georgetown Journal of Law and Public Policy.

“I want to commend the [Federalist] Society for bringing together the best minds from right, left and center to debate the most pressing legal issues of the day.”

—U.S. Supreme Court Justice Samuel Alito addressing the Federalist Society’s Annual Dinner, November 16, 2006.

“I love the Federalist Society... These are highly committed, intelligent, hard-working, active students who make the Harvard community better...”

—Dean Elena Kagan, Harvard Law School, addressing the Federalist Student Symposium, Boston, February 2005.

“[T]he purpose of the Federalist Society was to bring together young people who had this skepticism about what they were being taught and to let them know that there were others who shared this skepticism.”

—U.S. Supreme Court Justice Antonin Scalia, at the Federalist Society’s Twentieth Anniversary Gala, November 14, 2002.

“I think one thing your organization has definitely done is to contribute to free speech, free debate, and most importantly public understanding of, awareness of, and appreciation of the Constitution. So that’s a marvelous contribution, and... in a way, I must say I’m jealous of how the Federalist Society has thrived at law schools.”

—Nadine Strossen, president of the American Civil Liberties Union (ACLU).

“The [Federalist] Society functions as a kind of perpetual law school campus with branches scattered across the country. Even though the group is growing, part of its impact is not in membership per se or outright recruitment —on which it’s never spent much more than 10 percent of its budget—but in facilitating dialogue and building the pipeline.”

—Jonathan Riehl, *Congressional Quarterly Weekly*, December 11, 2006.

“The work of the Federalist Society and others in honing conservative constitutional arguments through the years has been indispensable. There is no substitute for intellectual rigor.”

—Rich Lowry, *National Review*, January 13, 2006.

“[The Federalist Society] is not really very revolutionary, but enormously successful for those who are intellectually curious, have a strong interest in our nation’s values and institutions, and are sufficiently self-assured to want to hear the best arguments by the best advocates on all sides concerning these subjects.”

—Hon. Theodore B. Olson, former U.S. Solicitor General, November 11, 2004.

# THE FEDERALIST SOCIETY

for Law & Public Policy Studies

1982 • 25<sup>th</sup> ANNIVERSARY • 2007

Dear Friends and Supporters:

The Federalist Society has been growing at 15-20% annually since 2003 in just about every aspect of our operations. The Society now involves over 40,000 law students, lawyers, academics, judges, and policy leaders. In terms of programs, the Society is thriving as never before. Our Student Chapters have grown at an even more dramatic rate. Last year we witnessed an increase of 43% in the number of events Student Chapters hosted and a 27% increase in attendees from the previous year. Attendance at our 2006 Student Symposium was 1,200, up from 600 just two years ago. Our Lawyers Chapters continue to develop new and effective methods to expand the reach of our ideas, and our National Lawyers Convention in Washington, DC is now drawing nearly 1,500 people.

As we approach our twenty-fifth anniversary the Federalist Society is pleased with its progress thus far. The Society is clearly making a difference in the legal culture. Those involved with the Society have played key roles in every area of the law and our programming has been on the cutting edge of important legal topics. Even Leftist academics concede that the Society is responsible for a great deal of the intellectual ferment in the legal academy. In many ways, the Federalist Society is like a young university, with the oldest of our “graduates” nearing the peak of their careers.

The Society would like to take the opportunity of its twenty-fifth anniversary not simply to celebrate having come this far and to take stock of its previous achievements, but to advance its mission in a decisive way. Accordingly, we have a special slate of twenty-fifth anniversary programming. We will be making a major effort to expand our number of active volunteers from 3,500 to 10,000 through our State Courts Project and other initiatives. As we look forward to tackling these new goals, we thank you for your help in our effort to promote principles of limited government, the separation of powers, and the rule of law.

Sincerely,



Eugene B. Meyer  
President



The Federalist Society's top officers greet speakers before the Annual Dinner on November 16<sup>th</sup>. From left to right: Federalist Society Executive Vice President Leonard Leo, U.S. Supreme Court Justice Samuel Alito, U.S. Supreme Court Justice Antonin Scalia and Federalist Society President Eugene Meyer.



*THE FEDERALIST SOCIETY'S  
STUDENT CHAPTER PROGRAMS*

- For the first time in its history, the Federalist Society was able to establish a Student Chapter at every one of America's 195 ABA-accredited law schools.
- More than 1,200 students attended the 25th Annual Student Symposium at Columbia Law School in February.
- In the 2005–2006 academic year, Student Chapters hosted a record 825 events, up from 600 the year before.
- With each event averaging over 50 students, in all the audience for Federalist Society Student Chapter events was more than 40,000.

Highlights of the successful 2005–2006 academic year included two speeches by U.S. Supreme Court Justice Antonin Scalia. He addressed a crowd of 500 at **Pontifical Catholic** in Puerto Rico on the topic of originalism, and he delivered a lecture on important issues facing the Court to 400 people at **Columbia**. Former Attorney General John Ashcroft's two speeches



*Northwestern University School of Law Student Chapter leadership with Federalist Society President Eugene Meyer.*

were also very popular. Over 1,000 students attended his speech at **Columbia**, and 900 students attended his speech at **Emory**. Senator Mitch McConnell's speech at **Kentucky**, Senator Orrin Hatch's speech on the Alito confirmation hearings at **Harvard** and Senator John Cornyn's speech on judicial nominations at **Texas** also attracted large audiences.

The Supreme Court's decision in *Kelo v. New London* was announced in June of 2005, providing a fascinating, significant topic for Federalist Society student events in the subsequent academic year. Scott Bullock, the Institute for Justice attorney who argued the case before the Supreme Court, debated eminent domain abuse with legal scholars and practitioners before large crowds at **Michigan, New England, Pittsburgh**



*U.S. Ninth Circuit Court of Appeals Judge Alex Kozinski takes time to meet with the University of Pittsburgh chapter at the Student Symposium.*

and **Washington-St. Louis**. Scott Bullock's Institute for Justice colleagues, Dana Berliner and Clark Neilly, also participated in many events at Student Chapters, providing the students a behind-the-scenes view of a Supreme Court case. Over 120 students attended their speeches about *Kelo* at **Florida State** and **Suffolk**. The *Kelo* case was one of the most popular topics of the year prompting debates on the topic at **Brigham Young, Georgetown, Lewis and Clark, Northwestern, UCLA** and **Yale**, each attracting over 100 attendees.

The ongoing War on Terror was another popular topic for Student Chapters. Berkeley Prof. John Yoo debated San Francisco Prof. Jan Honigsberg on "Enemy Combatants in the War on Terrorism" before 200 people at **San Francisco**. Second Circuit Court of Appeals Judge Richard Wesley spoke about the president's powers in the War on Terror at **Harvard**. Virginia Prof. John Norton Moore, Georgetown Prof. Neal Katyal and former CIA official William McNair debated tactics required for the covert War on Terror before an audience of 400 at **William Mitchell, John Marshall (Chicago), Minnesota** and **St. Thomas-Minneapolis** also hosted well-attended debates focusing on legal questions relating to the War on Terror.



*Dean of Pepperdine Law School Kenneth W. Starr and Prof. John O. McGinnis of Northwestern University School of Law (a former Starr law clerk) were both popular speakers at Student Chapter events in 2006–2007.*



The Student Chapter at Pontifical Catholic University of Puerto Rico organized a visit by U.S. Supreme Court Justice Antonin Scalia on the anniversary of his twentieth year on the high court. Event organizers included student leaders Eliezer Aldarondo, Juan Carlos Ramirez and Freddie Torres.

In an effort to promote open discussion of legal issues on law school campuses, Federalist Society Student Chapters hosted debates on many other topics. Some of the more successful events included a panel at **Harvard** on the proper role of the Senate in Supreme Court confirmations. Two hundred students attended this panel, which featured Harvard Professors Alan Dershowitz, Richard Fallon and Charles Fried. **Minnesota** hosted a debate between Minnesota Professors Dale Carpenter and Michael Paulsen on the constitutionality of the Solomon Amendment. Three hundred students attended the spirited debate. At **Miami**, 200 people attended a panel on the future of the Supreme Court featuring Edward Whelan of the Ethics and Public Policy Center, Wendy Long of the Judicial Confirmation Network,



More than 100 students attended the Harvard Federalist Society Debate on "Can Originalists Defend Brown vs. Board of Education?" between Judge Michael McConnell of the U.S. Court of Appeals for the Tenth Circuit and Prof. Michael Klarman of the University of Virginia School of Law.

Ralph Neas of the People for the American Way, Karen Pearl of the Planned Parenthood Federation of America and Donna Shalala of the University of Miami.

Numerous U.S. Circuit Court of Appeals judges addressed Student Chapters. D.C. Circuit Chief Judge Douglas Ginsburg spoke at **Illinois** and **Northwestern** on "Law and Economics: A View from the Bench." **Brigham Young, Columbia** and **Nevada-Las Vegas** hosted D.C. Circuit Judge Thomas Griffith, and D.C. Circuit Judge David Sentelle spoke at **Houston** and **South Texas**. D.C. Circuit Judge Laurence Silberman spoke about restructuring the FBI at **Georgetown**,

where he received their Lifetime Achievement Award. **Texas** began their year with an address on constitutional interpretation by Fifth Circuit Judge Edith Jones. Judge Jones spoke later in the year at **Harvard** and at **Texas Tech**, where 100 people gathered to hear a speech on "The Impropriety of Using International Law in U.S. Constitutional Interpretation." **Akron** hosted Sixth Circuit Judge Alice Batchelder to speak on the judiciary. Seventh Circuit Judge Michael Kanne visited **Illinois**, and his colleague, Seventh Circuit Judge John Coffey, visited **Duke**. Eighth Circuit Judge Raymond Gruender spoke at **St. Louis**, and Ninth Circuit Judges Jay Bybee and Diarmuid O'Scannlain



Ally Banguero of the Seattle Chapter and Trizia DeCanio of the Florida A&M Chapter with Peter Redpath, Director of the Federalist Society's Student Division, at the Supreme Court reception during the Student Leadership Conference last summer.

spoke at **Harvard**. Ninth Circuit Judge Alex Kozinski related his experiences as a federal judge at **Michigan** and spoke on antitrust law at **Western State**. **Duke** hosted Ninth Circuit Judge Clifford Wallace to speak on the history of international courts. Tenth Circuit Judges Michael McConnell and Deanell Reece Tacha visited **Yale**. Judge Tacha also gave a speech at **Washburn** on "The Changes in the Courts and the Administration of Justice." Tenth Circuit Judge



Judge Loretta Preska, U.S. District Court of Southern New York, spoke to the Fordham Student Chapter in September on the topic of "Judicial Independence."



SELECTED STUDENT CHAPTER SPEAKERS

- Hon. Alexander Acosta, U.S. Attorney, Southern District of Florida
- Prof. Jonathan Adler, Case Western Reserve University School of Law
- Hon. John Ashcroft, Former U.S. Attorney General
- Prof. John Baker, Louisiana State University Law Center
- Justice W. Scott Bales, Arizona Supreme Court
- Prof. Randy Barnett, Boston University School of Law
- Michael Barone, U.S. News and World Report
- Hon. Bob Barr, Former U.S. Congressman
- Judge Alice Batchelder, U.S. Court of Appeals, Sixth Circuit
- Steven Biskupic, U.S. Attorney, Eastern District of Wisconsin
- Clint Bolick, Alliance for School Choice
- Jennifer Bracer, U.S. Commission on Civil Rights
- Rachel Brand, U.S. Assistant Attorney General, Office of Legal Policy
- Hon. Ed Bryant, Former U.S. Congressman
- Scott Bullock, Institute for Justice
- Judge Jay Bybee, U.S. Court of Appeals, Ninth Circuit
- Prof. Steven Calabresi, Northwestern University School of Law
- Hon. Paul Clement, Solicitor General of the United States
- Ward Connerly, American Civil Rights Institute
- Senator John Cornyn, U.S. Senator, Texas
- Justice Maura D. Corrigan, Michigan Supreme Court
- Justice N. Patrick Crooks, Wisconsin Supreme Court
- Hon. Ted Cruz, Texas Solicitor General
- Prof. Alan Dershowitz, Harvard Law School
- Justice Brent E. Dickson, Indiana Supreme Court
- Justice Robert Edmunds, North Carolina Supreme Court
- Prof. Richard Epstein, The University of Chicago Law School
- Steve Forbes, Former Presidential Candidate
- Prof. Charles Fried, Harvard Law School
- John Fund, The Wall Street Journal
- Prof. Nicole Garnett, Notre Dame Law School
- Prof. Rick Garnett, Notre Dame Law School
- Todd Gaziano, The Heritage Foundation
- Chief Judge Douglas Ginsburg, U.S. Court of Appeals, D.C. Circuit
- Hon. Trey Grayson, Kentucky Secretary of State
- Judge Thomas Griffith, U.S. Court of Appeals, D.C. Circuit
- Judge Raymond Gruender, U.S. Court of Appeals, Eighth Circuit
- Kevin J. Hasson, The Becket Fund for Religious Liberty
- Senator Orrin Hatch, U.S. Senator, Utah
- Hon. Asa Hutchinson, Former U.S. Congressman
- Ambassador Mohammad Istrabadi, Iraqi Ambassador to the U.N.
- Justice James Johnson, Washington State Supreme Court
- Judge Edith Jones, U.S. Court of Appeals, Fifth Circuit
- Judge Michael Kanne, U.S. Court of Appeals, Seventh Circuit
- Gregory Katsas, U.S. Deputy Assistant Attorney General, Civil Division
- Prof. Doug Kmiec, Pepperdine University School of Law
- Judge Alex Kozinski, U.S. Court of Appeals, Ninth Circuit
- Justice Stephen Markman, Michigan Supreme Court
- Judge Michael McConnell, U.S. Court of Appeals, Tenth Circuit
- Senator Mitch McConnell, U.S. Senator, Kentucky
- Prof. John McGinnis, Northwestern University School of Law
- Hon. David McIntosh, Former U.S. Congressman
- Michael Medved, Author and Syndicated Radio Talk Show Host
- Hon. Edwin Meese, III, Former U.S. Attorney General
- Prof. John Norton Moore, University of Virginia School of Law
- Judge Diarmuid O'Scannlain, U.S. Court of Appeals, Ninth Circuit
- Judge Charles Pickering, Retired U.S. Court of Appeals, Fifth Circuit
- Roger Pilon, Cato Institute
- Judge William H. Pryor Jr., U.S. Court of Appeals, Eleventh Circuit
- Rod Rosenstein, U.S. Attorney, District of Maryland
- Justice Antonin Scalia, U.S. Supreme Court
- Phyllis Schlafly, Eagle Forum
- Judge David Sentelle, U.S. Court of Appeals, D.C. Circuit
- Chief Justice Randall T. Shepard, Indiana Supreme Court
- Judge Lawrence Silberman, U.S. Court of Appeals, D.C. Circuit
- Rep. Michael Sodrel, U.S. Congressman, Indiana
- Christina Hoff Sommers, American Enterprise Institute
- Dean Kenneth Starr, Pepperdine University School of Law
- Prof. Margaret D. Stock, Department of Law, U.S. Military Academy, West Point
- Rep. John Sullivan, U.S. Congressman, Oklahoma
- Judge Deanell Reece Tacha, U.S. Court of Appeals, Tenth Circuit
- Judge Timothy Tymkovich, U.S. Court of Appeals, Tenth Circuit
- Judge Clifford Wallace, U.S. Court of Appeals, Ninth Circuit
- M. Edward Whelan, III, President, Ethics and Public Policy Center
- Prof. John Yoo, University of California, Berkeley, Boalt Hall School of Law

Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit drew a crowd of more than 300 at Loyola New Orleans when she spoke on "Interpretation of International Law in the U.S."



Timothy Tymkovich spoke at **Colorado** and **Harvard** and participated in a panel on the citation of foreign law by American courts at **New Mexico**. Eleventh Circuit Judge William Pryor spoke at **Northwestern** and **Notre Dame**. In May of 2006, **Chicago** hosted a panel of Circuit Court of Appeals judges to address the topic of "The Judiciary and the Academy." This panel featured D.C. Circuit Judge David Tatel, Sixth Circuit Judge Diana Mott, Tenth Circuit Judge Michael McConnell and Chicago Professor Geoffrey Stone.

Prof. Doug Kmiec of Pepperdine Law was one of the most sought after speakers by Student Chapters in the 2006-2007 academic year. He spoke at Texas, UCLA, Stanford, Duke, Northwestern, Chicago-Kent, Northern Illinois, Chapman and Marquette.



Other notable Student Chapter speakers during the 2005-2006 academic year included former Attorney General Edwin Meese, who spoke at **Richmond** and **William and Mary**, Iraqi Ambassador to the U.N. Mohammad Istrabadi, who spoke at **Cardozo**, U.S. Solicitor General Paul Clement, who

Prof. John Baker of Louisiana State University Law Center spoke to several student chapters about the study he conducted for the Federalist Society entitled "Measuring the Explosive Growth of Federal Crime Legislation."



spoke at **Miami** and **Stanford** and author and syndicated radio talk show host Michael Medved, who spoke at **Gonzaga**, **Idaho** and **Seattle**. The enthusiastic Student Chapter leaders hosted many other prominent speakers, captivating speeches and animated debates in 2005-2006, making it the most successful year in the history of The Federalist Society.



## THE FEDERALIST SOCIETY'S LAWYERS CHAPTERS PROGRAMS

- In FY 2006, the Lawyers Chapters held a record 264 events.
- Over 18,000 attended Lawyers Chapters events, averaging about 70 attendees per event. Over 90 events drew between 50–100 attendees, with over 40 events drawing over 100.
- The Lawyers Chapters in 65 cities across the nation are the cornerstone of activity in the Lawyers Division. The constant high quality of programming in the local chapters is crucial to maintaining a strong community presence.

Several chapters hosted U.S. Supreme Court Justice Antonin Scalia this year. The **Minnesota** Lawyers Chapter hosted a reception for Justice Scalia in September at the University of St. Thomas School of Law. The reception included distinguished members of the bar, members of the federal and state bench, U.S. Attorney Rachel Paulose and several elected officials including Secretary of State Mary Kiffmeyer and State Senator Michele Bachmann. The Chapter celebrated



*Addie Fiske, U.S. Civil Rights Commissioner Jennifer Braceras, former U.S. Senator Slade Gordon and Fox News Legal Analyst Megyn Kendall enjoy the Boston Lawyers Chapter production of Julius Caesar. As is the tradition, the reading was followed by a panel discussing current legal applications of the play's principles. This year's panel focused on the inherent conflicts between executive and legislative branches in a time of war.*

Justice Scalia's 20th anniversary on the Supreme Court. The **San Diego** Chapter also enjoyed a visit by the Justice in August. The **Hartford** Chapter co-sponsored a talk with Justice Scalia in April. The morning reception was attended by a standing room only crowd of over 120 Federalist lawyers and law students. The Chapter enjoyed an open Q&A session with Justice Scalia after his remarks. The **St. Louis** Lawyers Chapter also hosted Justice Scalia. The visit included a luncheon for the Bar Association of Missouri with 1,200 lawyers in attendance, an evening reception at Southeast Missouri State University with close to 1,500 in attendance and a private reception for Federalist Society members with over 120 in attendance.



*Mary Beth Buchanan, U.S. Attorney for the Western Division of Pennsylvania, Judge David Sentelle of the U.S. Court of Appeals for the D.C. Circuit, and Professor John Yoo, University of California, Berkeley, Boalt Hall School of Law, formerly of the U.S. Justice Department's Office of Legal Counsel, all three popular Lawyers Chapters speakers, meet at the National Lawyers Convention.*

Several chapters hosted United States Solicitor General Paul Clement, who offered his thoughts on the recently completed 2005–06 Supreme Court term, while previewing cases on the fall docket. In **Atlanta, Chicago, Milwaukee, Philadelphia** and **San Francisco**, the Solicitor General attracted audiences of over 100 attorneys. Former U.S. Solicitor General Ted Olson delivered his annual speech reviewing the past term of the Supreme Court before over 500 **Washington, D.C.** attorneys in July. Alabama Solicitor General Kevin Newsom offered a Supreme Court round-up to **Birmingham** lawyers, as did Greg Coleman of Weil, Gosthal & Manges to the **Dallas** Chapter. The **Houston** Chapter held its annual Supreme Court



*Former Attorney General and Federalist Society Board of Visitors member Edwin Meese addressed the Lawyers Chapter in Sacramento.*

roundtable with Fifth Circuit U.S. Court of Appeals Judge Jerry Smith, Greg Katsas of the U.S. Department of Justice and University of Texas Professor Ernie Young. About sixty attorneys and summer associates attended the program. The **Columbus** Chapter hosted its State Solicitor, Douglas Cole, who offered an overview of the recent Supreme Court term and discussed the impact of new Chief Justice John Roberts.

Several chapters held special events throughout the year. The **Sacramento** Chapter hosted a tribute to its recently deceased board member, Justice Robert Puglia, with special guests Former U.S. Attorney General Edwin Meese, U.S. Court of Appeals Judge Janice Rogers Brown and former California Governor Pete



Judge Janice Rogers Brown, U.S. Court of Appeals for the D.C. Circuit, spoke to the D.C. Lawyers Chapter in January 2007.

Wilson. Over 250 attended the gala dinner. Several of the speakers centered their remarks on the theme “The Constitution, the Role of Judges and the Rule of Law.”

The **Boston** Chapter held its seventh annual Shakespeare program, featuring a one-hour staged reading of *Julius Caesar*. The event, hosted by former U.S. Attorney General Richard Thornburgh, and moderated by Megyn Kendall of Fox News, featured many prominent Boston attorneys, public officials, judges and opinion leaders performing key scenes from Shakespeare’s classic depiction of the abuse of executive power, political assassination and intrigue. Participants included: Federal Judge Douglas Woodlock as Brutus, former U.S. Attorney Wayne Budd as Caesar, Supreme Court Justice Judy Cowin as Calpurnia, Federal Judge Rya Zobel as Marc Antony, Boston Chapter chairman Dan Kelly as Cassius, First Amendment lawyer Harvey Silverglate as Cinna and U.S. Civil Rights Commissioner Jennifer Bracer as the Soothsayer. After the play, a discussion on “Caesar, Bush and the Limits of Executive Power” was led by Harvard University Professors Harvey Mansfield and Juliette Kayyem. Over 450 attended the performance and discussion.

Several Chapters hosted U.S. Solicitor General Paul Clement, who offered his thoughts on the recently completed 2005-2006 Supreme Court term, while previewing cases on the fall docket.



The NSA terrorist surveillance program was a popular subject in 2006 with Lawyers Chapters, as they debated the national security versus civil liberties implications of this program. The **Chicago** Chapter hosted Prof. Richard Epstein of the University of Chicago School of Law. He spoke on the topic “Peek and Ye Shall Find? Constitutional Policy Implications of the Foreign Intelligence Surveillance Act,” before a crowd of about 80 Chicago attorneys. He offered thought-provoking remarks on textual limitations on executive power and how those issues have worked out in practi-

cal politics with regard to the Bush Administration’s terrorist surveillance policies. On the same topic, the **New York City** Chapter hosted Baker & Hostetler attorney David Rivkin and Cato Institute scholar Bob Levy, who continued a debate they engaged in called “Five Questions” that was featured on the Federalist Society’s web page. The **Philadelphia** Chapter also hosted David Rivkin, who debated Larry Frankel of the ACLU. The **San Diego** Chapter co-hosted a debate between Prof. Michael Ramsey of the University of San Diego Law School and Candace Carroll of the ACLU on the surveillance program. Prof. Robert Turner of the Center for National Security Law at the University of Virginia discussed the same issue with the



Former U.S. Solicitor General Theodore Olson gives his annual Supreme Court Round-Up on the just-completed session to more than 500 people.

**Cleveland** Chapter. Other chapters, including **Houston, Minnesota, Los Angeles** and **Phoenix**, hosted Prof. John Yoo of University of California, Berkeley, Boalt Hall School of Law, who discussed his thoughts on presidential powers in times of war and his reflections on his tenure working in the Bush Administration.

Among the most discussed issues was the nomination of Samuel Alito to the United States Supreme Court. Several Chapters participated in a series of programs debating judicial activism versus judicial restraint and the issues involved in the Alito nomination and the role of the courts. Ron Cass of the Committee for Justice spoke to the **Orlando** Chapter on this issue, as did Michael Carvin of Jones Day to the **Pittsburgh** Chapter. Time Warner Senior Vice President and former Alito clerk Adam Ciongoli spoke to chapters in **Cleveland, Michigan** and **New Jersey**. Former Congressman Bob Schaffer spoke to the **Colorado** Chapter. Wendy Long of the Judicial Confirmations Network spoke in **Little Rock** and **Lincoln**, while Ed Whelan, the President of the Ethics and Public Policy Center, spoke in **Philadelphia** and **Charlotte**. Curt Levey, General Counsel of the Committee for Justice, appeared in **Richmond**. Rachel Brand, the Assistant Attorney General for the Office of Legal Policy at the U.S. Department of Justice, offered her assessments of the judicial confirmations of Justice Alito and Chief Justice John Roberts to the **Houston** Chapter. She also spoke in **Cleveland, New Orleans** and **Pittsburgh**. The **Washington, D.C.** Chapter



## SELECTED LAWYERS CHAPTER SPEAKERS

*John Bolton*, U.S. Ambassador, United Nations  
*Rachel Brand*, Assistant Attorney General, Office of Legal Policy, U.S. Dept. of Justice  
*Judge Janice Rogers Brown*, U.S. Court of Appeals, D.C. Circuit  
*Judge Duane Benton*, U.S. Court of Appeals, Eighth Circuit  
*Professor Gerard V. Bradley*, University of Notre Dame Law School  
*Justice Raoul Cantero*, Florida Supreme Court  
*Paul Clement*, U.S. Solicitor General  
*Douglas Cole*, State Solicitor of Ohio  
*R. Ted Cruz*, Solicitor General, Texas  
*Paula Dobriansky*, Under Secretary of State, U.S. State Department  
*Prof. Richard Epstein*, University of Chicago Law School  
*Ken Falk*, ACLU of Indiana  
*Gary Feinerman*, Solicitor General, Illinois  
*Larry Frankel*, Legislative Director, ACLU of Pennsylvania  
*John Fund*, OpinionJournal.com  
*Senator Lindsey Graham*, U.S. Senate, South Carolina  
*Judge Ray Gruender*, U.S. Court of Appeals, Eighth Circuit  
*Secretary Carlos M. Gutierrez*, U.S. Department of Commerce  
*Tamar Jacoby*, Senior Fellow, The Manhattan Institute  
*Judge Edith Jones*, U.S. Court of Appeals, Fifth Circuit  
*Gregory G. Lockhart*, U.S. Attorney, Southern District of Ohio  
*Judge Michael McConnell*, U.S. Court of Appeals, Tenth Circuit  
*Senator Mitch McConnell*, U.S. Senate, Kentucky  
*Rob McKenna*, Attorney General, Washington  
*Edwin Meese*, The Heritage Foundation and former U.S. Attorney General  
*Eric Melgren*, U.S. Attorney, District of Kansas  
*Justice Harold Melton*, Georgia Supreme Court  
*Harriet Miers*, Former White House Counsel  
*Justice Carlos Moreno*, California Supreme Court  
*Chief Justice Thomas J. Moyer*, Supreme Court of Ohio  
*Ralph Neas*, People for the American Way  
*Kevin Newsom*, Solicitor General, Alabama  
*Michael Novak*, American Enterprise Institute  
*Kate O'Beirne*, National Review  
*Hon. Theodore B. Olson*, former U.S. Solicitor General and Gibson, Dunn & Crutcher  
*Judge Diarmuid F. O'Scannlain*, U.S. Court of Appeals, Ninth Circuit  
*Karen Pearl*, Planned Parenthood  
*Roger Pilon*, Cato Institute  
*Hon. William H. Pryor Jr.*, U.S. Court of Appeals, Eleventh Circuit  
*Prof. Jeremy Rabkin*, Cornell University  
*Judge John Rogers*, U.S. Court of Appeals, Sixth Circuit  
*Kevin V. Ryan*, United States Attorney, Northern District of California  
*Justice Antonin Scalia*, U.S. Supreme Court  
*Gretchen C.F. Shappert*, U.S. Attorney, Western District of North Carolina  
*Judge Jerry Smith*, U.S. Court of Appeals, Fifth Circuit  
*Dean Kenneth Starr*, Pepperdine University School of Law  
*Judge Jeffrey Sutton*, United States Court of Appeals, Sixth Circuit  
*Abigail Thernstrom*, U.S. Civil Rights Commission  
*M. Edward Whelan III*, President, Ethics & Public Policy Center  
*Hon. Pete Wilson*, Former Governor of California  
*Prof. John Yoo*, University of California, Berkeley, Boalt Hall School of Law

heard from Stephen Schmidt, the former Counselor to Vice President Cheney, who offered his reflections on the successful confirmation of Justice Alito.

Assessing the legacy of the Rehnquist Court also occupied the time and attention of a number of Lawyers Chapters. Several held panel discussions with former Supreme Court clerks and legal scholars. The **Milwaukee** Chapter co-hosted a national conference with the Federalism & Separation of Powers Practice Group featuring Supreme Court Justice Antonin Scalia, current U.S. Solicitor General Paul Clement, and former U.S. Solicitor General Theodore Olson, among many others. Over 350 lawyers and students attended this conference which is highlighted on Page 20. **Chicago** lawyers heard from former Texas Solicitor General Ted Cruz and Prof. Rick Garnett of Notre

Dame Law School, both former Rehnquist clerks, along with Illinois Solicitor General Gary Feinerman, a former clerk to Justice Anthony Kennedy. About 90 attended this dinner. The **Sacramento** Chapter hosted Chapman University School of Law Prof. John C. Eastman and Boalt Hall School of Law Prof. Howard A. Shelanski, both former Supreme Court clerks. The **St. Louis** Chapter hosted former Attorney-Advisor in the Office of Legal Counsel at the U.S. Department of Justice Robert T. Haar, who discussed his experi-

*Judge Diarmuid F. O'Scannlain*,  
*U.S. Court of Appeals for the Ninth Circuit*, spoke on the  
*Legacy of the Rehnquist Court*  
*before the Atlanta Lawyers Chapter in May.*



ences clerking for Chief Justice Rehnquist. **Orange County** lawyers discussed the Chief Justice's legacy with former Rehnquist clerks Prof. Celestine McConville of Chapman Law School and Prof. Barry McDonald of Pepperdine Law School. The **Atlanta** Chapter held a similar panel discussion with Judge

*SEC Commissioner Paul Atkins*  
*addressed the D.C. Lawyers Chapter in the fall.*



Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit and former Rehnquist clerk Matthew Martens, among other panelists.

As Congress debated whether to reform immigration policy, several Chapters weighed in on the debate through many programs on proposed reforms. The **New York City** Chapter hosted a spirited debate before over 100 attorneys between Tamar Jacoby, Senior Fellow at the Manhattan Institute, and Marti Dinerstein, the President of Immigration Matters. They discussed the question "Does Our Immigration Policy Hurt the War on Terrorism?" Ed Gillespie, former chairman of the Republican National Committee, discussed proposed reforms before more than 200 **Washington, D.C.** lawyers. The **Baltimore** Chapter convened a panel discussion on "Gangs and Immigration." 



*THE NATIONAL LAWYERS CONVENTION*

The Federalist Society's 2006 National Lawyers Convention, which took place last November at the Mayflower Hotel in Washington, D.C., was once again the showcase event of the organization's year. More than 1,500 members and friends of the Society attended one or more events during the 2006 convention. The theme, "Limited Government," was reflected in numerous speeches, panels, debates and discussions.

The highlights of the three-day event were the annual Barbara K. Olson Memorial Lecture given Friday evening to a packed house by Vice President Richard Cheney and the Federalist Society's Annual Dinner on Thursday evening which was addressed by not one but two U.S. Supreme Court Justices. The first part of the annual dinner program was the Federalist Society's commemoration of Justice Antonin Scalia's twenty years on the Supreme Court. Justice Scalia's ties to the organization go back to its



*Vice President Richard Cheney delivered the annual Barbara K. Olson Memorial Lecture at the National Lawyers Convention to a capacity crowd.*

founding in 1982. A long-time friend of the Society, Justice Scalia was joined by his wife, Maureen and their nine children for a standing ovation in honor of his service to the nation on the high court.

The featured dinner speaker of the evening was newly confirmed U.S. Supreme Court Justice Samuel Alito who discussed, somewhat humorously, the confirmation process and the proper role of judges. He also praised the Society for bringing the best minds from right, left and center to debate the most pressing legal issues of the day. The dinner has developed into a major event for the legal community drawing more than 1,400 people.

Governor Haley R. Barbour of Mississippi; Michael Chertoff, U.S. Secretary of Homeland Security; Senator John McCain of Arizona; Senator Arlen Specter of Pennsylvania, and Karl Zinsmeister,

Domestic Policy Advisor to the President, all delivered addresses to the convention.

The Convention's more than 25 events, featuring more than 100 speakers, were sponsored by the



*Mississippi Governor Haley Barbour addressed the National Lawyers Convention on his state's recovery progress from Hurricane Katrina. He was introduced by Federalist Society co-founder David McIntosh.*

Society's fifteen Practice Groups, which strive to make the gathering as intellectually stimulating as possible by including strongly opinionated speakers with diverse viewpoints. Standing-room-only crowds were present in many of the sessions, some of which were taped by C-SPAN and covered by the national media.



*U.S. Secretary of Homeland Security Michael Chertoff is welcomed by Ronald Cass, chairman of the International and National Security Law Practice Group.*

Convention participants included professors from prominent law schools, federal appellate court judges from seven different circuits, several administration officials, leading journalists, and prominent think tank leaders, as well as attorneys from across the country.

Other notable speakers at the 2006 Convention included: U.S. Solicitor General Paul Clement; Judge Frank Easterbrook, U.S. Court of Appeals for



the Seventh Circuit; Judge Edith Jones, U.S. Court of Appeals for the Fifth Circuit; Former U.S. Solicitor General Theodore Olson; Prof. Charles Fried of Harvard Law School; William Kristol of the *Weekly Standard*; former Acting U.S. Solicitor General Walter E. Dellinger; Judge William Pryor Jr., U.S. Court of Appeals for the Eleventh Circuit; Phyllis Schlafly of Eagle Forum; Judge A. Raymond Randolph, U.S. Court of Appeals for the D.C. Circuit; Judge Carlos Bea, U.S. Court of Appeals for the Ninth Circuit; U.S. Congressman Jeffrey Flake of Arizona; Prof. Richard Epstein of the University of Chicago School of Law; and Anthony Romero of the ACLU.

#### STUDENT SYMPOSIUM

The Federalist Society's twenty-fifth annual National Student Symposium on "International Law and the United States Constitution" was a spectacular success. The Symposium took place in February at Columbia University Law School in New York City. This program brought together more than 1,200 top academics, policy experts and mostly students from



*Then U.S. Ambassador to the United Nations John Bolton gave a speech on the United Nations and international law to a standing room only crowd at the Student Symposium at Columbia Law School.*

across the country, representing 133 different law schools. Overall, this was an increase of 300 participants from last year. Attendance for the Symposium has doubled over the last two years. For a number of years attendance at the Symposium was roughly 600. Last year the Symposium at Harvard Law School drew 900. This year attendance went up to 1,200.

Panel topics included: the possibility of an international rule of law, the use of foreign materials in domestic constitutional interpretation, constraints of international law on the War on Terror, the power of the Executive and the enforceability of foreign judgments. Speakers and panelists included: U.S. Ambassador to the United Nations John Bolton; Judge Frank Easterbrook,

*William Kristol, Editor of The Weekly Standard, participated in the Showcase Panel entitled "Limited Government and Spreading Democracy: Uneasy Cousins?"*



U.S. Court of Appeals for the Seventh Circuit; Judge Dennis Jacobs, U.S. Court of Appeals for the Second Circuit; Judge William Pryor Jr., U.S. Court of Appeals for the Eleventh Circuit; Judge A. Raymond Randolph, U.S. Court of Appeals for the D.C. Circuit, and Judges Diarmuid O'Scannlain and Alex Kozinski, both of U.S. Court of Appeals for the Ninth Circuit.



*Manny Klausner of California asks a question of participant Phyllis Schlafly of the Eagle Forum after a lively roundtable on "The Role of Government in Defining our Culture." Dean Reuter, Federalist Society Practice Groups Director, looks on.*

Distinguished speakers from the legal academy included: Prof. John McGinnis of Northwestern University School of Law; Prof. Jeremy Rabkin of Cornell University; Prof. Akhil Amar of Yale Law School; Prof. John Yoo of University of California, Berkeley, Boalt School of Law; Prof. John Harrison of University of Virginia Law School; Prof. Michael Ramsey of San Diego Law School; Prof. Martin Flaherty of Fordham Law School; Prof. Steven Calabresi of Northwestern School of Law; and Prof. Gerald Neuman of Columbia Law School.

Ambassador Bolton gave a post-luncheon address to a tightly packed audience. He analyzed the United States' decision to withdraw from the ABM treaty of 1972, which he said had produced a good outcome even though, at the time, the decision had caused gnashing of teeth among many



*U.S. Supreme Court Justice Antonin Scalia, his wife Maureen and their nine children and their spouses all attended the Federalist Society's Annual Dinner to celebrate the Justice's twentieth year on the Supreme Court.*

international lawyers. He concluded with remarks about the United Nations and the oil-for-food and other scandals which he believes have reduced the organization's reputation and effectiveness.

#### STUDENT LEADERSHIP CONFERENCE

Another indication of Student Division success has been the growth of the Student Leadership Conference held in Washington, D.C. each July. In two intensive days the Society covers the cost to bring all our incoming chapter presidents for a crash course on how to run a successful chapter. They also hear from inspiring legal legends and meet other Society student leaders from all over the country—friends with whom they can consult during the school year. We attribute some of the remarkable progress of our chapters in the last couple of years to these meetings. Most of the 195 accredited law schools in the U.S. sent student participants to this year's conference which took place the weekend of July 14-16. Students heard from Judge Janice Rogers Brown of the U.S. Court of Appeals for the D.C. Circuit and Federalist Society co-founders former Congressman David McIntosh and Prof. Steven Calabresi of Northwestern University School of Law. The sessions of the conference focused mainly on helping students learn the nuts and bolts of running a successful chapter at their law school. The weekend included a reception at the U.S. Supreme Court where the students mingled with members of the D.C. legal community including U.S. Supreme Court Justice Antonin Scalia.



*Justice Allison Eid of the Colorado Supreme Court and her husband, Troy Eid, (right), U.S. Attorney for the District of Colorado, greet Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit at the National Lawyers Convention.*

#### FACULTY CONFERENCE

The 2006 Faculty Conference in January in Washington, D.C. marked the eighth consecutive year the Federalist Society has provided a unique setting for discourse and for fostering the development of quality scholarship among professors with an interest in traditional legal principles.

This year, panels ranged from "Is Federalism Over After *Raich*?" to "International Law: How Present in Our Law?," "Conservative Non-Originalist Approaches to Constitutional Interpretation," and "The Solomon Amendment: May Congress Demand that Universities



Judge Edith Brown Clement, U.S. Court of Appeals for the Fifth Circuit, talks with Michael Wallace of Mississippi at the National Lawyers Convention.

that Get Federal Funds Allow Military Recruiting on Campus?” There were also twelve papers presented by various professors on an array of topics, from the death penalty for minors to admissibility thresholds for foreign law in domestic cases. Seventy-five professors attended.



Federalist Society co-founders Steven Calabresi and David McIntosh (left) enjoy a moment before the Annual Dinner with U.S. Supreme Court Justices Samuel Alito and Antonin Scalia and co-founder Lee Liberman Otis.

Feedback from the attendees continues to affirm the immense value of this conference for the scholars. Specific results from earlier conferences are already showing up in terms of articles, which were greatly improved by the feedback. These annual meetings energize the attendees, who must deal daily with the biases that exist in the legal academy. Most importantly, they offer the opportunity for the interchange of ideas and the review of each other's work that is invaluable for serious young scholars.

The Federalist Society's Faculty Conference continues to offer a unique setting for discourse,



U.S. Attorney for the Eastern District of Michigan Stephen Murphy with his wife Amy and their children at the Convention.

fostering the development of quality scholarship among professors with an interest in traditional legal principles. The Society believes that an opportunity for these professors to exchange ideas and scholarship with each other will facilitate the intellectually serious discussion we hope to promote and advance traditional legal principles in the legal academy and beyond. This conference is a crucial effort because legal academia is at the forefront of political correctness in the law. The Faculty Conference helps energize those professors most dedicated to offering students a strong counter to political correctness. Apart from the major conference, the Federalist Society continues to facilitate frequent discourse between faculty members. An increasing number of faculty members are also involved in our Practice Groups.





**THE FEDERALIST SOCIETY  
E.L. WIEGAND  
PRACTICE GROUP PROGRAMS**

The Federalist Society's 15 Practice Groups have established a proven mechanism to disseminate traditional legal ideas through events and scholarship. In 2006, as this work continued, the Practice Groups explained traditional perspectives on the law and ensured that even more people heard these views.

The **Civil Rights** Practice Group hosted several programs on the issue of birthright citizenship in the month of August. There were events in Austin, Dallas, and Houston dealing with proposals that have been introduced in Congress to repeal birthright citizenship for the children of undocumented persons, as well as for the children of persons other than U.S. citizens and aliens lawfully admitted for permanent residence. Section 1 of the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." In light of this provision, the programs addressed the question, "Are proposals to Repeal Birthright Citizenship by Statute Constitutional?" Panelists included Chapman University Law School Prof. John C. Eastman, U.S. Military Academy Prof. Margaret D. Stock and Mr. James C. Ho of Gibson Dunn and Crutcher. The Practice Group will likely host additional such programs in southern California in the coming year. The Practice Group, in cooperation with the Chicago Lawyers Chapter, also hosted a panel examining Title IX and its effects on athletics. The group also hosted a panel discussion on reauthorization of the Voting Rights Act that attracted a great deal of attention in anticipation of congressional action.

As highlighted in the Special Projects section on page 20, the **Federalism and Separation of Powers** Practice Group, along with the Lynde and Harry Bradley Foundation, hosted a one-day conference in Milwaukee in honor of William H. Rehnquist, examining his legacy as Associate Justice and Chief Justice of the U.S. Supreme Court. Conference participants included U.S. Supreme Court Justice Antonin Scalia, U.S. Solicitor General Paul Clement, former U.S. Solicitors General Theodore Olson and Walter Dellinger and several other notable scholars and public officials. The event attracted a capacity crowd of well over 350.

In September, the **Corporations, Securities & Antitrust** Practice Group co-hosted a conference in New York titled "Does Procedure Dominate Substance?: Of Class Actions and Pretrial Motions." The first panel examined the standards for certifying a class in class actions. The panel was moderated by eSapience, Ltd. Chairman David S. Evans and included University of



*William P. Barr, Executive Vice President and General Counsel, Verizon Communications, is interviewed by a reporter after a panel planned by the Telecommunications Practice Group entitled "Net Neutrality: Battle of the Titans."*

Chicago Law School Prof. Richard A. Epstein, New York University School of Law Prof. Samuel Issacharoff and Vanderbilt University Law School Prof. Richard A. Nagareda. The second panel, which considered pretrial motions to dismiss and summary judgment, included Boston University School of Law Prof. Keith N. Hylton, New York University School of Law Prof. Geoffrey P. Miller and J. Douglas Richards of Milberg Weiss and Bershad and was moderated by George Washington University Law School Prof. Jack H. Friedenthal.

*Judge Brett Kavanaugh, U.S. Court of Appeals for the D.C. Circuit, moderated a Civil Rights Practice Group panel on "Civil Rights in the 21st Century" at the National Lawyers Convention.*



The conference concluded with a lunchtime address by Boies, Schiller & Flexner Chairman David Boies.

The **Free Speech and Election Law** Practice Group hosted an Election Law Lecture Series of programs with the presentation of papers and discussion of felon voting, campaign finance reform, public financing of campaigns and voting fraud. Federal Election Commissioner Hans A. von Spakovsky, U.S. Election Assistance Commissioner Ray Martinez III and former FEC counsel Allison Hayward were among the participants. The Election Law series was published in *Engage* and will be published in the *St. Thomas Journal of Law and Public Policy* in the fall of 2007.



The **Religious Liberties** Practice Group had a very busy year, as it continued its partnership with the Pew Forum on Religion & Public Life. The practice group hosted a debate and panel discussions on conscience clauses, the death penalty, the federal partial-birth abortion ban and the right to “privacy” in Supreme Court jurisprudence. Participants included Dean Kenneth W. Starr of Pepperdine University Law School, Becket Fund for Religious Liberty Founder and Chairman Kevin J. Hasson, Alliance Defense Fund Chief Counsel Benjamin W. Bull, Center for Reproductive Rights President Nancy Northup and others.

The **International and National Security Law** Practice Group co-sponsored an event with the New York City Lawyers Chapter discussing, “After *Hamdan*: The Supreme Court and the Future of U.S. Responses

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*Kevin J. Hasson, Becket Fund for Religious Liberty Founder and Chairman, appeared regularly for the **Religious Liberties** Practice Group this year including in a debate on the conscience clause.*

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to Terrorism.” Moderated by former Chief Judge of the United States District Court for the Southern District of New York Michael B. Mukasey, Fordham Law School Prof. Martin S. Flaherty and Boalt Hall School of Law, University of California at Berkeley Prof. John C. Yoo debated the merits of *Hamdan* and its implications for military trials of terrorists, as well as for detention, interrogation and the National Security Agency’s surveillance program. In December, Prof. John C. Yoo debated “War by Other Means” with University of Chicago Law School Prof. Richard A. Epstein at the McCormick Tribune Freedom Museum in Chicago. Gretchen Helfrich, Chicago Public Radio’s former host of *Odyssey*, served as moderator.

The **Administrative Law** Practice Group hosted a conference at the University of Minnesota School of Law, titled “The Future of Tax Shelters,” in October. The conference brought together top tax scholars and professionals, as well as scholars from other disciplines that are thinking about tax shelters from different perspectives, to evaluate the present and future of tax shelters. The *Virginia Tax Review* will publish the symposium essays.

Together with the Heritage Foundation and the **Criminal Law & Procedure** Practice Group, the **Corporations** Practice Group also hosted a panel

titled “The Future of the Attorney-Client Relationship in White-Collar Prosecutions” in November. The program analyzed the issues surrounding the Justice Department’s current policies and practices for investigating and prosecuting business organizations. Under current policy, corporations that agree to waive the attorney-client privilege are deemed to be “cooperating” and therefore entitled to special consideration during investigation and even sentencing. Former U.S. Attorney General Edwin Meese of the Heritage Foundation delivered the introductory remarks, and the panel included former U.S. Deputy Attorney General George J. Terwilliger III, a member of the Corporations Practice Group Executive Committee, and Pepsico General Counsel and former U.S. Deputy Attorney General Larry D. Thompson.

The **Litigation** and the **Professional Responsibility and Legal Education** Practice Groups co-sponsored a fascinating panel discussion on “Mass Fraud in Mass Torts.” Cardozo School of Law Prof. Lester Brickman presented a paper documenting various instances where science has been manipulated by expert witnesses and plaintiffs’ counsel to portray a distorted picture of causation and defendants’ liability. He was joined in making his argument by Patrick M. Hanlon of Goodwin Proctor. Joseph F. Rice of the firm of Motley Rice argued that the legal system operated effectively to mediate competing scientific claims and asserted that discoveries of fraud only proved the efficacy of the system in sorting out the facts. Duke Law School Prof. Francis E. McGovern weighed in on the side of the existing regime. D.C. Circuit Court of Appeals Judge Douglas H. Ginsburg served as the moderator.

The **Environmental Law and Property Rights** Practice Group hosted a conference on reform of the Endangered Species Act. The conference examined the issue of who should bear the burdens and costs of ESA enforcement, individual landowners or society at large. The conference also examined some of the unintended consequences of




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*Edwin Williamson of Sullivan & Cromwell serves as senior advisor to the **International and National Security Law** Practice Group.*

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Judge Jeffrey Sutton, U.S. Court of Appeals for the Sixth Circuit, moderated a panel organized by the **Free Speech and Elections Practice Group** on the *Single Subject Rule*.

the Act. Participants included Congressman Richard W. Pombo, Department of the Interior Deputy Secretary Lynn Scarlett and former Department of Justice Official Jeffrey B. Clark. *The William and Mary Journal of Environmental Law* will be publishing both panels soon. The Practice Group also sponsored a panel at the Convention examining how some state attorneys general and environmentalist groups have filed suits to force the Environmental Protection Agency to regulate greenhouse gases under the Clean Air Act and charged major utilities with contributing to the “public nuisance” of global warming due to their emissions of carbon dioxide.

The **Telecommunications & Electronic Media** Practice Group hosted a half-day conference in May on the future of federalism in the telecommunications industry. The conference featured a keynote address by National Association of Manufacturers (NAM) President and former Michigan Governor John M. Engler, who talked about the importance of promoting competitiveness in all fields of industry and manufacturing and emphasized that a strong and vibrant telecommunications industry is vital to a healthy manufacturing sector of the economy. The governor also explained NAM’s support of federal efforts to lift obsolete state barriers to competition and its opposition to net neutrality.

The **Financial Services** Practice Group hosted a panel discussing, “Wal-Mart: The Next Community Bank?” at the National Lawyers Convention. Panelists included Hon. Thomas J. Bliley, Former United States Congressman, Virginia, John L. Douglas, Alston & Bird, Hon. Kenneth A. Guenther, Former President and Chief Executive Officer, Independent Community Bankers of America and Hon. Peter J. Wallison, Resident Fellow, American Enterprise Institute. James M. Rockett, Bingham McCutchen, served as moderator.

The **Intellectual Property** Practice Group held an “Intellectual Property: Back to Basics” Conference, in Washington D.C. at Wiley Rein & Fielding, which featured two panels. The first panel, “By Any Other Name: Intellectual Property as “Property,” focused on the philosophical and practical implications of intellectual property as property. The

second panel was “Modern Intellectual Property Rights: Unprecedented Growth or Unprecedented Erosion?” Members of the **Intellectual Property** Practice Group have joined with members of other organizations aimed at protecting intellectual property rights in developing countries, creating the WIPO Coalition. As part of this initiative, IP Practice Group member Prof. Mark F. Schultz, Southern Illinois University School of Law traveled to Geneva to monitor and report on developments at the World Intellectual Property Organization’s discussion of its Development Agenda. Prof. Schultz’s reports were published at NGOWatch.org. The WIPO Coalition is committed to monitoring developments at WIPO meetings and will continue to report its progress.

The **Labor and Employment** Practice Group



Roger Clegg, President of the Center for Equal Opportunity, (left) and Michael Rosman, General Counsel for the Center for Individual Rights, appeared on a panel on law firm hiring practices and diversity organized by the **Labor and Employment Practice Group**.

organized a panel at the National Lawyers Convention entitled “Law Firm Hiring Practices and Diversity,” which was moderated by Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit and featured Prof. Richard H. Sander of the University of California, Los Angeles School of Law; Ms. Shirley J. Wilcher, President of Wilcher Global; Stephen F. Hanlon of Holland & Knight; Roger Clegg, President and General Counsel of the Center for Equal Opportunity and Michael E. Rosman, General Counsel for the Center for Individual Rights. 



### THE FEDERALIST SOCIETY STATE COURTS PROJECT

The Federalist Society has successfully fostered debate on legal principles and jurisprudence surrounding the federal courts since its inception in 1982. Five years ago, the Society began its efforts to encourage such discussion on the state level as well. In the fall of 2006, the Federalist Society State Courts Project launched a vigorous educational campaign to encourage discussion amongst the public, opinion leaders and the press about issues concerning the proper role of state supreme courts and state judicial selection processes—issues which have received very little attention in the past, yet are of vital importance in our constitutional system. The purpose of this effort is to provide accessible information to the press and the public that would serve as a springboard for real, meaningful debate about what is actually at stake regarding the direction of state constitutional and general legal jurisprudence.

The 2006 educational campaign consisted of three elements: 1) events in various cities throughout those states on which we have chosen to focus, 2) unique scholarship on the state of state supreme court jurisprudence written by top law professors and practicing attorneys around the country, and 3) facilitating media appearances by those scholars, attorneys, and other experts. The fall was an ideal time to begin these initiatives, as judicial elections provide a good “news peg” for focusing attention on court issues and judicial reform. In states where there were no elections, the State Courts Project began laying the infrastructure for future activity. Forty-five state liaisons have been appointed to the project and are actively working at the local level to educate and inform the public about their state supreme court’s recent decisions and the underlying election process.

The Federalist Society State Courts Project focused on five states this past fall: Washington, Georgia, Kentucky, Alabama, and Florida. White papers written by local legal experts and law professors were released in each of these states to state appellate court judges, governor’s counsels, other government officials, select corporate leadership, local policy organizations, the press and the public. These papers highlight the courts’ most recent key rulings in a user-friendly way. The Federalist Society also undertook a media project in each state to generate press about the state supreme court’s work in key areas (*e.g.*, property rights and crime), to educate the public about the judicial election process and to foster debate about the proper role of the courts. In conjunction with the release of the white papers, media-trained legal experts who spoke on their own behalf were made available to the press for commentary on the papers and the proper role of



As part of the State Courts Project, Holly Pierson, a practicing attorney in Atlanta, co-wrote a white paper on the Georgia Supreme Court.

the state supreme court. These legal experts acted as featured guests on radio, were quoted in newspapers and published op-ed articles. The white papers themselves also served as a useful resource reference for press covering the supreme court elections.

Of all the state supreme court races this election season, Washington’s was the most closely watched. With three incumbent justices facing well-funded challengers, both the press and the general public were unusually focused on the state’s highest court. The Federalist Society co-presented the only debate between the candidates before the September primary, which received extensive local television and newspaper coverage. The Society went on to sponsor two more events before the election.

Georgia is another state where the supreme court judicial race received more than the usual share of national and state attention. This was in part due to significant expenditures being made in one hotly



Marc Ayers, a Birmingham attorney, wrote a white paper on the Alabama Supreme Court for the State Courts Project.

contested race. To help generate discussion about judicial issues, the Federalist Society hired a polling firm to conduct pre-election surveys of potential Georgia voters. They tested the awareness and understanding of the process by which supreme court justices are elected as well as voters’ familiarity with the Georgia Supreme Court and its decisions. The pre-election survey also focused on voter awareness, impression and opinion with respect to judicial activism, judicial restraint and the role of the courts.

The white paper was entitled *The Predictable Unpredictability of the Georgia Supreme Court* and was authored by practicing attorneys Robert Barker,



Holly Pierson and Ryan Teague. It paid particular attention to recent case trends in criminal and tort law, as well as cases that implicate separation of powers. The Society also hosted three events in Georgia.

The Supreme Court judicial election in Kentucky was notable because four of the seven seats were contested. The Federalist Society published a white paper entitled “*Eight Ways to Sunday*”: *Which Direction, Kentucky Supreme Court?*, which was co-authored by Paul Salamanca, law professor at University of Kentucky College of Law in Lexington, and John Bush, an attorney in Louisville. The paper paid particular attention to recent case trends in the areas of tort and contract law, as well as cases that implicate separation of powers and the right to privacy. The white paper was promoted throughout the state as a launching pad for further discussion of the role of the Kentucky Supreme Court, and the paper was featured in *The Louisville Courier-Journal*. As in Washington and Georgia, the Federalist Society engaged in an effort to facilitate Prof. Salamanca’s and Mr. Bush’s participation in the public discussion in Kentucky. A synthesis of the entire Federalist Society educational campaign in Kentucky appeared on the “Townhall.com” blog.

Five of the nine justices on the Alabama Supreme Court were up for election. A white paper was commissioned to address the court’s most notable decisions of the last two years. This white paper, written by practicing Birmingham attorney and former Alabama Supreme Court clerk Marc Ayers was titled *Staying the Course: An Update on the Alabama Supreme Court*.

Although the state of Florida has non-partisan retention elections and no judge in the history of Florida has ever lost a retention election, the 2006 Florida retention process received more attention than usual because of several recent high-profile Florida Supreme Court cases, including one where the court struck down legislatively enacted school choice reform. The Federalist Society published a white paper on the court’s recent decisions entitled *The Florida Supreme Court: Judicial Activism & Judicial*

*Self-Restraint—Some Examples*, which was authored by Professors Thomas C. Marks Jr. and Pamela Buha from Stetson University College of Law in Tampa.

The Federalist Society also hosted two events to discuss issues surrounding the Florida Supreme Court. One was a debate addressing a lawsuit filed in Florida that challenged the state bar rule setting forth what can and cannot be answered by judicial candidates.

Though these five states were the central focus of the State Courts Project thus far, significant initiatives were undertaken in other states as well. Based on the success of the Georgia polling, the Federalist Society decided to survey potential Oregon voters for their views on the Oregon Supreme Court and the judicial role. As in Georgia, the Oregon poll results revealed the citizens’ disapproval of judicial activism: an overwhelming majority (84%) believes judges should interpret the law as it is written and not take

into account their own viewpoints and experiences. The poll also showed that a majority (70%) have total trust and confidence in their state supreme court to make fair decisions. The Federalist Society poll results were featured in *The Oregonian* and the *Register Guard*.

The Federalist Society took initiatives to educate Colorado citizens about state court issues with the publication of a white paper on the current state of the Colorado Supreme Court written by Colorado State Senator Shawn Mitchell and titled *The Colorado Supreme Court: Independence or Activism?*

The impact of elections on judicial independence has also been questioned nationally by the Conference of Chief Justices. They want to determine whether judicial campaign finance, judicial speech on issues and grassroots activities such as voter guides, threaten the independence of the state judiciary. Recognizing the need to promote more dialogue on this subject across state lines, the Federalist Society organized a national event on judicial elections entitled “Are Judicial Elections a Threat to Judicial Independence? A Conversation Between State Supreme Court Justices Harold F. See and Randall T. Shepard,” which



White Papers analyzing the jurisprudence of selected State Supreme Courts were published by the Federalist Society through the State Courts Project.



*U.S. Supreme Court Chief Justice John Roberts appeared before the Federalist Society's London Chapter and offered a comparison between the British and American legal systems.*

took place at the National Press Club in Washington, D.C. Timed exactly two weeks before the general election, this event drew significant interest from the press, including a live broadcast on C-SPAN. A streaming video of the national debate is available for viewing on the State Courts Project page of The Federalist Society website [www.fed-soc.org](http://www.fed-soc.org).

Overall, the State Courts Project has sparked a level of dialogue in the local press that has rarely, if ever, taken place before. In particular, these activities facilitated a far more serious public debate during this fall's judicial election process.

#### *INTERNATIONAL LAW AND SOVEREIGNTY PROJECT*

The concept of sovereignty is inextricably intertwined with the Western tradition of the Rule of Law.



*Chief Judge Douglas H. Ginsburg of the U.S. Court of Appeals for the D.C. Circuit and Boston University Law Dean Emeritus Ronald A. Cass of the Center for the Rule of Law discussed judicial review on a tour of Federalist Society European chapters.*

Countries historically have been free to establish their own laws without interference. In recent years, however, foreign and international sources of law have begun to be involved as a vehicle for creating and enforcing new limiting principles on the concept of sovereignty.

In 2002, the Federalist Society established its International Law and Sovereignty Project. The



*James P. Kelly, III (right) the Federalist Society's Director of International Affairs, and his wife Lisa visit with Pierre Masquart of the Society's Paris Chapter at the Convention.*

project's activities include attending and reporting on the meetings of various international organizations, including UNESCO, the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), and the Council on Human Rights, as well as the ongoing monitoring and reporting on the activities of many non-governmental and international organizations through [NGOWatch www.ngowatch.org](http://www.ngowatch.org), a website created in partnership with the American Enterprise Institute.

As part of the project the Federalist Society has also established chapters in Paris, London, and Brussels. These chapters go far in helping to build the trans-Atlantic coalition that is necessary to maintain a vibrant dialogue about the role of international law and the idea of sovereignty.

This year has seen many successful programs hosted by the European Chapters. In September, the London Chapter, under the leadership of Bryant Edwards, hosted a program featuring Chief Justice John Roberts at the Carlton Club in London. The Chief Justice provided observations on his first year as head of the United States Supreme Court and offered a comparison between the American and the British legal systems before taking questions from the audience.

In early December, the Federalist Society's European Chapters organized a week-long series of conferences on the topic of judicial review, which compared the American and European experiences with judicial review. A panel discussion was hosted by each of the three European Chapters. Chief Judge Douglas H. Ginsburg of the U.S. Court of Appeals for the D.C. Circuit and Boston University Law Dean Emeritus Ronald A. Cass (who now runs the Center for the Rule of Law) represented the American viewpoint at each event and various members of the European Court of Justice and national courts



*U.S. Supreme Court Justices Antonin Scalia and Stephen G. Breyer discuss constitutional interpretation at a program co-sponsored by the Federalist Society and the American Constitution Society and moderated by Jan Crawford Greenburg of ABC News.*

presented the European perspective. The events attracted a number of jurists and law professors.

The Federalist Society's International Project has also been very involved monitoring the activities of various international organizations. The Federalist Society has achieved observer status at WIPO, serves on the U.S. National Commission to UNESCO and is invited to attend many of their meetings. The Federalist Society continues to send representatives to these and other meetings of international organizations as a means of monitoring activity and exposing international policy makers to our programming and scholarship. Reports of these meetings are published on the NGOWatch website [www.ngowatch.org](http://www.ngowatch.org).

#### **LEGACY OF THE REHNQUIST COURT**

On February 23, 2006, the Federalist Society hosted a day-long conference on "The Legacy of the Rehnquist Court" in the late chief justice's hometown of Milwaukee. As mentioned on pages 9 and 14, the conference was co-sponsored and supported by the Lynde and Harry Bradley Foundation and was attended by more than 350 lawyers and students. The first panel was a roundtable of Solicitors General, and included: Paul Clement, current U.S. Solicitor General; Walter Dellinger, Acting U.S. Solicitor General under President Bill Clinton; and Theodore Olson, former U.S. Solicitor General for the George W. Bush Administration. The panel was moderated by Joseph Kearney, Dean of Marquette University Law School.

The second panel discussed "The Jurisprudence of the Rehnquist Court and the Enterprise of Judging." Participants included Prof. Ann Althouse of the University of Wisconsin Law School;

Prof. Richard Garnett of Notre Dame Law School; David Leitch, General Counsel to the Ford Motor Company and former Deputy White House Counsel and Prof. John McGinnis of Northwestern Law School. Judge Steven Colloton of the U.S. Court of Appeals for the Eighth Circuit moderated.

The keynote luncheon address was given by U.S. Supreme Court Justice Antonin Scalia and included his reflections on the jurisprudence of Chief Justice Rehnquist and their years on the court together.

#### **SCALIA-BREYER CONVERSATION ON THE CONSTITUTION**

A special event held to commemorate the Federalist Society's twenty-fifth anniversary was a lively discussion between U.S. Supreme Court Justices Antonin Scalia and Stephen G. Breyer to an overflow crowd of 800 special invitees in Washington, D.C. last December. The discussion was co-sponsored by the Federalist Society and the American Constitutional Society. The title of their exchange was "A Conversation on the Constitution: Perspectives from *Active Liberty* and *A Matter of Interpretation*" and highlighted their two very different views on the Constitution. ABC News Supreme Court Correspondent Jan Crawford Greenburg moderated the discussion. It was aired on C-SPAN and covered by all major networks. The audio and video of the conversation between the Justices is available on our website at [www.fed-soc.org](http://www.fed-soc.org).

#### **THE LEGACY OF THE MEESE JUSTICE DEPARTMENT**

In late January 2007, the Federalist Society's next event to commemorate its twenty-fifth anniversary year took place at the Ronald Reagan Library in California and examined the legacy of the Justice Department under former Attorney General Edwin Meese. The day-long event featured two panels. The first, entitled, "The Meese Department of Justice: Its Accomplishments and Its Relevance Today," consisted of former Meese Justice Department officials. The second, entitled "The Development of Originalism," featured a number of scholars who reflected on trends in constitutional interpretation. In addition, the event featured a luncheon speech by former U.S. Solicitor General Theodore B. Olson and a live interview with General Meese conducted by Prof. Gail Heriot of the San Diego School of Law. The audio recording of this program is also available on our website at [www.fed-soc.org](http://www.fed-soc.org). 



**The Washington Post**  
 Saturday, November 18, 2006  
**No Secrets Here: Federalist Society Plots In the Open**  
**Conservative Legal Group Focuses on Judiciary to Come**  
 By David Montgomery

...election? What election? ... Hotel this week ... Federalist Society is kind of like a ... and all the legal decision-making ...

**CQ WEEKLY**  
 CONSERVATIVES: The Federalist Society's Pipeline Grows 1,000  
 CONGRESS: How Big They Are for the New Days 12/11  
 DECEMBER 11, 2006

**Los Angeles Times**  
 FRIDAY, NOVEMBER 11, 2005  
**Engaged in a Very Civil War**  
 The Federalist Society has reshaped the legal system without ever going to court.

...the House lawyer ... society? ...

**Federalist Pipeline Fuels Movement on the Right**  
 As conservative group grows in size, influential liberals say it's time for the left to play catch-up

**THE WALL STREET JOURNAL**  
 Thursday, January 26, 2006

**The Roberts-Alito Court**

With at least 52 Senators already on record in support, it's clear that—short of some smear ex machina—liberal Democrats can't stop Samuel Alito from being confirmed to a seat on the Supreme Court. So it's a good moment to consider what this says about our politics and what it means for the Court as it enters a new era.

One conclusion is that the confirmation of both Chief Justice John Roberts and Judge Alito marks the most important domestic success for President Bush since his 2003 tax cuts. These look like legacy picks. Despite the Harriet Miers misstep, Mr. Bush has now fulfilled one of his campaign promises. And with two distinguished conservative jurists joining Justices Antonin Scalia and Clarence Thomas, the Court is closer than it's been in 50 years to having a majority that can restore Constitutional interpretation to its founding principles.

In this sense, the Alito-Roberts ascendancy also marks a victory for the generation of legal conservatives who earned their stripes in the Reagan Administration. The two new Justices are both stars of that generation; they, like others scattered throughout the lower courts, and they are now poised to influence the law and culture for 20 years or more. All those Federalist Society seminars may have finally paid off. Call it Ed Meese's revenge.

The Roberts-Alito Court also represents a notable, and greatly satisfying, rebuke for the legal left and its "borking" strategy. They have long thought of the courts as their personal legislature, and they have shown they will do and say anything to keep control of it. But this time they lost, and on their own ideological terms.

Senator Chuck Schumer declared in 2001 that he wanted to turn judicial confirmations into battles over "ideology." The New York Democrat succeeded in doing so, but he ended up losing in a self-knockout. One reason Democrats couldn't defeat Chief Justice Roberts or Judge Alito, despite near party-line opposition, is that their filibuster strategy had made judges a top-line election issue in both 2002 and 2004.

The battle over their unprecedented filibuster of 10 appeals-court nominees helped to sweep Democrats out of the Senate in Bush-leaning states and give Republicans a larger majority. The Democrats who remain in red states—five of whom are up for re-election in November—saw all this and had no appetite for a repeat in 2006. The liberal interest groups that devised the filibuster strategy and wrote the anti-Alito talking points for Senators Ted Kennedy and Patrick Leahy thus contributed as much as anyone to Judge Alito's confirmation. Congratulations, Ralph Neas. It's your finest hour.

While it's impossible to know how any new Justice will vote on specific issues, every indication is that the new duo will fit somewhere along the Court's conservative-libertarian wing. With Judge Alito replacing Justice Sandra Day O'Connor, who in her later years had moved markedly left on the culture, we can anticipate more skepticism toward both racial preferences and campaign-finance restrictions on free speech.

We can also expect more respect for the free exercise of religion clause in the First Amendment, as opposed to the rigid invocation of the establishment clause's "wall" of separation between church and state. We'd also hope for greater respect for property rights, including a revisiting of last year's egregious Kelo decision, as well as a revival of the Lopez line of commerce clause cases showing more respect for federalism. Roe v. Wade may survive, or not, but we'd expect that individual states would receive more leeway to enact restrictions on abortion as per the wishes of their citizens.

This does not mean this will be a "conservative" Court, however. Four reliable liberals remain, as well as the protean Justice Anthony Kennedy, who has been making his own migration to the cultural left and the make-it-up-as-you-go jurisprudence exemplified by Lawrence v. Texas (on state laws on homosexuality) and Roper v. Simmons (on the juvenile death penalty). You can bet the press corps and liberal politicians will now apply their carrot-and-stick strategy of praise and castigation to push Justice Kennedy further to the left and retain a five-vote liberal majority. This will be especially true on the polarizing cultural disputes that are better solved democratically.

All of which means that the political battles over the Courts will continue. It is possible Mr. Bush will get another Supreme Court nomination before his term ends. Even if he doesn't, there will be many crucial places on the appellate courts to fill. There are eight appeals-court vacancies, excluding Judge Alito's slot on the Third Circuit.

The White House and Senate should move with confidence and dispatch to fill these openings with judges in the Thomas-Scalia and now Roberts-Alito mold, while they still have the votes to confirm them. One thing we've surely learned from the past six months of Supreme Court debate is that elections matter to the courts as much as they do to the other two branches of government.

While it's impossible to know how any new Justice will vote on specific issues, every indication is that the new duo will fit somewhere along the Court's conservative-libertarian wing. With Judge Alito replacing Justice Sandra Day O'Connor, who in her later years had moved markedly left on the culture, we can anticipate more skepticism toward both racial preferences and campaign-finance restrictions on free speech.

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The Federalist Society has always placed a high premium on its ability to present balanced debate and non-partisan information. To that end, the publications arm of the organization has grown apace with the organization itself, so that there are now three regular newsletters dealing with various legal institutions, a scholarly journal of considerable length, a member magazine, and frequent white papers on a variety of topics. The organization screens its publications rigorously for objectivity and balance, feeling an obligation to its members in law schools, the bar, the judiciary and elsewhere to provide quality material that is educational in the best sense of the word. When Society publications do take a position, readers are directed to contrary viewpoints elsewhere, in an attempt to reach meaningful balance.

**The Journal of the Federalist Society Practice Groups**

Project of the E.L. Weigand Practice Groups

**NOTA BENE**

*State-Level Protection for Good-Faith Pharmaceutical Manufacturers*  
by Daniel Troy

*The Vienna Convention and the Supreme Court: Reaching the Limits of Internationalism?*  
by Kent Schweidger

*The McNulty Memorandum: Recent Modifications to Federal Prosecutorial Policy Regarding Corporations*  
by George J. Terwilliger III

*Standing in the Hot Seat: Climate Change Litigation*  
by Jonathan H. Adler

*NSA Surveillance: The Litigation and its Implications*  
by Thomas R. McCarthy

*The Blaine Amendment: Harbinger of Secularism?*  
Gerard V. Bradley

**BOOK REVIEWS**

*Richard A. Posner's Not a Suicide Pact, John Yoo's The Powers of War and Peace, Jerome Karabel's The Chosen, John Ashcroft's Never Again*

Volume 8, Issue 1 February 2007

**ABA WATCH**

FEBRUARY 2007

**INSIDE**

**ABA Considers Recommendations on Judicial Conduct, Gun Control, & "Apology Legislation" at Mid-Year Meeting**

The American Bar Association's House of Delegates will consider a number of resolutions at its annual meeting in Miami on February 12. If adopted, these resolutions become official policy of the Association. The ABA, maintaining that it serves as the national representative of the legal profession, may then engage in lobbying or advocacy of these policies on behalf of its members. At this meeting, recommendations scheduled to be debated include proposals concerning "apology legislation," diversity, domestic violence, and gun control. What follows is a review of some of the resolutions that will be considered in Miami.

**MONET CODE OF JUDICIAL CONDUCT**

Recommendation 212, proposed by the Joint Commission to Evaluate the Model Code of Judicial Conduct, urges the adoption of the revised Model Code of Judicial Conduct, dated February 2007.

**Michael Wallace Speaks with the Federalist Society**

Michael Wallace, then of Phelps Dunbar and currently of Wise, Carter, Child & Garvey, was nominated by President George W. Bush to the United States Court of Appeals for the Fifth Circuit on February 9, 2006. The American Bar Association's Standing Committee on Federal Judiciary, which rates judicial candidates post-nomination, bestowed Wallace with a unanimous "not qualified" rating. Some critics of the Standing Committee speculated that Wallace received this rating because of his past contentious relationships with both current ABA President Michael Greco and the Association over several Legal Services Corporation (LSC) issues, as Wallace served as an LSC board member from 1984-90. In September, Wallace received a hearing before the United States Senate.

**Among the proposed changes:**

- Newly revised Canon 1 combines the previous Canons 1 and 2, "placing at the forefront of the document the judge's duties to uphold the independence, integrity, and impartiality of the judiciary, to avoid impropriety and its appearance, and to avoid abusing the prestige of judicial office."
- Rule 2.10, concerning judicial statements on pending and impending cases, declares "A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office."
- Canon 3 bars judges from belonging to groups that discriminate based on gender, ethnicity, and sexual orientation. Previously, judges were only barred from groups that banned members based on race.

*Continued on page 14*

**ABA Partners with Diverse Coalition in Seeking Reforms to Thompson Memo**  
Page 2

**Department of Education Reviews ABA Law School Accreditation Standards**  
Page 3

**National Right to Work Legal Defense Foundation Seeks Participation in ABA Labor Conference**  
Page 6

**ABA President Criticizes Charles Stinson's Remarks about Guantanamo Lawyers**  
Page 7

**ABA Testimony in Michael Wallace Nomination**  
Page 8

**Engage.** The flagship of Federalist Society publications, *Engage* continues to appear twice a year in print-bound version. Ideas are generated by our fifteen Practice Group executive committees. Articles in 2006 discussed the parameters of Title III, the attorney-client privilege in corporate settings, Basel II, the right to healthcare, *Rapanos*, Boy Scout cases, the size of the Ninth Circuit, asbestos litigation and contested Voting Rights Act provisions, among other things—including reviews of many exciting book titles. Convention panels will appear online, per usual, in the spring (2007).

**White Papers.** The Federalist Society increasingly turns out high level white papers focused on particular issues or areas of interest. White papers on issues such as *Rapanos* and the EPA's New Source Review policy are available on our website [www.fed-soc.org](http://www.fed-soc.org). (White papers published as part of the State Courts Project are highlighted on Page 18.)

**ABA Watch.** One of the most popular publications, *ABA Watch* is a semiannual newsletter, timed to coincide with the American Bar Association's mid-year and annual meetings and meant to help readers form an independent opinion of the organization. The winter issue featured an interview with president-elect Karen Mathis, discussion of the ABA's role in War on Terror civil liberties cases, future resolutions to be addressed by the organization, and the rating given to then-nominee for the Supreme Court, Samuel Alito. August saw more on the War on Terror, this time the separation of powers issues, in addition to pieces on the ABA's Standing Committee on the Federal Judiciary, its new "diversity" standards for law schools, and resolutions to be considered for the upcoming ABA meeting. The *ABA Watch* will continue to provide information on the Association to assist others in making a rounded assessment of its role and influence in the American legal system.



# STATE COURT Docket Watch

Washington Union Fees Law Goes to Supreme Court

**The United States Supreme Court will decide this term an important case involving the use of union fees for political purposes. Specifically, the Court will determine the constitutionality of a Washington law which requires unions to obtain affirmative authorization from non-members prior to using their fees for political purposes. At issue is whether the Washington Supreme Court erred when it ruled that the state's "opt-in" provision violates unions' First Amendment rights.**

**THE WASHINGTON "OPT-IN" STATUTE**  
Washington is one of a number of states that authorizes union security agreements. These agreements require both union and non-union members to contribute dues for costs related to collective bargaining. The non-union members' dues are referred to as "agency shop fees," but are functionally equivalent to union dues.<sup>2</sup> A portion of all the member and non-member dues are used to support political and ideological causes. Non-members opposing to these causes can receive a rebate after going through a lengthy process.

In 1992, Washington voters passed Initiative 134, which, among other things, required unions to seek "affirmative authorization" from non-union members prior to using their money for political purposes. The initiative was codified as Wash. Rev. Code § 42.17.760 ("§760"). The law provides that labor organizations "may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual." This provision is known as the "opt-in" procedure. Instead of requiring non-union members to first object, or opt-out, the statute places the burden on the unions to seek authorization before using the fees for political purposes.

**WASHINGTON EDUCATION ASSOCIATION'S USE OF NONMEMBER DUES FOR POLITICAL PURPOSES**  
The Washington Education Association (WEA) is the statewide union which

*Continued on page 14*

## Missouri Supreme Court Rejects Workers Compensation Litigation

**Fred Schoemehl sustained an on-the-job knee injury in May 2001, and filed a claim for workers' compensation against his employer and against the Treasurer of the State of Missouri in her capacity as custodian of the state's Second Injury Fund.<sup>1</sup> Because of the severity of his injury, Mr. Schoemehl was awarded Permanent Total Disability (PTD) benefits for the rest of his life, beginning in December 2003. One month later, however, Mr. Schoemehl died of causes unrelated to the knee injury. His**

*Continued on page 12*

INSIDE THIS ISSUE  
 Washington Union Fees Law Goes to Supreme Court  
 Missouri Supreme Court Extends Workers Compensation Benefits  
 Gay Marriage in the State Courts: New Jersey  
 Georgia Supreme Court Strikes Down Asbestos Litigation Reform  
 Alabama Supreme Court Considers Companion Separation of Powers Challenges

**State Court Docket Watch.** This newsletter, appearing four times in the year and largely composed by members of the Society's Lawyers Chapters, reports on noteworthy trends, interesting decisions and controversial cases. The newsletter is mailed to every state appellate judge and state attorney general, many trial judges, and an extensive list of corporate general counsels. Issues covered in the past include eminent domain, same-sex marriage, product liability, preemption, standing, term limits and others.

**Class Action Watch.** Published to apprise both Federalist Society membership and the public at large of recent trends and cases in class action litigation, *Class Action Watch* has in the past reported on such items as the Class Action Fairness Act and how it was interpreted by courts, Proposition 64 and the Unfair Competition Law, and the obesity class action suit against McDonald's Corporation.

**Inside:**  
 Student Chapter Update  
 Lawyers Chapter Update  
 International Chapter Update  
 State Courts Project  
 Faculty Division

**Special Feature Article:**  
*A Day at Guantanamo Bay*

# CLASS ACTION WATCH

**The Vioxx Litigation**  
**On September 30, 2004, Merck withdrew its painkiller Vioxx from the market because of a study showing small but statistically significant increase in risk of cardiovascular events from long-term usage of the drug. What had been a trickle of litigation over the drug became a flood. As of January, there were over 27,000 personal-injury lawsuits involving over 45,000 plaintiff groups, and another 265 putative class actions filed. Plaintiffs' attorneys, it seems, are using the procedural class-action mechanism to achieve substantive advantages in litigation. The vast majority of the class actions Merck faces can be placed in one of four categories.**

**I. PERSONAL INJURY CLASS ACTIONS**  
 Many seek to try personal-injury cases as a class action. There is very little chance a nationwide personal-injury class will be certified in any jurisdiction. Pharmaceutical products liability litigation requires the substantive law of fifty different states, and product liability law (as well as the learned intermediary defense) has substantial

**Welding Fume: A Disappearing Mass Tort?**  
**Over the last several years, a number of prominent plaintiffs' attorneys have targeted the welding industry with lawsuits that allege that exposure to the manganese in welding fumes causes neurological disorders. These attorneys have bankrolled airways and billboard with advertisements, held mass screenings, briefed analysts about the threat that this litigation poses to large welding manufacturers, and filed thousands of lawsuits in federal and state courts, in the hopes of bringing the industry to its knees and forcing a large settlement.**

In recent years, at least one of the welding fume trials resulted in defense verdicts (the one exception was in Madison County). Defendants have undertaken discovery efforts, revealing numerous fraudulent claims that raise questions about the plaintiffs' *Continued on page 9*

INSIDE MARCH 2007  
 The Vioxx Litigation  
 Welding Fume: A Disappearing Mass Tort?  
 Fraud Ruling in Cleveland Asbestos Litigation  
 The Millberg Weiss Indictment  
 New Trend in Illinois Supreme Court Rulings?  
 Campbell v. Air Touch Cellular d.b.a. Verizon Wireless

**The Federalist Paper.** The in-house magazine of The Federalist Society, the *Paper* comes out in the winter, summer and fall. Highlighting some of the activities and events of Society Chapters, Practice Groups and individual members, the magazine is meant to give members a sense of the kind of engagements occupying particularly active chapters and Practice Groups. Each division of the Society reports on some of the more noteworthy events of the past season and includes reports on the annual Student Symposium and yearly Lawyers Convention. The State Courts and International Law Projects provide updates on their respective doings as well. The Federalist Society's newest component, the Faculty Division, contributed in the first issue of 2007. Especially noteworthy announcements are also made to member professional developments.



As the various charts on the inside back cover of this report demonstrate, the Federalist Society has been growing at a fast pace since 2003. This growth trend includes our revenue which reached an all time high of \$7.3 million this fiscal year, an 11% increase over 2005. Increased revenue is essential if we are to sustain, and indeed, continue to build our vital network of able individuals who can participate fully in the national conversation regarding traditional legal principles in law and policy. These major accomplishments would not have been possible without the continuing financial support of those who believe in our mission, especially those who are members of the James Madison Club. Membership in the James Madison Club is open to those who contribute \$1,000 or more annually to the Federalist Society. In recognition of the commitment of these individuals, foundations and corporations, a list of the current members of the James Madison Club appears below:

*2006 JAMES MADISON CLUB ROSTER*

*MADISON CLUB GOLD  
(\$50,000 OR MORE)*

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- IFPMA
- Ewing Marion Kauffman Foundation
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- The John William Pope Foundation
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- The Sarah Scaife Foundation
- Searle Freedom Trust



*U.S. Supreme Court Justice Samuel Alito chats with Federalist Society Executive Vice President Leonard Leo and James Madison Club Member Lawrence Auriana of New York after the Justice's speech at the Annual Dinner.*

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- Benjamin Navarro
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*James and Allyson Ho of Dallas flank U.S. Secretary of Labor Elaine Chao at the James Madison Club reception before the Annual Dinner.*

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*James Madison Club members Mary Beth Buchanan and Erika Birg at the Federalist Society Annual Dinner.*

Hatton Sumners Foundation  
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 CIGNA



*Prof. Richard Epstein of Chicago Law School and Andrew Redleaf, a James Madison Club member from Minneapolis and a member of the Federalist Society's Board of Visitors, discuss current events with John Fund of OpinionJournal.com at the Annual Dinner.*

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- George W. Bermant
- Heidi Bernheim



*Convention participants James Rockett, Warren Belmar, Assistant Attorney General Eileen O'Connor of the U.S. Department of Justice's Tax Division, Judge Carlos Bea of the U.S. Court of Appeals for the Ninth Circuit, and Judge Ray Randolph of the U.S. Court of Appeals for the D.C. Circuit enjoy each other's company at the reception following the Barbara K. Olson Lecture.*

- Lawrence Bernheim
- Anthony Biller
- Erika Birg
- Stewart Birn
- Francis S. Blake\*
- C.H. Boyle Foundation
- Jennifer Braceras
- David A. Brandon Foundation
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- Willard Z. Carr
- Anthony T. Caso
- Ron Cass
- Susan Cass



*James Madison Club members James Barry of Milwaukee and Dean James Huffman of Lewis and Clark Law School in Portland visit at the Convention.*

- Ernest S. Christian
- Shannen W. Coffin
- Jonathan Cohn and Rachel Brand
- Sean C. Connors
- Charles J. Cooper
- Trevor K. Copeland
- Ralph Coti
- Carol T. Crawford
- Ted Cruz
- Richard J. Cummins
- Paul E. Dans
- Robert C. Dinerstein
- Sara Church Dinkler
- Susanna Dokupil
- Elizabeth K. Dorminey
- Pete and Elise duPont
- Bryant B. Edwards
- Chris W. Ekren
- William J. Emanuel
- Epstein, Becker & Green PC
- L. Jackson Etheridge\*
- James L. Ewing IV
- Fred F. Fielding
- Daniel R. Finley
- John J. Fisher
- Mark E. Foster
- Theodore Frank
- Tim Franzen
- Christopher and Courtenay Gabriel
- Curtis Gannon
- William L. Garwood
- Cary Gaylord
- Thomas F. Gede
- Charles P. Gilliam
- Robert J. Giuffra, Jr.
- Elizabeth Dallas Gobeil
- James L. Graham
- Geoffrey L. Graybill
- Gregory Grimsal
- Michael and Maria Elena Hall
- Eric D. Hargan\*
- Steve Hartung
- Brent O. Hatch
- Robert C. Hawk

- Jim A. Haynes
- Gail Heriot
- Karl Hirshman
- Robert H. Hishon
- James and Allyson Ho
- Joe G. Hollingsworth
- Mark V. Holmes
- James Huffman
- J.C. Huizenga
- William T. Huston\*
- Charles Hwang
- Nancy Iredale
- Paul Jacobson
- Erik S. Jaffe
- William Jernigan
- Paul D. Jones
- Clark Judge
- Paul J. Kaleta



*Jack Park and W. Thomas Haynes, Executive Director of the Coca-Cola Bottlers' Association, catch up at the National Lawyers Convention in Washington, D.C.*

- Shahab S. Karmely
- Thomas J. Kavalier
- Lawrence Keane
- Orin S. Kerr
- Manny Klausner
- Howard Klein
- Raymond J. LaJeunesse, Jr.
- Grant Lally\*
- Kenneth K. Lee
- Andrew W. Lester\*
- Raymond W. Leyden
- Robert Lofts
- Wendy Long
- Gregory Maier
- Donald W. Maliniak
- MaryRose Manczak
- Karen L. Manos
- Edmund R. Manwell
- Steve A. Mathews
- Letty McAdams
- Sean M. McAvoy
- Robert D. McCallum
- Simone Mele



Roger Milliken  
 Mark D. Mittleman  
 Hashim Mooppan  
 Edward A. Moritz  
 Richard T. Morrison  
 Peter Mulloney  
 William Mumma  
 Mark Nance  
 Richard C. Neal  
 Jeffrey T. Nielson  
 Coleman Nutter\*  
 James O'Connell  
 John E. O'Neill  
 John C. O'Quinn  
 Kevin O'Scannlain  
 Robert C. Odle, Jr.  
 Thomas P. Ogden  
 Ian Marshall Ogilvie  
 Dwight D. Opperman  
 Donald L. Padgitt  
 Robert Parker  
 Scott M. Pearson  
 Eric J. Pelton  
 Mark A. Perry  
 Holly A. Pierson  
 Stephen D. Poss  
 George Priest  
 Alfred W. Putnam, Jr.  
 Alan C. Raul  
 Alfred S. Regnery  
 John L. Reynen  
 Richard Rideout  
 James F. Rill\*  
 Bradley Robins  
 James M. Rockett  
 Ronald D. Rotunda  
 John L. Ryder  
 Christopher Saari and Sarah O'Dowd  
 Robert H. Scarborough  
 Gene C. Schaerr  
 Peter Carey Schaumber  
 Donald Shawler  
 Robert P. Sheils, Jr.  
 John Simkiss  
 Douglas G. Smith  
 John A. Smyth, III  
 Abraham Sofaer\*  
 John J. Soroko\*  
 Kenneth W. Starr\*  
 Nicholas John Stathis\*  
 Mark O. Stern  
 Charles Henry Still  
 Roger & Susan Stone Foundation  
 Robert L. Strickland\*  
 William and Genevieve Strong Foundation  
 Rod Sullivan  
 Heath Price Tarbert  
 Michael Thielen  
 Larry D. Thompson

Michael and Janet Tierney  
 Grey Till, Jr.  
 Kate Comerford Todd  
 Eric W. Treene  
 United States Steel Foundation  
 E. Peter Urbanowicz  
 G.L. Jidge Verity  
 Vincent J. Vitkowsky  
 Bonnie K. Wachtel\*  
 Michael B. Wallace  
 John L. Warden  
 Lynn D. Wardle  
 David Weinstein  
 Hill B. Wellford  
 Steadman H. Westergaard  
 James Q. Whitaker  
 Rando B. Wick  
 J. Michael Wiggins  
 Richard E. Wiley  
 Richard K. Willard\*  
 Michael F. Williams  
 John Witten  
 Douglas H. Wood  
 Rebecca K. Wood  
 Joseph Woodford



*Judge Frank Easterbrook, U.S. Court of Appeals for the Seventh District, Prof. Nicholas Quinn Rosenkrantz of Georgetown University Law Center and member of the Federalist Society Board of Visitors, and Prof. Nita Farahany of Vanderbilt University Law School chat at the Convention.*

Christopher A. Wray  
 Stephen T. Yelverton  
 Julius J. Zschau

**FEDERALIST SOCIETY PATRONS  
 (\$500-\$999)**

Anonymous (2)  
 Gary Adams  
 Paul Atanasio  
 James Barker  
 Bob Barr  
 William Barrett  
 Gregory L. Barton  
 Warren Belmar  
 Bradford Berenson  
 Tanya Birdwell



*Stephen and Stephanie Hessler and Judge Danny Boggs of the U.S. Court of Appeals for the Sixth Circuit visit at the Annual Dinner..*

- Michael R. Rosman\*
- Gerald E. Rupp
- W. Jeffrey Schmidt
- Maimon Schwarzschild
- Arthur L. Scinta\*
- Robert M. Segal
- Loren A. Smith
- Paul E. Sullivan
- Richard Sullivan
- Jeffrey P. Taft
- Clifford W. Taylor
- Paul M. Terrill III
- Donald G. Tober
- Jobie Turner
- Scott M. Univer
- Roger Yurchuck

- Mark Brnovich
- Edmund N. Carpenter
- Adam H. Charnes
- Jeffrey B. Clark
- James A. Cooke
- Michael J. Coster
- John T. Delacourt
- Paul J. Dostart
- Joe D. Edge
- Stephen Erickson
- John Evangelakos
- George Frazza
- Jerry B. Fulmer
- Paul V. Gadola
- Garvey Kansas Foundation
- Dorothy Gray\*
- David S. Herrington
- The Huizenga Foundation
- Mrs. Noel E. Johnson
- Howard J. Klein
- Arthur Kniffen
- Jack Kress
- Marc R. Lisker
- Margaret A. Little
- Nobles Lowe
- Brian Maas
- Minke Foundation
- Joseph W. Morris
- Thomas C. Morrison
- Peter D. Mullholland
- Glen Nager
- Mary B. Neumayr
- Dennis Nolan
- Eileen O'Connor
- Charles M. Oellermann
- James W. O'Mara
- John J. Park, Jr.
- Oscar N. Persons
- Charles J. Queenan, Jr.
- Robert J. Reagan
- Larry Edward Ribstein



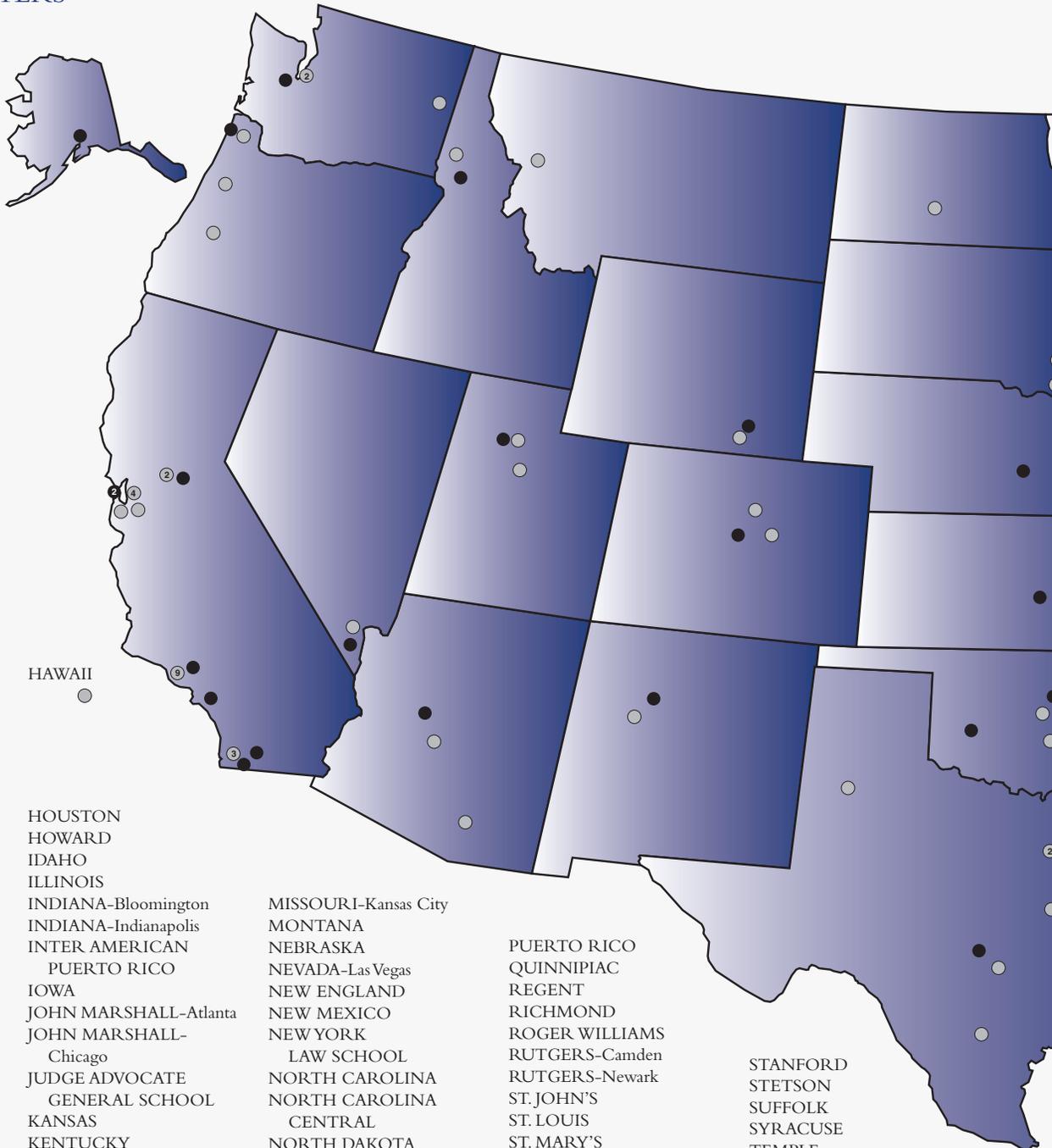
*Student Chapter President of William and Mary Law School Andrew Knaggs chats with James Madison Club member Simone Mele.*

*\*Denotes individuals who are Founding Members of the James Madison Club..*



STUDENT CHAPTERS

- AKRON
- ALABAMA
- ALBANY
- AMERICAN
- APPALACHIAN
- ARIZONA
- ARIZONA STATE
- ARKANSAS-  
Fayetteville
- ARKANSAS-  
Little Rock
- AVE MARIA
- BALTIMORE
- BARRY
- BAYLOR
- BERKELEY-Boalt
- BOSTON COLLEGE
- BOSTON UNIVERSITY
- BRIGHAM YOUNG
- BROOKLYN
- BUFFALO
- CALIFORNIA WESTERN
- CAMPBELL
- CAPITAL
- CARDOZO
- CASE WESTERN  
RESERVE
- CATHOLIC
- CHAPMAN
- CHICAGO
- CHICAGO-KENT
- CINCINNATI
- CITY UNIVERSITY  
NEW YORK
- CLEVELAND STATE
- COLORADO
- COLUMBIA
- CONNECTICUT
- CORNELL
- CREIGHTON
- CUMBERLAND
- DAVIS, CALIFORNIA
- DAYTON
- DENVER
- DEPAUL
- DETROIT-Mercy
- DICKINSON-Penn State
- DISTRICT OF  
COLUMBIA
- DRAKE
- DUKE
- DUQUESNE
- EMORY
- FLORIDA
- FLORIDA A&M
- FLORIDA COASTAL
- FLORIDA  
INTERNATIONAL
- FLORIDA STATE
- FORDHAM
- FRANKLIN PIERCE
- GEORGE MASON
- GEORGE WASHINGTON
- GEORGETOWN
- GEORGIA
- GEORGIA STATE
- GOLDEN GATE
- GONZAGA
- HAMLIN
- HARVARD
- HASTINGS
- HAWAII
- HOFSTRA



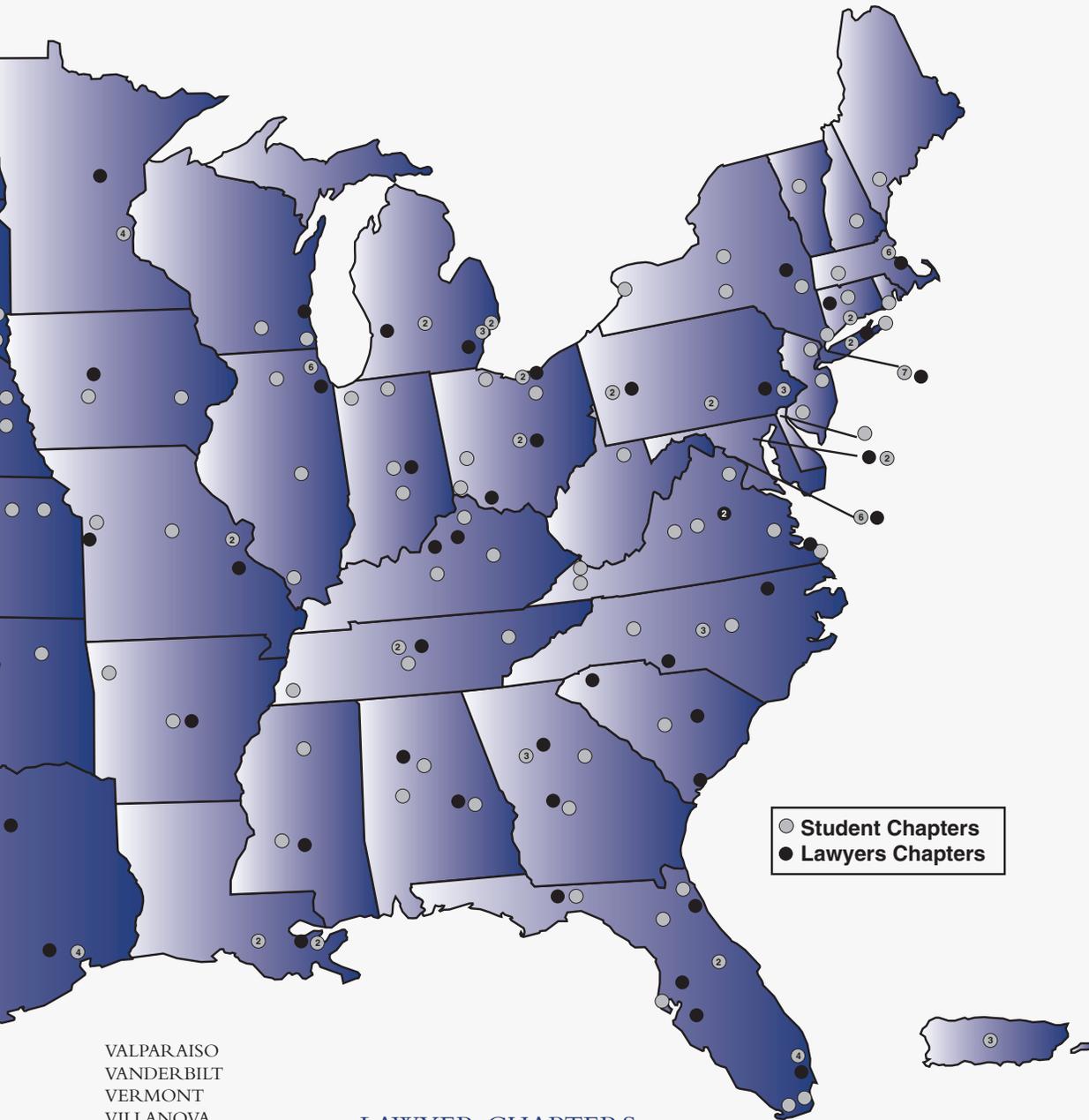
HAWAII

- HOUSTON
- HOWARD
- IDAHO
- ILLINOIS
- INDIANA-Bloomington
- INDIANA-Indianapolis
- INTER AMERICAN  
PUERTO RICO
- IOWA
- JOHN MARSHALL-Atlanta
- JOHN MARSHALL-  
Chicago
- JUDGE ADVOCATE  
GENERAL SCHOOL
- KANSAS
- KENTUCKY
- LEWIS & CLARK-  
Northwestern
- LOUISVILLE
- LOYOLA-Chicago
- LOYOLA-Los Angeles
- LOYOLA-New Orleans
- LSU
- MAINE
- MARQUETTE
- MARYLAND
- McGEORGE
- MEMPHIS
- MERCER
- MIAMI
- MICHIGAN
- MICHIGAN STATE
- MINNESOTA
- MISSISSIPPI
- MISSISSIPPI COLLEGE
- MISSOURI-Columbia

- MISSOURI-Kansas City
- MONTANA
- NEBRASKA
- NEVADA-Las Vegas
- NEW ENGLAND
- NEW MEXICO
- NEW YORK  
LAW SCHOOL
- NORTH CAROLINA
- NORTH CAROLINA  
CENTRAL
- NORTH DAKOTA
- NORTHEASTERN
- NORTHERN ILLINOIS
- NORTHERN  
KENTUCKY
- NORTHWESTERN
- NOTRE DAME
- NOVA SOUTHEASTERN
- NYU
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- OHIO STATE
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- PITTSBURGH
- PONTIFICAL CATHOLIC  
UNIVERSITY OF  
PUERTO RICO

- PUERTO RICO
- QUINNIPIAC
- REGENT
- RICHMOND
- ROGER WILLIAMS
- RUTGERS-Camden
- RUTGERS-Newark
- ST. JOHN'S
- ST. LOUIS
- ST. MARY'S
- ST. THOMAS-Miami
- ST. THOMAS-Minneapolis
- SAN DIEGO
- SAN FRANCISCO
- SANTA CLARA
- SEATTLE
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CALIFORNIA
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- SOUTH TEXAS
- SOUTHERN  
NEW ENGLAND
- SOUTHERN ILLINOIS
- SOUTHERN TEXAS
- SOUTHERN  
UNIVERSITY
- SOUTHWESTERN  
SMU

- STANFORD
- STETSON
- SUFFOLK
- SYRACUSE
- TEMPLE
- TENNESSEE
- TEXAS
- TEXAS SOUTHERN
- TEXAS TECH
- TEXAS  
WESLEYAN
- THOMAS COOLEY-  
Lansing
- THOMAS COOLEY-  
Grand Rapids
- THOMAS COOLEY-  
Rochester
- THOMAS JEFFERSON
- TOLEDO
- TOURO
- TRINITY
- TULANE
- TULSA
- UCLA
- UTAH



○ Student Chapters  
● Lawyers Chapters

VALPARAISO  
VANDERBILT  
VERMONT  
VILLANOVA  
VIRGINIA  
WAKE FOREST  
WASHBURN  
WASHINGTON  
WASHINGTON (St. Louis)  
WASHINGTON & LEE  
WAYNE STATE  
WEST VIRGINIA  
WESTERN NEW ENGLAND  
WESTERN STATE  
WHITTIER  
WIDENER-Wilmington  
WIDENER-Harrisburg  
WILLAMETTE  
WILLIAM & MARY  
WILLIAM MITCHELL  
WISCONSIN  
WYOMING  
YALE

**LAWYER CHAPTERS**

ALASKA  
ALBANY  
ATLANTA  
AUSTIN  
BALTIMORE  
BIRMINGHAM  
BOSTON  
CHARLESTON  
CHARLOTTE  
CHICAGO  
CINCINNATI  
CLEVELAND  
COLUMBUS  
COLORADO  
DALLAS  
DETROIT  
GRAND RAPIDS  
GREENVILLE  
HARTFORD

HOUSTON  
IDAHO  
INDIANAPOLIS  
IOWA  
JACKSONVILLE  
KANSAS-Wichita  
KANSAS CITY  
LAS VEGAS  
LEXINGTON  
LITTLE ROCK  
LONG ISLAND  
LOS ANGELES  
LOUISVILLE  
MEMPHIS  
MIAMI  
MILWAUKEE  
MINNEAPOLIS  
MISSISSIPPI  
MONTGOMERY

NASHVILLE  
NEBRASKA  
NEW JERSEY  
NEW MEXICO  
NEW ORLEANS  
NEW YORK CITY  
NORFOLK  
NORTH COAST (CA)  
OKLAHOMA CITY  
ORANGE COUNTY  
ORLANDO  
PHILADELPHIA  
PHOENIX  
PITTSBURGH  
PORTLAND  
PUGET SOUND  
RALEIGH  
RICHMOND  
SACRAMENTO

ST. LOUIS  
SALT LAKE CITY  
SAN DIEGO  
SAN FRANCISCO  
SILICON VALLEY  
SOUTH CAROLINA  
TALLAHASSEE  
TAMPA BAY  
TULSA  
WASHINGTON, DC  
WILMINGTON  
WYOMING



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**REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

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Board of Directors  
The Federalist Society for Law and Public  
Policy Studies  
1015 18th St., N.W., Ste. 425  
Washington, DC 20036-5221

We have audited the accompanying statements of financial position of The Federalist Society for Law and Public Policy Studies as of September 30, 2006 and 2005 and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Society's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Federalist Society for Law and Public Policy Studies as of September 30, 2006 and 2005 and the changes in its net assets and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

*A Professional Corporation*  
Bethesda, MD  
December 18, 2006



**THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES**  
**STATEMENTS OF FINANCIAL POSITION**  
**SEPTEMBER 30, 2006 AND 2005**

EXHIBIT A

<u>ASSETS</u>	<u>2006</u>	<u>2005</u>
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 4,975,658	\$ 2,216,747
Investments	1,921,003	1,893,387
Grants receivable	797,250	1,120,750
Contributions receivable	383,441	406,653
Other receivables	13,423	6,331
Other current assets	<u>141,424</u>	<u>69,513</u>
	<u>8,232,199</u>	<u>5,713,381</u>
<b>GRANTS RECEIVABLE - LONG-TERM</b>	<u>57,143</u>	<u>229,524</u>
<b>FIXED ASSETS</b>		
Computer equipment	192,190	149,239
Office furniture and equipment	90,909	31,553
Leasehold improvements	<u>15,388</u>	<u>15,388</u>
	298,487	196,180
Accumulated depreciation and amortization	<u>(171,388)</u>	<u>(140,280)</u>
	<u>127,099</u>	<u>55,900</u>
<b>OTHER ASSETS</b>	<u>10,000</u>	<u>10,000</u>
<b>TOTAL ASSETS</b>	<u>\$ 8,426,441</u>	<u>\$ 6,008,805</u>
<b><u>LIABILITIES AND NET ASSETS</u></b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued expenses	\$ 347,832	\$ 246,688
Deferred revenue	<u>270,275</u>	<u>356,436</u>
	<u>618,107</u>	<u>603,124</u>
<b>NET ASSETS</b>		
Unrestricted	4,220,927	3,380,562
Temporarily restricted	3,577,407	2,015,119
Permanently restricted	<u>10,000</u>	<u>10,000</u>
<b>TOTAL NET ASSETS</b>	<u>7,808,334</u>	<u>5,405,681</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u>\$ 8,426,441</u>	<u>\$ 6,008,805</u>

See Notes to Financial Statements



**THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES**  
**STATEMENTS OF ACTIVITIES**  
**FOR THE YEARS ENDED SEPTEMBER 30, 2006 AND 2005**

	2006			Total	Unrestricted
	Unrestricted	Temporarily Restricted	Permanently Restricted		
<b>REVENUE</b>					
Grants	\$ 1,936,347	\$ 2,946,183	\$ -	\$ 4,882,530	\$ 1,788,494
Registration fees	537,414	-	-	537,414	364,769
Membership dues	240,513	-	-	240,513	211,255
Contributions	2,722,576	223,610	-	2,946,186	2,561,927
Investment income	260,421	-	-	260,421	186,639
Miscellaneous income	11,795	-	-	11,795	12,077
	<u>5,709,066</u>	<u>3,169,793</u>	<u>-</u>	<u>8,878,859</u>	<u>5,123,161</u>
<b>NET ASSETS RELEASED FROM RESTRICTIONS</b>					
Satisfaction of program restrictions	1,607,505	(1,607,505)	-	-	1,458,895
	<u>7,316,571</u>	<u>1,562,288</u>	<u>-</u>	<u>8,878,859</u>	<u>6,582,056</u>
<b>EXPENSES</b>					
Program services					
General program	987,002	-	-	987,002	825,672
Fellows program	274,996	-	-	274,996	230,701
Student Chapter and Membership Services	435,449	-	-	435,449	405,752
Student Speakers Bureau	915,108	-	-	915,108	632,932
Student National Symposium	199,376	-	-	199,376	144,630
Lawyers Division Chapter and Membership Services	347,657	-	-	347,657	304,311
Lawyers Division Speakers Bureau	521,379	-	-	521,379	539,914
Lawyers National Conference	802,799	-	-	802,799	734,072
Practice activities	808,158	-	-	808,158	670,601
Other conferences	298,208	-	-	298,208	279,014
	<u>5,590,132</u>	<u>-</u>	<u>-</u>	<u>5,590,132</u>	<u>4,767,599</u>
General and administrative	392,031	-	-	392,031	346,911
Fundraising	494,043	-	-	494,043	441,996
	<u>6,476,206</u>	<u>-</u>	<u>-</u>	<u>6,476,206</u>	<u>5,556,506</u>
<b>CHANGE IN NET ASSETS</b>	<u>840,365</u>	<u>1,562,288</u>	<u>-</u>	<u>2,402,653</u>	<u>1,025,550</u>
<b>NET ASSETS AT BEGINNING OF YEAR</b>	<u>3,380,562</u>	<u>2,015,119</u>	<u>10,000</u>	<u>5,405,681</u>	<u>2,355,012</u>
<b>NET ASSETS AT END OF YEAR</b>	<u>\$ 4,220,927</u>	<u>\$ 3,577,407</u>	<u>\$ 10,000</u>	<u>\$ 7,808,334</u>	<u>\$ 3,380,562</u>

See Notes to Financial Statements



## EXHIBIT B

2005		
Temporarily Restricted	Permanently Restricted	Total
\$ 1,642,283	\$ -	\$ 3,428,777
-	-	364,769
-	-	211,255
64,728	-	2,626,655
-	-	186,639
-	-	12,077
<u>1,707,011</u>	<u>-</u>	<u>6,830,172</u>
(1,458,895)	-	-
<u>248,116</u>	<u>-</u>	<u>6,830,172</u>
-	-	825,672
-	-	230,701
-	-	405,752
-	-	632,932
-	-	144,630
-	-	304,311
-	-	539,914
-	-	734,072
-	-	670,601
-	-	279,014
-	-	4,767,599
-	-	346,911
-	-	441,996
-	-	5,556,506
248,116	-	1,273,666
<u>1,767,003</u>	<u>10,000</u>	<u>4,132,015</u>
<u>\$ 2,015,119</u>	<u>\$ 10,000</u>	<u>\$ 5,405,681</u>

THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES  
STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED SEPTEMBER 30, 2006 AND 2005

## EXHIBIT C

	2006	2005
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Change in net assets	\$ 2,402,653	\$ 1,273,666
Adjustments to reconcile change in net assets to net cash provided (used) by operating activities		
Depreciation and amortization	31,107	23,936
Net appreciation in fair value of investments	(84,178)	(78,293)
Donation of securities	(4,114)	(4,711)
(Increase) decrease in		
Grants receivable	495,681	(438,281)
Contributions receivable	23,212	(396,730)
Other receivables	(7,092)	(1,335)
Other current assets	(71,911)	4,417
Increase (decrease) in		
Accounts payable and accrued expenses	101,144	103,888
Deferred revenue	(86,161)	129,103
	<u>2,800,541</u>	<u>615,660</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of investments	(550,509)	(553,614)
Proceeds from sale of investments	611,185	52,938
Purchase of fixed assets	(102,306)	(27,920)
	<u>(41,630)</u>	<u>(528,596)</u>
<b>INCREASE IN CASH AND CASH EQUIVALENTS</b>	2,758,911	87,064
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR</b>	<u>2,216,747</u>	<u>2,129,683</u>
<b>CASH AND CASH EQUIVALENTS AT END OF YEAR</b>	<u>\$ 4,975,658</u>	<u>\$ 2,216,747</u>



THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2006 AND 2005

NOTE 1: ORGANIZATION

The The Federalist Society for Law and Public Policy Studies (the Society) was organized in August 1982 as a not-for-profit corporation under the state laws of Illinois, for the primary purpose of promoting intellectual diversity in the legal profession and the legal community. It is organized exclusively for charitable, educational and scientific purposes.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The financial statements of the Society have been prepared on the annual basis of accounting in conformity with accounting principles generally accepted in the United States of America.

Accounting Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and contingencies at the date of the statement of financial position and revenue and expenses during the reporting period. Actual results could differ from these estimates.

Cash and Cash Equivalents

All highly liquid debt instruments with a maturity of three months or less at the time of purchase are considered cash equivalents.

Fixed Assets

Fixed assets are capitalized at cost and depreciated over estimated useful lives of 5 to 10 years using straight-line method. It is management's policy to capitalize fixed assets for which the useful life extends past one year.

Investments

The Society has investments in marketable equity and debt securities that are presented at their fair market value as determined by quoted market prices.

Rent Concessions

Rent concessions on the office lease are recognized over the term of the lease on a straight-line basis.

Membership Dues

The Society provides certain services only to dues paying members creating exchange transactions. Therefore, membership dues are considered as program service fees and are recognized in the period in which the services are rendered.

Net Assets

Net assets arising from contributions are reported as unrestricted or restricted based on stipulations of the donor. Unrestricted net assets are the portion of net assets that are neither temporarily nor permanently restricted by donor stipulations on their use. Temporarily restricted net assets are the portion of net assets resulting from contributions or other inflows of assets whose use is limited by donor-imposed stipulations that can be removed by the passage of time or action of the Society pursuant to those stipulations. Permanently restricted net assets are the portion of net assets whose use is limited by donor-imposed stipulations that cannot be removed by the passage of time or action of the Society.

NOTES TO FINANCIAL STATEMENTS

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - continued

Contributions and Grants Receivable

Contributions and grants receivable are reported at net realizable value and any allowance for bad debts is the result of management's assessment of the collectibility of the receivables.

NOTE 3: CONTRIBUTIONS RECEIVABLE

Contributions receivable of \$283,441 and \$406,863 at September 30, 2006 and 2005, respectively, consist of amounts due within one year. There is no allowance for doubtful accounts for the years ended September 30, 2006 and 2005.

NOTE 4: GRANTS RECEIVABLE

Included in the grants receivable are the following unconditional promises to give as of September 30, 2006 and 2005:

	2006	2005
Amounts to be received in:		
Less than one year	\$ 397,250	\$ 1,120,790
One to five years	80,000	241,000
	867,250	1,361,790
Present value discount at 3%	(2,857)	(11,470)
	\$ 864,393	\$ 1,350,320

As of September 30, 2006 and 2005, 20% and 70% of the grants receivable are from one entity, respectively. Grants receivable are deemed by management to be fully collectible.

NOTE 5: INVESTMENTS

At September 30, 2006 and 2005, the Society's investments consist of the following:

	2006	2005
Certificates of deposit	\$ 290,481	\$ 290,000
Corporate bonds	417,873	480,050
Government bonds	148,843	88,741
Common stocks	1,084,126	1,029,791
	\$ 1,941,323	\$ 1,888,582

Investment income (which is recognized in the statement of activities) for the years ended September 30, 2006 and 2005 was as follows:

	2006	2005
Interest and dividends	\$ 176,243	\$ 108,346
Net appreciation in fair value of investments	84,178	75,293
	\$ 260,421	\$ 183,639

NOTES TO FINANCIAL STATEMENTS

NOTE 6: TEMPORARILY RESTRICTED NET ASSETS

As of September 30, 2006 and 2005, temporarily restricted net assets of \$3,877,407 and \$2,215,118, respectively, are available for education and research projects.

NOTE 7: COMMITMENTS AND CONTINGENCIES

The Society has an office lease that expires December 31, 2016. During the years ended September 30, 2006 and 2005 additional space was added to the existing office lease. Rent expense for the years ended September 30, 2006 and 2005 was \$181,968 and \$235,853, respectively. As of September 30, 2006, required minimum lease payments are as follows:

2007	\$ 287,123
2008	252,880
2009	298,723
2010	354,887
2011	210,791
Thereafter	1,387,296
	\$ 2,887,700

NOTE 8: FUNCTIONAL ALLOCATION OF EXPENSES

The costs of providing the various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

NOTE 9: SIMPLE IRA PLAN

Through December 31, 2004 the Society sponsored a Simple IRA plan for its employees. Under the provisions of the plan, the Society matches an employee's contribution up to 3% of the employee's compensation. For the remainder of the fiscal year the Society sponsored a SEP plan whereby it had the option to contribute a discretionary amount. For both 2006 and 2005 they contributed 3%. The Society contributions totaled \$35,087 and \$30,725, for the years ended September 30, 2006 and 2005, respectively.

NOTE 10: INCOME TAXES

The Society is exempt from federal income taxes, except for taxes on unrelated business income, under Section 501(c)(3) of the Internal Revenue Code. There was no unrelated business income in the years ended September 30, 2006 and 2005.

NOTE 11: CONCENTRATION OF CREDIT RISK

Financial instruments that subject the Society to concentrations of credit risk include cash which is invested with financial institutions. While the Society attempts to limit its financial exposure, its deposit balances with financial institutions may, at times, exceed the limits insured by agencies of the U.S. government. The Society has not experienced, and does not anticipate experiencing, any losses on such deposits.

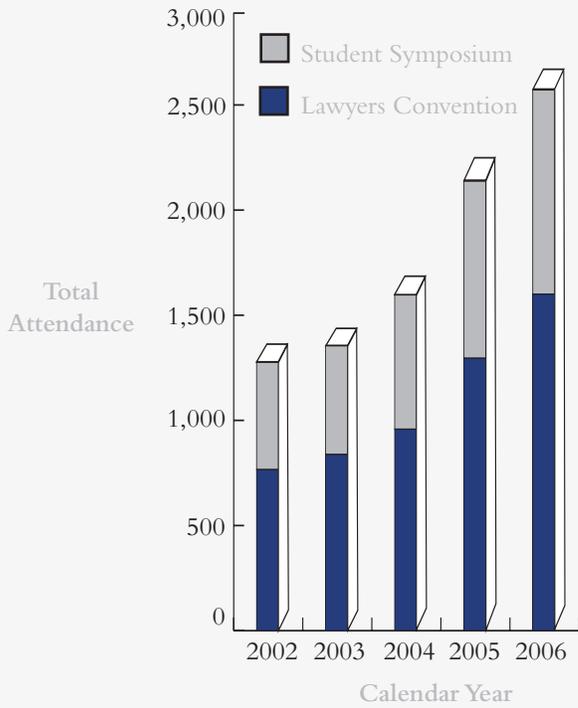
NOTE 12: RECLASSIFICATION

Certain amounts in the 2005 financial statements have been reclassified to conform with the 2006 presentation.

END OF AUDITED FINANCIAL STATEMENTS

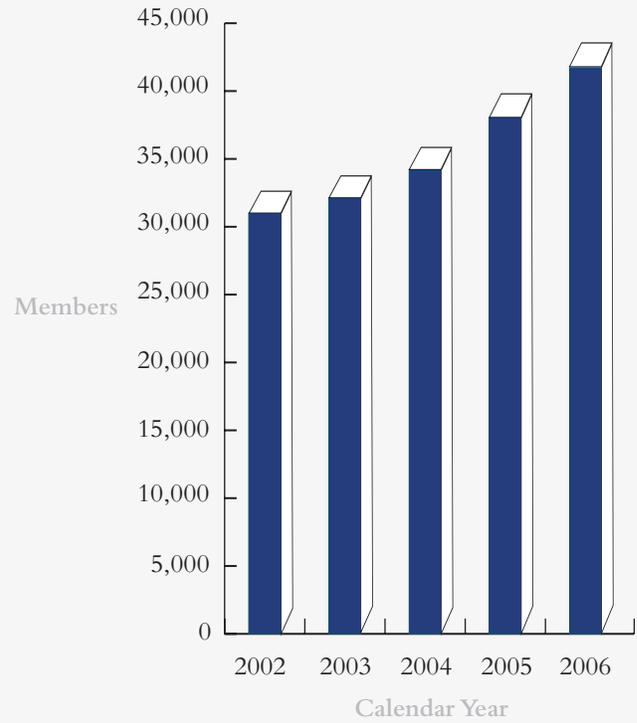
### NATIONAL CONFERENCE ATTENDANCE

National Lawyers Convention and Student Symposium

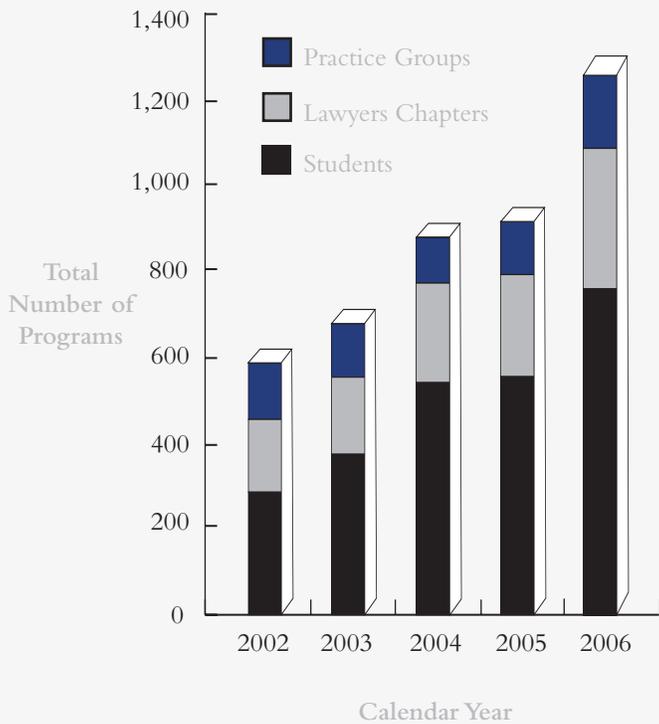


### FEDERALIST SOCIETY MEMBERSHIP GROWTH

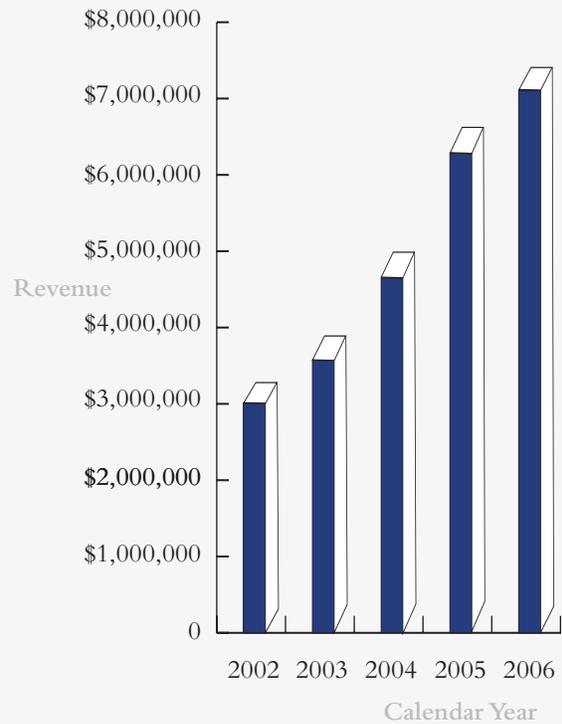
Local and National Involvement



### FEDERALIST SOCIETY PROGRAM GROWTH



### FEDERALIST SOCIETY REVENUE GROWTH



### FEDERALIST SOCIETY EXPENDITURES-FISCAL YEAR 2006

