

The Magazine of the Federalist Society

SPRING
• ISSUE •

The Federalist Paper

Spring 2014

www.fed-soc.org

INSIDE:

Student, Lawyers &
Faculty Division
Updates

2013 National Lawyers
Convention Highlights

THE FEDERALIST No. 78



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

LETTER FROM THE EDITOR

Dear Friend of the Society,

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

The Faculty Division hosted its 16th Annual Faculty Conference in January and sponsored more popular colloquia around the country.

The Student Division continued another great year of dynamic programming at nearly every law school in the country.

The Practice Groups moved forward with the Executive Branch Review Project and once again sponsored engaging and relevant panels at the National Lawyers Convention in November.

Check out pages 18 and 19 for photo highlights from November's National Lawyers Convention in Washington, D.C.

Also included in this issue are full updates from our Lawyers Chapters, State Courts Project, International Law & Sovereignty Project, and Practice Groups.

Stay tuned on fed-soc.org and FedSocBlog.com to stay updated on our Teleforum Conference Calls, SCOTUScasts, Practice Group Podcasts, newest *Engage* articles, and white papers.

As always, we invite and encourage friends and members to send in comments and suggestions to Christian.Corrigan@fed-soc.org—and we look forward to hearing from you!

Directors/Officers

Steven G. Calabresi, *Chairman*
Hon. David M. McIntosh, *Vice Chairman*
Gary Lawson, *Secretary*
Brent O. Hatch, *Treasurer*
T. Kenneth Cribb
C. Boyden Gray
Leonard A. Leo, *Executive Vice President*
Edwin Meese, III
Eugene B. Meyer, *President*
Michael B. Mukasey
Lee Liberman Otis, *Senior Vice President*

Board of Visitors

Mr. Christopher DeMuth, *Co-Chairman*
Hon. Orrin G. Hatch, *Co-Chairman*
Prof. Nicholas Quinn Rosenkranz, *Co-Chairman*
Prof. Lillian BeVier
Mr. George T. Conway
Hon. Donald Paul Hodel
Mr. Robert A. Levy
Hon. Theodore B. Olson
Hon. Wm. Bradford Reynolds
Hon. Gerald Walpin

Hon. Elaine L. Chao
Hon. Lois Haight Herrington
Hon. Frank Keating, II
Hon. Gale Norton
Mr. Andrew J. Redleaf
Ms. Diana Davis Spencer

Staff

President
Eugene B. Meyer

Executive Vice President
Leonard A. Leo

Lawyers Division

Dean Reuter, *Vice President, Practice Groups Director*
Lisa Ezell, *Vice President, Lawyers Chapters Director*
Jennifer Derleth, *Deputy Director, Lawyers Chapters*
Juli Nix, *Director of Conferences*
David C.F. Ray, *Associate Director*
Maria Marshall, *Associate Director*
C. William Courtney, *Assistant Director*

External Relations

Jonathan Bunch, *Vice President, Director*
Maureen Wagner, *Deputy Director*

Development

Cynthia Searcy, *Director*
Sophia Mason, *Associate Director*
Katelynd Mahoney, *Assistant Director*

Office Management

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

International Law & Sovereignty Project

James P. Kelly, III, *Director*
Paul Zimmerman, *Deputy Director*

Membership Director

Peter Bisbee

Senior Vice President & Faculty Division Director
Lee Liberman Otis

Anthony Deardurff, *Deputy Director, Faculty Division*
Tyler Lowe, *Director of Online Education*
Jandi Heagan, *Assistant Director, Faculty Division*

Student Division

Peter Redpath, *Vice President, Director*
Brandon Smith, *Deputy Director*
Kate Beer Alcantara, *Associate Director*
Caroline Moore, *Assistant Director*

Finance Director

Douglas C. Ubben, *Vice President*

Information Technology Director

C. David Smith, *Vice President*

Pro-Bono Center Director

Peggy Little

Social Media & Alumni Director

Justin Shubow

Publications Director

Christian B. Corrigan

Features

Spring 2014



Student Division	4
Faculty Division	7
Practice Groups	9
Alumni Relations	14
Lawyers Chapters	15
National Lawyers Convention Photos	18
International Affairs	20
State Courts Report	22
Social Media.....	23

Student Division Report

By *Caroline Moore*

Assistant Director, Student Division

The Student Chapters held over 730 events last fall and our average attendance continues to be around 60 attendees per event. There are already over 1,165 student events planned for the 2013-2014 academic year, and our Division believes this number will reach nearly 1,400. We are very proud of **Harvard, Georgetown, Missouri, Southern California, Mississippi, California-Berkeley, and Campbell** for each hosting events that exceed 200 attendees. All of our chapters worked tirelessly to increase attendance for their events by bringing topics in the media to their campuses, using persuasive advertising, and winning their peers over with delicious catering.

Our **South Carolina** chapter has made their chapter a well-oiled machine. Alex Winston, the chapter president, has incorporated the use of social media, as well as surveys and monthly newsletters, and has encouraged national membership to make student chapter members feel that they are “in the know” with the events their chapter is hosting. They also strive to make attendees feel that their feedback is important and will be taken into consideration for future speakers and future events. To this end, the chapter plans on hosting 22 events for the calendar year, with a goal of 46 attendees per event. **Yale** is another chapter that has worked very hard to build a great organization on campus. The chapter focused much of its effort this year on fostering a sense of community within the institution. The chapter put a huge emphasis on involvement with the national organization and brought over 20 volunteers to our National Lawyers Convention in November. It plans on holding 22 events this year with an average of 66 attendees per event, and hopes to have more 1Ls involved than ever before.

Our **Georgetown** chapter held the largest event of the fall semester, attracting over 400 students and faculty to an overflowing auditorium! The speech was the inaugural event of the Robert H. Bork Memorial Lecture and Debate Series—a series that honors Judge Bork’s legacy and encompasses topics such as: Originalism vs. The Living Constitution; The Robert Bork Legacy; and The Role of Judges. The inaugural event at Georgetown featured Justice Antonin Scalia—a close friend of Judge Bork. So far, 41 of our chapters have committed to hosting one of these events on their campuses for the 2013-2014 academic year. The Robert Bork series has had an average attendance of 63 thus far, and have been some of our highest attended events of the year. Our **Kentucky** chapter held a Bork series event with Congressman Thomas Massie titled, “A Conversation with the Congressman.”



Supreme Court Justice Clarence Thomas with the Notre Dame Chapter.

The 105 attendees thoroughly enjoyed the talk which gave an insider’s perspective to life in Congress. Likewise, our **Harvard** chapter held an equally engaging debate featuring Prof. Rick Garnett of Notre Dame Law and Prof. Noah Feldman of Harvard

Law on the topic of “Regulation vs. Religious Freedom,” with 90 in attendance. **Miami** brought in KrisAnne Hall of The Liberty Forum to debate Prof. Mary Anne Franks from Miami Law for a unique Constitution Day celebration. After the event, titled “A Debate on Constitutional Interpretation,” the audience of 70 enjoyed a celebration with a Constitution Day cake.

Following suit, our Student Chapters held 26 Supreme Court Previews this fall. One of the best-attended of these events was at **NYU**, and featured Prof. Eugene Volokh of UCLA Law and Richard Aborn of Citizens’ Crime Commission. The event had an astounding 200 students and faculty in attendance. Prof. Randy Barnett of Georgetown Law and Commentator, Prof.

Daniel Yeager of California Western Law, attracted over 140 students and faculty members at **California West-ern's** Supreme Court Preview, and Prof. Josh Blackman of South Texas Law drew an audience of 120 students at our **Stanford** chapter's Supreme Court Preview. **Southern California** held a widely successful iteration with former U.S. Solicitor General Gregory Garre, Justice Goodwin Liu of the California Supreme Court, and Prof. Rebecca Brown of Southern California, and exceeded 200 attendees. In addition to these chapters, **Chicago** and **Indiana-Bloomington** held Supreme Court Previews with 90 attend-

ees. This year, the Simon Foundation provided funding for most of our Supreme Court Previews. These events are important and beneficial because they give students a quick glance of the Federalist Society in the beginning of the semester and attract a wide range of the student body. They continue to be some of the most highly anticipated events of the semester.

Our chapters continue to show interest in criminal law topics. Some-such topics include polygraph demonstrations, police brutality, and overcriminalization. Brian Morris is one of our popular experts on the topic of polygraphs and how they can be used in a criminal court. Mr. Morris enjoys including members of the audience, such as a dean, faculty member, or chapter president for his presentations, so that the students stay engaged in the presentation. One of our **Southern Illinois** chapter's most memorable event was with Radley Balko of *Reason Magazine* on the overuse of SWAT teams and brutal police tactics. Mr. Balko used an interactive presentation to stimulate discussion during the event. The presentation showed a series of pictures of military soldiers and police officers asking if each picture depicted a soldier or police officer. The audience of 117 was surprised to find that the police use of force was much more memorable than that of the military individuals. An event titled, "Racial Profiling Considered: A Panel Discussion About the Stop-and-Frisk Decision" was one of **NYU's** most successful events so far this semester. The event drew an audience of

150 and was moderated by Prof. Samuel Estreicher from NYU Law and featured: Prof. Nicola Persico, Northwestern Law; Prof. Kent Greenwalt, Columbia Law; Prof. Steve Shulhofer and Prof. Andy Schaffer, both of NYU Law;

Celeste Koeleveld, NYC Corporation Counsel; and Darius Charney, Center for Constitutional Rights. **Texas Tech** hosted a panel on "Polygraph in Criminal Law Cases: Should It Be Admissible?" This event had 145 in attendance. Other successful criminal law events with over 100 in attendance took place at **California Berkeley, Washington & Lee, Pepperdine, Illinois, and Liberty.**



Judge Leslie H. Southwick (center), U.S. Court of Appeals for the Fifth Circuit, with members of the University of Houston Chapter after an event.

Our students continue to be interested in events dealing with national security, defense, drones, and privacy. **George Mason** hosted a very successful panel titled, "National Security Law Symposium: International Warfare" with Dr. James Carafano of the Heritage Foundation, Scott Shane of *The New York Times*, and Tara McKelvey of *Newsweek*. This event attracted 110 attendees. Former U.N. Ambassador John Bolton traveled to **Ave Maria** this winter to participate in an event on "America's Pressing National Security Problems," with Dean Emeritus Bernard Dobranski. The chapter was very receptive to this event which went into depth on the history of the conflicts in the Middle East. He drew from his experience to discuss our relationship with Israel and spoke about possibilities for resolve, discussing the late President Reagan's strategy of "peace through strength." The event saw a crowded room with more than 110 students and faculty members. **Campbell, Chicago, and Miami** also reached large audiences for their events.

Immigration is a topic that seems to be in the news and on our student calendar non-stop. **Iowa** held an event on the topic with Prof. John Baker, Georgetown and Louisiana State University Law, and drew a crowd of 200. **Mississippi** held an event on "Immigration" with Stuart Anderson of the National Foundation for American Policy that attracted 200 attendees. Mr. Anderson has participated in events across the country on free-market immigration reform this year. According to a member

our **Hamline** chapter, “he was [one] of my favorite speakers and everyone seemed to enjoy his presentation . . . he brought a great breadth of knowledge and an interesting point of view.” **Virginia** hosted alum and radio host Laura Ingraham earlier this fall for an immigration presentation. **Cornell** held an event titled, “A Market-Oriented Approach to Immigration Reform.” This debate with Steven Lehotsky of the U.S. Chamber of Commerce and Prof. Robert Hockett of Cornell Law attracted over 80 attendees. Another highly successful event on this topic of Immigration was held at **Barry**. The debate was titled, “The Constitution: ‘A Living Document’ or Fixed by Its Creators.” The event had over 115 in attendance and featured Hon. Gerald Walpin, former Inspector General of the Corporation for National & Community Service, debating Prof. Enrique

Guerra-Pujol of Barry Law. We have 55 immigration events on the calendar this year and we anticipate that the number will increase if Congress moves forward on immigration reform legislation.



Prof. Richard Epstein (third from left) with members of the Southwestern Chapter following an event.

A new area of interest among our students is our “How Money Walks” series. These events cover a range of topics about how state tax/economic policy effects the movement of money from one state to another and discuss economic growth. **Chicago** hosted Ramesh Ponnuru earlier this year for an event titled, “How We Got Here: The Origins of the Left & Right.” The audience of 85 enjoyed the event and left having a unique understanding of where Americans are taking their money, which states are most appealing, and how this affects states of origin. Prof. Francis Beckwith from Baylor Law participated in an event at **Pennsylvania**. He was accompanied by commentator Prof. Sara Gordon of Penn Law on “Faith, Reason, & Law.” Our **Nebraska** chapter hosted Doug Bandow from the Cato Institute and Steve Moeller of the NE Dept. of Environmental Quality for an event titled, “Free Market Strategies for Environmental Protection,” and had 65 in attendance. Sean O’Hare is one of our more popular speakers for the How Money Walks series. His focus for

these events is on entrepreneurship and exploring how regulation can stunt the growth of job creation. The following chapters held How Money Walks events and drew crowds that exceeded 60: **Yale, Missouri, Southern California, Arizona, Florida, Duke, Minnesota, UNLV, Kansas, Chicago-Kent, and Northern Illinois**. We look forward to seeing more of these events appear on our student calendar in the coming months.

It was encouraging to have 111 chapter members attend the annual National Lawyers Convention in November. We appreciated the students who served as volunteers for the weekend. Our volunteers had the chance to hear U.S. Senators Ted Cruz (TX) and Mike Lee (UT), as well as Wisconsin Governor Scott Walker. Some students were even able to attend the annual dinner, where

they re-connected with students from the Student Leadership Conference and heard Justice Thomas engage in fascinating conversation with Judge Diane Sykes about his remarkable journey from seminary to the Supreme Court. Other volunteers attended the annual Barbara K. Olson

Memorial Lecture. We always encourage students to attend the annual National Lawyers Convention to further expose them to speakers, faculty, and other lawyers who share their passion for the Constitution and the rule of law. Our goal is to have students leave the Conference empowered and ready to challenge the norms in their law school classrooms.

Our students hit the ground running to start the 2014 spring semester. We anticipate the student chapters will continue to hold a wide range of events on topics including polygraph demonstrations, supreme court reviews, religious liberties, How Money Walks, immigration, national security, and Originalism. Our Student Symposium was held on March 7-9, 2014 at the **University of Florida**. Stay tuned for a full recap of the 2014 Student Symposium in the summer 2014 issue of *The Federalist Paper* magazine.

Faculty Division Hosts Annual Faculty Conference, Receives New Grant from the John Templeton Foundation

*By Anthony Deardurff
Deputy Director, Faculty Division*

The Faculty Division concluded a highly productive fall semester, drawing strong attendance at its Annual Faculty Conference and Law and Liberty colloquia, posting numerous podcasts on notable arguments and decisions of the Supreme Court's October 2013 Term, and obtaining a new grant from the John Templeton Foundation for programming on free enterprise and religious liberty.

Dozens of faculty joined us for the annual Faculty Breakfast held during the National Lawyers Convention. Each year a growing number of faculty and aspiring academics gather to share in fellowship, discuss programming developments, and assess academic trends.

The **16th Annual Faculty Conference**, held on January 3-4 in New York City, was likewise well-attended notwithstanding

the first blizzard of the season, drawing approximately 100 law professors and a smattering of interested law-



(above) (left to right) Prof. Randy Barnett, Georgetown University Law Center; Prof. Greg Dolin, University of Baltimore School of Law; and Prof. Irina Manta, Hofstra University School of Law, during the "Is IP Property or Government-Conferred Monopoly?" panel at the Annual Faculty Conference in January. (below) Prof. John McGinnis (left), Northwestern University Law School, moderated the "Who Determines an Agency's Power?" panel at the Annual Faculty Conference. The panel featured Prof. Gregory Maggs (right), George Washington University Law School; Prof. Christopher Walker (not pictured), Ohio State College of Law; Prof. Frederick Hessick (not pictured), University of Utah College of Law; and Prof. John Duffy (not pictured), University of Virginia School of Law.



yers, students, recent graduates, and others. Panels of distinguished senior and junior scholars debated the nature of intellectual property as well as recent developments in the scope of administrative agencies' powers and the role of natural law and natural rights in American jurisprudence. Additional panels were dedicated to presentations by winners of the Division's Young Legal Scholars Paper Competition and presentations of faculty works in progress. The signature luncheon debate featured an informative and timely exchange between Prof. Paul Rubin (Emory University School of Law) and Prof. Ryan Calo (University of Washington School of Law) on whether privacy regulation is likely to reduce the value of

the internet. Video of the conference events is available at <http://www.fed-soc.org/events/detail/16th-annual-faculty-conference>

Our *Law and Liberty* series of colloquia, co-sponsored by the Liberty Fund, likewise continues to draw robust participation by faculty, practitioners, and academically inclined students. Over the course of a day and half, participants gather in small groups to discuss and debate enduring legal questions. Having reviewed a common set of background readings before each colloquium, they arrive ready to engage in an intense but enlightening dialogue on the assigned topic.

On January 24-25, participants gathered for “Freedom of Assembly and Religious Liberty” in Dallas, Texas to consider the rarely discussed “right of the people peaceably to assemble.” Issues debated included the history of the right, its relation to the modern doctrine of “expressive association,” and the role of associational autonomy and religious liberty in relation to antidiscrimination laws. On February 7-8, “Behavioral Economics and the Free Society” took place in San Francisco, California. Participants explored key

behavioral economics concepts, their validity, and the extent to which they can or should be incorporated into law, including the debate over “libertarian paternalism” in regulation and the behavioral interpretation of conduct by voters and legislators.

The Division also continues to post new faculty and practitioner SCOTUScasts on recently argued and/or decided Supreme Court cases, with podcasts on about 30 argued cases and 10 cases decided so far this term available online. These may be found at <http://www.fed-soc.org/publications/page/scotuscast>

Finally, we are delighted to announce the receipt of a new grant from the John Templeton Foundation to conduct programming on issues relating to law and free enterprise and law and religious liberty. Over the next few years we look forward to hosting colloquia, book events, podcasts, and a variety of other events focused on these important and timely topics. We plan to hold the first colloquium in a new Templeton series, “Law and the Moral Sense,” in July 2014 in Colorado.



(left to right) Prof. Alan Hurst, BYU Law School; Prof. Nadia Natzel, Southern University Law School; and Prof. David Wagner, Regent University School of Law during the “Seven-Minute Presentations of Works in Progress” at the Annual Faculty Conference in January.



(at left) Prof. Michael Moreland (left), Villanova University School of Law, and Prof. Jeremy Rabkin (right), George Mason University School of Law, during the “Natural Law and Natural Rights” panel at the Annual Faculty Conference. (at right) Prof. Robert Steinbuch (left), University of Arkansas School of Law, and Prof. Ilya Somin (right), George Mason University School of Law, during the “Seven-Minute Presentations of Works in Progress” at the Annual Faculty Conference.



Practice Groups Update

By Will Courtney, Assistant Director of Practice Groups,

Juli Nix, Director of Conferences,

David C.F. Ray, Associate Director of Practice Groups

All the Practice Groups have been exceedingly active in Winter 2013-2014.

The **Administrative Law & Regulation Practice Group** held a panel at the National Lawyers Convention titled “Executive Branch Gone Wild? 21st Century Checks and Balances.” Moderated by Practice Group Chairman Hon. Eileen J. O’Connor, partner at Pillsbury Winthrop Shaw Pittman, the panel covered an amazing amount of ground and featured Prof. Jonathan H. Adler, Case Western Reserve University School of Law; Prof. Rachel E. Barkow, New York University School of Law; Hon. Patrick Morrissey, Attorney General of West Virginia; Prof. David Schoenbrod, New York Law School; and Prof. Jonathan Turley, The George Washington University Law School.

The Practice Group was also active in organizing a number of Teleforum Conference Calls. Highlights included a Teleforum with Peter Schweizer, Hoover Institution, on his best-selling book *Extortion: How Politicians Extract Your Money, Buy Votes, and Line Their Own Pockets*, and one with Prof. Kathleen M. Boozang, Seton Hall University School of Law, and Sheila A. Millar, Keller & Heckman, about the responsible corporate officer doctrine and the fascinating instance of its application by the Consumer Product Safety Commission in the product recall of Buckyballs, an office toy for adults.

The **Civil Rights Practice Group** oversaw a lively

panel discussion at the National Lawyers Convention on the use of disparate impact analysis. Judge William F. Kuntz, II, United States District Court, Eastern District of New York, moderated a panel composed of Roger Clegg, Center for Equal Opportunity; Hon. Kenneth L. Marcus, Louis D. Brandeis Center for Human Rights; Prof. Reva Siegel, Yale Law School; and Prof. William R. Yeomans, American University Washington College of Law.



(left to right) Hon. Kenneth Marcus, President of the Louis D. Brandeis Center for Human Rights, Hon. William F. Kuntz, II, U.S. District Court for the Eastern District of New York, Prof. Reva Siegel, Yale Law School, and Prof. William Yeomans, American University Law, during the Civil Right Practice Group’s “Use of Disparate Impact Analysis” panel at the National Lawyers Convention.

Disparate impact featured heavily in other Civil Rights Practice Group programming as well. Ilya Shapiro, Cato Institute, spoke on a Teleforum covering the last-minute settlement in the disparate impact case *Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, and Roger Clegg and Hans Bader hosted a call on the January 8 release of a joint memo from the Department of Justice Civil Rights

Division and the Department of Education Office for Civil Rights urging public schools to revisit discipline policies that they assert have a disproportionate effect on minority students.

The **Corporations, Securities, & Antitrust Practice Group** hosted a panel at the National Lawyers convention titled “‘New’ Antitrust Enforcement Authority under the FTC Act: Defensible Statutory Interpretation or Plumbing the Penumbra?” The program featured FTC Commissioner Maureen K. Ohlhausen and ITC Commissioner F. Scott Kieff, as well as David A. Balto, David A. Balto Law Offices; Thomas O. Barnett, Cov-



(left to right) Prof. Kristin Hickman, University of Minnesota Law, Prof. Jide Nzelibe, Northwestern Law, Prof. Thomas Merrill, Columbia Law, Hon. Jennifer Elrod, U.S. Court of Appeals for the Fifth Circuit, and Prof. Philip Hamburger, Columbia Law, during the “Formalism and Deference in Administrative Law” panel at the National Lawyers Convention in November.

ington & Burling LLP; and J. Thomas Rosch, Latham & Watkins LLP. The panel was moderated by Judge Stephen F. Williams of the United States Court of Appeals for the DC Circuit.

Preferred and common shareholders of Fannie Mae and Freddie Mac have not recently received earnings distributions or dividends, and the federal government is, under a total net worth sweep, claiming all profits as its own. Hon. Charles J. Cooper, Cooper & Kirk, participated in a Teleforum that the Practice Group co-hosted with the Financial Services & E-Commerce Practice Group to update Federalist Society members on the important litigation surrounding the two government-sponsored enterprises.

What are the First Amendment rights of press in the context of criminal investigations, and when national security is at issue? What are the rights of media to publish material leaked from the government? What are the policy and legal considerations when it comes to a national media shield law? The **Criminal Law & Procedure Practice Group** put together a panel at the National Lawyers Convention that addressed these questions, and many more. Judge A. Raymond Randolph of the United States Court of Appeals for the DC Circuit moderated the panel, which featured Adam Liptak, *The New York Times*; Prof. Eric M. Freedman, Hofstra University School of Law; Prof. Eugene Volokh, University of California, Los Angeles School of Law; and Hon. Michael Mukasey, Debevoise & Plimpton LLP and former U.S. Attorney General.

Civil forfeiture laws have recently come under

increased scrutiny, under allegations that the system is often abused by state and federal law enforcement agencies. The Practice Group hosted Andrew R. Kloster, The Heritage Foundation, and Darpana Sheth, Institute for Justice, on a Teleforum Conference Call to discuss the issue. In another Teleforum, Practice Group Chairman John Malcolm, Heritage Foundation, summarized the oral arguments in *Paroline v. United States*, a Supreme Court case on restitution in child pornography cases.

The **Environmental Law & Property Rights Practice Group** provided excellent coverage of a number of recent court decisions, beginning with their panel at the National Lawyers Convention, titled “New Directions in Takings Law.” Paul J. Beard II, Pacific Legal Foundation; Prof. James L. Huffman, Lewis & Clark Law School; Prof. Thomas W. Merrill, Columbia Law School; and Prof. Stewart E. Sterk, Cardozo School of Law, discussed the recent Supreme Court decisions in *Arkansas Game & Fish Commission, Koontz*, and *Horne*, as well as the future direction of takings law in a panel moderated by Judge Edith Brown Clement of United States Court of Appeals for the Fifth Circuit.

The Practice Group covered a number of other cases as a part of the Federalist Society’s popular series of Courthouse Steps Teleforums. Nancie G. Marzulla and Hon. Roger J. Marzulla of Marzulla Law offered members a report on oral arguments in *Marvin M. Brandt Revocable Trust v. United States*, an interesting case involving the General Railroad Right-of-Way Act of 1875 and the currently popular Rails-to-Trails initiative. Two recent cases on greenhouse gases also received

attention from the Courthouse Steps Teleforum series; Mark DeLaquil, Baker & Hostetler, offered a summary of oral arguments in *EPA v. EME Homer City Generation*, and Robert R. Gasaway, Kirkland & Ellis, reported on oral arguments in *Utility Air Regulatory Group v. EPA*.

In its National Lawyers Convention Panel, The **Financial Services & E-Commerce Practice Group** sorted through the rubble of the recent financial crisis to address important legal and policy issues that remain unanswered as the economy struggles to return to normal in a panel titled “Too Big to Fail – What Now?” Former SEC Commissioner Paul S. Atkins, Patomak Global Partners, moderated the panel, which was composed of Martin N. Baily, Brookings Institution; Timothy P. Carney, American Enterprise Institute and the Washington Examiner; Randall D. Guynn, Davis Polk & Wardwell; and Robert E. Litan, Bloomberg Government.

The Practice Group hosted Prof. David A. Skeel, University of Pennsylvania Law School, on a Teleforum Conference Call to discuss pension reform as a possibility in the resolution of the municipal bankruptcy crisis in Detroit, a follow on program to a panel at the National Press Club and a Federalist Society white paper from Prof. Skeel. Additionally, the Practice Group held a Teleforum debate on the controversial Volcker Rule with Timothy E. Keehan, American Bankers Association, and Dr. Marcus Stanley, Americans for Financial Reform.

The **International & National Security Practice Group** hosted numerous Teleforums throughout 2013, with a special focus on cybersecurity and on government efforts to protect national security. In a Courthouse Steps Teleforum, Chapman University School of Law Center for Constitutional Jurisprudence Director John C. Eastman and Georgetown University Law Center Prof. Nicholas Quinn Rosenkranz attended the oral arguments before the U.S. Supreme Court in *Bond v. U.S.*, and offered their analysis.

To close out 2013, the group hosted a Teleforum in light of the December 2013 decision by the U.S. District Court for the District of Columbia that the National Security Agency’s bulk collection of telephone metadata is unconstitutional under the Fourth Amendment. Judge Richard J. Leon enjoined the program in its entirety, but immediately stayed his injunction pending appeal, citing national security considerations. Former U.S. Department of Justice Office of Legal Counsel Head Steven G. Bradbury and George Washington University Law School Prof. Orin S. Kerr weighed in on the impact of Judge Leon’s decision and the possible

ways the case might ultimately be decided.

In February, the Practice Group, as part of its ongoing NSA series, held a half-day symposium titled “The National Security Agency, Security, Privacy, and Intelligence.” The program included two panels and a very spirited luncheon debate. The morning panel, “Foreign Intelligence Collection and the FISA Court” addressed the legal and policy aspects of the international law of surveillance, the proper targets and subjects of foreign surveillance, what privacy rights should be extended to foreigners, the treatment of information of Americans incidentally collected, and the effects of Presidential Policy Directive 28. It also addressed proposals to appoint a public advocate to appear in certain FISA court cases, and the appointment of judges to the court. The panel included Center for Democracy & Technology Freedom, Security and Surveillance Project Senior Counsel and Deputy Director Harley Geiger, Roger Williams University School of Law Prof. Peter S. Margulies, Cato Institute Research Fellow Julián Sánchez, and Cadwalader Wickersham, & Taft partner Kenneth Wainstein, and was moderated by International & National Security Law Practice Group Chairman Vincent J. Vitkowsky.

The afternoon panel was titled “The NSA Telephone Metadata Program.” The NSA’s recently disclosed telephony metadata program raises a number of pressing constitutional, statutory, and policy questions. This panel considered, among other matters, whether the Fourth Amendment permits the government to compile large databases of domestic metadata without a warrant, or even individualized suspicion. The panel included Steven Bradbury, Cato Institute Director of Information Policy Studies Jim Harper, Center for National Security Studies Director Kate A. Martin, and Brookings Institution Senior Fellow in Governance Studies Benjamin Wittes, and was moderated by George Mason University School of Law Prof. Nathan A. Sales.

The highlight of the program was the very lively debate on the NSA telephone metadata surveillance program between former U.S. Department of Homeland Security Secretary Michael Chertoff and American Civil Liberties Union Executive Director Anthony D. Romero. Judge Chertoff defended the surveillance program as consistent with the findings in *Smith v. Maryland* which held that telephone privacy interests are minimal since the data doesn’t belong to individual users. Mr. Romero countered that there are very real privacy interests at stake that are threatened

by the surveillance program. The debate also focused on the impact of the revelations by Edward Snowden. *Washington Post* National Security Reporter Ellen Nakashima moderated the debate.

The **Labor & Employment Law Practice Group** has also been active, hosting various Teleforums and inaugurating a new series focusing on the National Labor Relations Board. In November, former United States Department of Labor Wage and Hour Division Administrator Tammy D. McCutchen attended the oral arguments before the Supreme Court in *Sandifer v. Unites States Steel Corp.*, which examines the meaning of the term “clothes” in Section 3(o) of the Fair Labor Standards Act.

The second Courthouse Steps Teleforum examined the free speech and collective bargaining issues raised in *UNITE HERE Local 355 v. Mulhall*. May an employer and union enter into an agreement under which the employer exercises its freedom of speech by promising to remain neutral to union organizing, its property rights by granting union representatives limited access to the employer’s property and employees, and its freedom of contract by obtaining the union’s promise to forego its rights to picket, boycott, or otherwise put pressure on the employer’s business? Or does doing so violate Federal law? NFIB Small Business Legal Center staff attorney Luke A. Wake attended the oral arguments and analyzed the merits of the case.

In January, the Supreme Court heard oral arguments in *NLRB v. Noel Canning*. The U.S. Court of Appeals for the D.C. Circuit had held that the President’s 2012 recess appointments to the National Labor Relations Board were unconstitutional, which meant the Board lacked a quorum to conduct business. Labor law expert and Vinson & Elkins partner John Elwood attended the oral arguments and discussed the *Noel Canning*, whether the Board validly continued to function without Supreme Court resolution of the validity of the recess appointments, and how the case is likely to be decided.

On January 21, the Supreme Court heard *Harris v. Quinn*, which considers (1) whether a state may, consistent with the First and Fourteenth Amendments to the United States Constitution, compel personal care providers to accept and financially support a private organization as their exclusive representative to petition the state for greater reimbursements from its Medicaid programs; and (2) whether the lower court erred in holding that the claims of providers in the

Home Based Support Services Program are not ripe for judicial review. Heritage Foundation Center for Legal and Judicial Studies Visiting Legal Fellow and Baker & Hostetler Associate Andrew Grossman attended the oral arguments and offered his analysis of the merits of the case and its likely outcome in this Courthouse Steps Teleforum.

The **Litigation Practice Group** began 2014 with a Teleforum titled “Damages and Medical Monitoring.” There is a split among appellate courts in the United States over medical monitoring—court-ordered payments to plaintiffs who have been exposed to some potentially harmful product or situation but have no symptoms. Shook, Hardy & Bacon partner Mark Behrens discussed medical monitoring, when and where it might be required, and the latest trends.

On February 24, the Supreme Court heard oral arguments in the highly anticipated greenhouse gas case, *Utility Air Regulatory Group v. Environmental Protection Agency*. The issue at hand is whether the EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases. Kirkland & Ellis partner Robert R. Gasaway attended the oral arguments and offered a summary and his impressions of the case.

The **Religious Liberties Practice Group** also offered numerous interesting Teleforums. The Supreme Court heard oral argument on November 6 in *Town of Greece v. Galloway*, a case in which the lower Court of Appeals held that a legislative prayer practice violates the Establishment Clause of the First Amendment, notwithstanding the absence of discrimination in the selection of prayer-givers or forbidden exploitation of the prayer opportunity. Christian Legal Society Senior Counsel Kim Colby attended the hearing and offered her analysis of the merits of the case and its likely outcome in light of the oral arguments.

In February, the Practice Group held a Teleforum examining a legislative proposal to expand the reach of antidiscrimination law. A bill to enact the proposed Employment Non-Discrimination Act (ENDA) was introduced into the 113th Congress and approved by the Senate by a 64-32 vote. The Act would prohibit discrimination in hiring and employment on the basis of sexual orientation or gender identity by employers with at least 15 employees. Non-profit membership clubs and organizations that are solely religious are

exempted, but religiously affiliated organizations (such as hospitals and schools) are not. George Mason University School of Law Prof. David E. Bernstein and Yale Law School Prof. William N. Eskridge, Jr. discussed the merits and likely application of ENDA if it were to be enacted.



(left to right) Hon. Maureen Ohlhausen, Federal Trade Commission, David Balto, New America Foundation, and Hon. F. Scott Kieff, U.S. International Trade Commission, during the “New Antitrust Enforcement Authority under the FTC Act: Defensible Statutory Interpretation or Plumbing the Penumbra?” panel at the National Lawyers Convention sponsored by the Corporations, Securities, & Antitrust Practice Group.

In November, the **Telecommunications & Electronic Media Practice Group** hosted a special panel discussion Teleforum titled, “The FCC and the States: A Division of Authority.” The panel examined how the Federal Communications Commission and states can work together to address the transition from circuit-switched to Internet Packet (IP) telecommunications, the recent *National Association of Regulatory Utility Commissioners Task Force Report on Cooperative Federalism*, how to address 911, consumer protection, and interconnection issues for IP-based services, how jurisdictions can and should be allocated between the FCC and the states, and how NARUC and the states can operate via a “cooperative federalism” model that utilizes federal and state resources to get to the right answers. The panel of experts consisted of Washington Utilities and Transportation Commission Chairman David W. Danner, Idaho Public Utilities Commission President Paul Kjellander, and Free State Foundation President Randolph J. May, and was moderated by former Colorado Public Utilities Commission Chairman Gregory E. Sopkin.

In December, the Practice Group held another insightful Teleforum conversation with a key policy maker in “A Conversation with Federal Trade Commissioner Maureen Ohlhausen.” Commissioner Ohlhausen discussed the recent revisions to the Children’s Online Privacy Protection Act (COPPA) Rule. COPPA prohibits an operator of a website or

online service that is directed to children, or who has actual knowledge that it is gathering personal information from a child, from collecting such information without providing notice of its data collection and obtaining verifiable parental

consent for it. The FTC recently expanded the COPPA Rule’s coverage to include more types of personal information, such as IP addresses, and to expand the definition of an operator to reach entities that do not collect or use children’s information.

On January 14, the United States Court of Appeals for the DC Circuit issued its decision in *Verizon v. FCC*, the case regarding the FCC’s *Open Internet Order*. The decision leaves the door open for the FCC’s regulation of the internet, but strikes down certain provisions of the Order, leaving many to wonder what the future holds for innovation, experimentation, and competition in the online marketplace. Randolph May and Public Knowledge Senior Staff Attorney John Bergmayer engaged in a spirited discussion about this landmark decision during a Teleforum titled “The Internet: To Regulate, or Not to Regulate?”

In November, the **Intellectual Property Practice Group** hosted a Teleforum call, “Burden of Proof in the World of Patents: *Medtronic v. Boston Scientific*.” In this Courthouse Steps Teleforum, Prof. Gregory Dolin of the University of Baltimore School of Law discussed the oral argument in *Medtronic*.

The Practice Group hosted a Teleforum in November titled, “Patent Re-Reform in Congress.” Our distinguished panel of experts discussed the various patent reform bills, their implications and possible unintended consequences. The call featured James R. Copland of the Center of Legal Policy at the Manhattan Institute for Policy Research; Prof. Thomas F. Cotter of

Briggs and Morgan and Professor of Law at the University of Minnesota Law School and Prof. Richard A. Epstein of New York University School of Law.

Also in February, the Practice Group held a Court-house Steps Teleforum regarding the *Octane Fitness* and *Highmark* oral arguments. Prof. Gregory Dolin, Co-Director of the Center for Medicine and Law at the University of Baltimore School of Law, attended oral argument and reported back during this Teleforum.

In February, the **Federalism & Separation of Powers Practice Group** held a discussion on Timothy Sandefur's new book *The Conscience of the Constitution: The Declaration of Independence and the Right to Liberty*. Mr. Sandefur discussed his book followed by commentary from Clark Neily of the Institute for Justice.

In December, the Federalism & Separation of Powers Practice Group hosted a Teleforum titled, "Changing the Rules: The Senate Filibuster." In November the U.S. Senate changed its procedural rules well into the tenure of a Congress. The rules change concerned the filibuster. Where previously a cloture vote to end debate on all filibusters required 60 votes, cloture votes on a President's executive branch and judicial nominees now require only 51 votes. The rules change stipulates that U.S. Supreme Court nominees are not covered by the change. Our experts, Carrie Severino, Chief Counsel and Policy Director at the Judicial Crisis Network, and Ed Whelan, President of the Ethics and Public Policy Center, discussed the

change, how it was enacted and the implications of the change for future Congresses.

In January, the **Free Speech & Election Law Practice Group** discussed "The Limits of Political Activity." Recently, the IRS proposed new regulations governing 501(c)(4) social welfare groups. Proponents argue that the proposed regulations will more clearly define permissible political activities of organizations operated as 501(c)(4)s. Opponents see the proposed regulations as further infringement on the free speech and association rights of the groups and those who contribute to them, and argue that the proposed regulations will unduly restrict their activities. Our experts discussed the proposed regulations, the likelihood of them being implemented, and the road forward and featured Cleta Mitchell, partner at Foley & Lardner LLP; John Pomeranz of Harmon, Curran, Spielberg & Eisenberg LLP; and Jason Torchinsky, partner at Holtzman Vogel Joseflak PLLC.

The **Second Annual Executive Branch Review Conference** will take place at the Mayflower Hotel in Washington, DC on Wednesday May 7, 2014. Attendance is free, and CLE credit is available. Register online at <http://www.fed-soc.org/events/detail/second-annual-executive-branch-review-conference>.

Alumni Relations

By Justin Shubow
Director of Alumni Relations

The Federalist Society has taken significant steps in starting alumni chapters associated with different law schools. The goal is to create chapters that run themselves largely autonomously with the Federalist Society's financial and other support. In addition to other benefits these chapters are already providing, they are likely to encourage alumni to become more involved in shaping the direction of their law schools.

In October, we hosted a reception for **Yale** FedSoc alumni in conjunction with Yale Law School's annual alumni reunion in New Haven. In November, at the National Lawyers Convention, we hosted separate well-attended breakfasts for alumni, which drew over 400 attendees. There were breakfasts for **Catholic University, Chicago, Columbia, Georgetown, George**

Washington, Harvard, Michigan, NYU, Regent, Stanford, Texas, Virginia, and Yale. The breakfasts were hosted by alumni representatives from each school, including Judge Michael Massengale and Judge Randall Rader. Guest speakers included Judge Royce Lamberth, Judge Thomas Griffith, Judge Alan Forst, Prof. John Yoo, Prof. Randy Barnett, Prof. Philip Hamburger, Noel Francisco, Catholic Law School Dean Daniel Attridge, George Washington Dean Gregory Maggs, and Joel Kaplan, Vice President of Public Policy for Facebook.

Moving forward, the alumni initiative aims to play a more active role in finding and developing chapter leadership, together with giving them the support they need. In particular, we hope to facilitate more alumni get-togethers at law school reunions.

Lawyers Chapters Update

By Jennifer Derleth

Deputy Director, Lawyers Chapters

The Federalist Society's Lawyers Chapters hosted a variety of programs this winter, including several on election and voter ID law, the use of executive power, and religious liberty issues. We present an overview of these programs.

Several chapters hosted programs addressing election law and voting rights issues, focusing on recent litigation, proposed legislation, and issues that may arise in the 2014 elections. The **Philadelphia** Lawyers Chapter hosted Hans von Spakovsky of the Heritage Foundation and attorney Adam Bonin, legal analyst for DailyKos.com, to discuss *Shelby County v. Holder* and the future of the Voting Rights Act. The evening event drew about 40 attendees. Both the **Triangle** and **Piedmont Triad** Lawyers Chapters hosted debates between J. Christian Adams of the Election Law Center and Chris Brook of the ACLU of North Carolina. Adams and Brook addressed the challenges to the recent changes to North Carolina's election laws, which include implementing a voter ID requirement and modifying various aspects of when and how voting occurs. J. Christian Adams also spoke to 40 members of the **Charlotte** Lawyers Chapter on "Voter ID and North Carolina Election Integrity." He focused specifically on North Carolina's new voter ID law, explaining why the law's photo ID requirement, elimination of same-day registration, and changes to early vote pass constitutional muster. The **Austin** Lawyers Chapter hosted a luncheon with Daniel Hodge, chief of staff to Texas Attorney General Greg Abbott and First Assistant Attorney General, and Reed Clay, senior counsel to the First Assistant Attorney General. Hodge and Clay discussed Texas' voter ID law

and the legal hurdles it has faced since its passage in 2011.

Several chapters hosted single-speaker programs featuring prominent judges and public officials. The **Long Island** Lawyers Chapter was honored to host Wisconsin Governor Scott Walker in November. Governor Walker addressed 100 lawyers and law students about his recently published book, *Unintimidated: A Governor's Story and a Nation's Challenge*. Chief Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit spoke at a reception for the **Iowa** Lawyers Chapter. The **Triangle** Lawyers Chapter hosted a luncheon with South Carolina Attorney

General Alan Wilson, who discussed the role of state attorneys general in enforcing limits on national power. Justice Ann Timmer of the Arizona Supreme Court spoke with lawyers and law students at a reception hosted by the **Phoenix** Lawyers Chapter. The **Houston** Lawyers Chapter held a luncheon with Judge Leslie Southwick of the U.S. Court of Appeals for the Fifth Circuit, who talked about his new book, *The Nominee: A Political and Spiritual Journey*, in which he chronicles the struggles of his judicial confirmation process. The **Washington, DC** Lawyers Chapter hosted their February monthly luncheon with Congressman Andrew Harris of Maryland who discussed the implementation and challenges to the Affordable Care Act.

Many chapters hosted programs around challenges to religious liberty. The **Kansas City** Lawyers Chapter held a luncheon on *Sebelius v. Hobby Lobby* with Prof. Joshua Hawley from the University of Missouri School of Law and the Becket Fund. Prof. Hawley discussed the pending argument in front of the United States Supreme Court. Kyle Duncan, General Counsel at the



The Baton Rouge Lawyers Chapter board (right to left) Beverly Moore, Jason Dore, and Catherine Wheller, pose with Louisiana Supreme Court Justice Greg Guidry (first from left) after a chapter event.

Becket Fund, addressed over 80 lawyers and judges at an evening program sponsored by the **Miami** Lawyers Chapter. He also discussed *Hobby Lobby*. The **Salt Lake City** Lawyers Chapter hosted a luncheon featuring Ed Whelan, president of the Ethics and Public Policy Center, who discussed *Hobby Lobby* as well. He also shared his thoughts on the Religious Freedom Restoration Act and provided his predictions on the likely outcome and implications of current litigation. Mr. Whelan discussed the religious liberty challenges to the HHS Mandate, along with Matthew Kairis, partner at Jones Day, at a **Columbus** Lawyers Chapter luncheon. The **Tarrant County** Lawyers Chapter hosted Justin Butterfield of the Liberty Institute, who offered an overview of Supreme Court cases related to religious liberty issues, including *Hobby Lobby* and *Little Sisters of the Poor*. The **Orange County** Lawyers Chapter hosted Prof. David Forte, Cleveland-Marshall College of Law, for an address on “Religious Liberty: A Travelogue.” Prof. Forte argued that the notion of religious freedom as we have come to know in America is the product of a historical journey through six centers of civilization. Reviewing that trip, he argued that we are reminded why religions must have institutional autonomy from overreaching positive law intrusions, such as the Obamacare mandate that requires either direct or indirect health coverage for contraceptives.

The annual **Western** Chapters Conference was hosted at the Ronald Reagan Presidential Library in Simi Valley on January 25. About 200 lawyers and law students attended the day-long program, which included two panel discussions and a luncheon speaker. The morning panel addressed the pros and cons of California’s initiative process, and explored whether lawyers and public officials have an ethical obligation to defend laws they do not agree with, especially those passed via citizen initiative. The participants included Prof. Rick Hasen of UC Irvine, Dan Kolkey of Gibson Dunn & Crutcher, Prof. Justin Levitt of Loyola Law School (Los Angeles), Kenneth Miller of Claremont McKenna, and moderator Judge Sandra Ikuta of the U.S. Court of Appeals for the Ninth Circuit. The afternoon panel explored the question, “How do we balance disclosure with maintaining the privacy of participants in contentious issues?” The panelists discussed many issues, including whether a signature on a petition is deserving of a different degree of privacy than a financial contribution, whether different levels of support deserve different degrees of scrutiny, and if threats of harassment trump the need for disclosure.

Participants included Paul Avelar of the Institute for Justice, Manny Klausner of the Reason Foundation, Peter Scheer from the First Amendment Coalition, Hans von Spakovsky of the Heritage Foundation, and moderator Judge Carolyn Kuhl of the Superior Court of California for the County of Los Angeles. Attendees enjoyed a luncheon program featuring Judge Carlos Bea of the U.S. Court of Appeals for the Ninth Circuit interviewing former U.S. Attorney General Edwin Meese. General Meese answered many questions and shared his reflections on his time in the Reagan Administration, including the role he played in President Reagan’s selection of Justices Scalia and Kennedy for the U.S. Supreme Court.

Indiana Attorney General Greg Zoeller addressed about 60 lawyers of the **Indianapolis** Lawyers Chapter regarding the role of state attorneys general in addressing federal overreach. General Zoeller explained that states have a responsibility to balance the power of the federal government. He maintained that it is his role as Indiana’s Attorney General to protect his state government against federal encroachment, and this has nothing to do with partisanship or his personal views. As examples of how states are resisting federal overreach, he cited challenges to EPA regulations imposed on states and the Affordable Care Act. He also maintained it was a “dereliction of duty” to decline to defend state laws, referencing how some state attorneys general were refusing to defend state marriage laws. He also said he would not decline to defend challenges to the death penalty in Indiana because of his personal beliefs.

The **Baton Rouge** Lawyers Chapter launched in late 2013 and has already hosted several successful programs. The chapter held its first Supreme Court Roundup with three justices from the Louisiana Supreme Court, including Justices Greg Guidry, Jeff Hughes, and Marcus Clark. Among other decisions, the justices discussed *State vs. Draughter*, which concerned a new state amendment protecting gun possession as a fundamental right. They also discussed their decision to deny a writ application for a case involving the search of a New Orleans panhandler found to possess cocaine. The event drew 60 attendees. The chapter also hosted Harold Kim of the U.S. Chamber of Commerce, who spoke to about 50 lawyers during a luncheon discussion on tort reform and its impact on Louisiana’s business and litigation climate. The U.S. Chamber Institute for Legal Reform ranks Louisiana’s tort liability system 49th in the country, and while these rankings are subjective, Kim said they matter because they influence where companies choose to do business.

Kim made a few suggestions to improve Louisiana's ranking, recommending that the state lower its \$50,000 threshold for a jury trial and that the Legislature should abolish the practice of "lawsuit lending," a practice that Kim argued leads to prolonged litigation.

The **Michigan** Lawyers Chapter hosted a panel discussion on *Schuette v. Coalition to Defend Affirmative Action*, a Michigan case pending before the U.S. Supreme Court concerning whether the state violated the Fourteenth Amendment's Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public-university admissions decisions. Panelists included Hans von Spakovsky of the Heritage Foundation, Jennifer Gratz of the XIV Foundation, author and speechwriter Trevor Copeland and Mark Fancer of the ACLU of Michigan, with *Detroit News* columnist Henry Payne moderating. Panelists debated both the policy and the constitutionality of such programs before about 50 attendees.

Several lawyers chapters hosted book events this winter. The **Dallas, Austin, Houston, Los Angeles, San Francisco, Boston, South Carolina, and Milwaukee** Lawyers Chapters hosted Clark Neily of the Institute for Justice to talk about his recent book, *Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government*. Prof. Josh Blackman, South Texas College of Law, spoke to a handful of chapters about his new book, *Unprecedented: The Constitutional Challenge to ObamaCare*, including the **Philadelphia, Houston, and New York City Young** Lawyers Chapters. The **Phoenix** Lawyers Chapter hosted Radley Balko, author of *Rise of the Warrior Cop*, who debated local lawyer Bill Montgomery. The **Long Island** Lawyers Chapter hosted Rich Lowry, editor of *National Review*, who discussed his book *Lincoln Unbound: How An Ambitious Young Railsplitter Saved the American Dream—and How We Can Do It Again*.

Pension reform continues to be a subject of interest amongst chapters. The **Portland** Lawyers Chapter

hosted Dr. Eric Fruits from Portland State University who offered his insights into Oregon's pension system and the role of pension obligation bonds. The **Chicago** Lawyers Chapter sponsored a pension program with Greg Katsas of Jones Day and Prof. David Skeel of the University of Pennsylvania Law School. Katsas and Skeel addressed several issues, including bankruptcy as one means of structuring and effecting pension changes, some reform measures enacted to address the pension problems, and an overview of legal challenges to those measures. The luncheon program attracted 40 attendees.

The **DC Young** Lawyers Chapter hosted a sold-out breakfast with Judge Thomas Griffith of the U.S. Court of Appeals for the D.C. Circuit. Judge Griffith shared advice about how to sustain a successful and meaningful career in Washington, DC and observed



Prof. Josh Blackman, South Texas College of Law, spoke to several chapters about his book, *Unprecedented: The Constitutional Challenge to ObamaCare*.

that in such a partisan city, it is important to make friends on both sides of the aisle and to remember that even when your career path doesn't go according to plan, there will always be more great opportunities ahead. He also very candidly told the young lawyers that when they present a case in court, they should avoid using complicated legal jargon to impress the judges and instead be conversational and make their arguments as simple as possible.

The Lawyers Chapters have many programs scheduled for spring. The **DC Young** Lawyers Chapter is hosting two events, the first with former SEC commissioners and the second with Lee Goodman, Chairman of the FEC. The **Indianapolis** Lawyers Chapter is scheduled to host Senator Dan Coats, and the **Atlanta** Lawyers Chapter will host former U.S. Attorney General Michael Mukasey in May. The **San Diego** Lawyers Chapter will host Congressman Darrell Issa as their guest at their annual dinner in April. For details on these events and all lawyers chapter programming, please visit www.fed-soc.org.

2013 National Lawyers Convention



Photo Highlights



Federalist Society Launches New Partnerships, Monitors Sovereignty Developemnts

*By Paul Zimmerman
Deputy Director, International Affairs*

The Federalist Society's International Project has continued its commitment to reaching new audiences committed to a free society in Europe. While working with established partners throughout Europe in recent months, the Federalist Society also forged new alliances with organizations that believe the rule of law is the backbone of a free and prosperous society, and that constraints on government authority are necessary precursors to liberty. The Project also maintained its focus on international organizations and European institutions to report on developments affecting national sovereignty around the globe.

In October, the Federalist Society's partner at Oxford University, the Benjamin Disraeli Society, kicked off its new year of programming with an event featuring Lord David Alton of the British Parliament, who spoke on human rights and religious freedom. Also in October, the Federalist Society sponsored a visit by Judge Douglas Ginsburg of the U.S. Court of Appeals for the D.C. Circuit, now a professor at George Mason University School of Law, to speak at a conference of judges hosted by the French Cour de Cassation on comparative approaches to monitoring the behavior and conduct of judges among European countries and

in the U.S.

In November, the International Division was excited to host 22 judges, attorneys, civil society representatives, and others from 6 European countries, including many from countries in Central and Eastern Europe, at its National Lawyers Convention in Washington, DC. The visit enabled our guests to contribute legal and policy knowledge from their home countries to help inform the discussion at the Society's signature event, and it provided an opportunity for our international contacts to gain knowledge from representatives of American organizations as they seek to launch and expand their projects abroad.

Later in November, building on the growing strength of its connections in Britain and France, the Society sponsored an exciting slate of events in **London**, **Oxford**, and **Paris** for U.S. Senator Mike Lee of Utah. In London, the Federalist Society and the free market think tank the Adam Smith Institute organized a discussion

between Senator Lee and Member of Parliament Sir Edward Garnier QC on the civil justice system and the rule of law. Senator Lee also gave a speech at Christ Church College at Oxford hosted by the Disraeli Society and the libertarian student group the Oxford Hayek Society on how



In November, the Federalist Society co-sponsored an event with the Adam Smith Institute in London on civil justice reform and the rule of law, featuring (left to right) U.S. Senator Mike Lee (UT); Dr. Eamonn Butler of the Adam Smith Inst.; and Sir Edward Garnier, QC, MP.

the U.S. Constitution preserves freedom, with approximately 80 people in attendance. Following the speech, Senator Lee attended and spoke at a black-tie dinner with about 40 Oxford conservative and libertarian students at Rhodes House. Senator Lee then traveled to Paris to offer his encouragement and know-how to a group of young French legal professionals who take part in the meetings of the Federalist Society's partner organization the Institut de Formation Politique (IFP) and are seeking to establish an organization for conservatives and libertarians on legal issues in France. Senator Lee's visit to Europe concluded with remarks and dinner at Gray's Inn in London at an event organized by the Young Britons' Foundation, a training organization for British young people seeking involvement in U.K. politics and media.

As the project works to build up the Society's network of young conservatives and libertarians in France, we co-sponsored with IFP a second installment of the training organization's Law and Policy Circle, at which young people discussed the current important legal issues in France and received training on important skills, such as legal argumentation and media participation. Following this training session, at a meeting in Paris, Federalist Society Executive Vice President Leonard Leo and Deputy Director of International Affairs Paul Zimmerman followed up with attorneys and law students from the IFP network to discuss how IFP's model could be effectively adapted into a network of conservative and libertarians focused on legal issues in France.

In December, the Federalist Society continued its vital work as monitor of developments in international human rights institutions for its Global Governance Watch® project as Leonard Leo and Director of International Affairs Jim Kelly attended the Second Annual Forum on Business and Human Rights in **Geneva**. There they observed the growing interest of the United Nations, government officials, and civil society groups in establishing and enforcing international standards on global corporations outside of the ordinary legislative and judicial process at the national level. In January, Paul Zimmerman attended a reception hosted by the American Society of International Law for the UN Treaty Body committee chairs on the eve of a private meeting of these chairs at American University.

In January, one of the Federalist Society's partners in **Budapest, Hungary**, the Central European Policy Centre (CEPC), hosted a conference on the cooperation between the United States and Central Europe on

cybersecurity. The event included talks from a group of Hungarian government officials and advisers on the country's cybersecurity policy, as well as Hungarian academics and experts. The Federalist Society recommended and facilitated the participation of Prof. Nathan Sales of George Mason University School of Law in the conference. One of the outcomes is a document summarizing the discussions at the conference and outlining a set of policy proposals for cooperation between the U.S. and Central European countries on cybersecurity.

In early March, the Federalist Society worked with its partner organizations in the U.K. to host the first in a series of meetings that will seek to bring together potential allies to discuss their concerns about and work on the expanding reach of European Union institutions and the European Court of Human Rights, which has recently announced far-reaching rulings on issues such as life sentences and prisoner voting, and the implications of these developments on British sovereignty. With these meetings, the Society seeks to bring together the work of these organizations on the subject and contribute to the conversation among the U.K. public regarding the potential outcomes of the latest EU and ECHR developments.

As it works with new partners in Western European countries, the Federalist Society is maintaining its focus in Central and Eastern Europe as it plans its second European Judicial Conference in **Vienna** in June. At this second installment of the event, a group of European jurists, most of whom serve on the constitutional courts of post-communist countries, and judges from the U.S. will gather to discuss issues of common interest, including judicial independence and the freedom of expression. As it has in the past, the Federalist Society will be co-sponsoring this year's European Advocacy Academy, a conference in **Brussels** seeking to educate young civil society and other leaders from across Europe who are interested in promoting liberty and to train them to advocate effectively for freedom within the current framework of national and Europe-wide systems.

To share your comments about the International Affairs Division, or to learn more about its work, please contact Jim Kelly at jkellyiii@fed-soc.org and Paul Zimmerman at paulz@fed-soc.org.

State Courts Report

By Peter Bisbee
Assistant Director, External Relations

The State Courts Project monitors activities relating to the role of state courts, judicial selection, judicial philosophy, and the rule of law generally. The Project consistently seeks to spark debate and increase the quality of the discussion surrounding important legal policy issues. The developments described below have drawn considerable attention in local legal communities and, in some cases, nationally.

MICHIGAN

In our last issue we detailed the Michigan Bar's request for Secretary of State Johnson Ruth Johnson to issue a declaratory ruling on whether the groups who fund "issue ads" in judicial election campaigns must disclose their sources of funding. In November, Secretary Johnson proposed new administrative rules requiring sponsors to do just that. However, that decision was preempted in late December when the Michigan Senate passed Senate Bill 661, which requires new financial reporting for candidates, directs groups to include "authorized by" disclaimers on issue ads and robocalls, and doubles campaign contribution limits. Governor Rick Snyder recently signed the bill, now Public Act 252, into law.

In November Governor Snyder also signed Public Act 164, ending the Ingham County Circuit Court's tenure as Michigan's Court of Claims, a role it has served since the late 1970s. Instead, four court of appeals judges selected by the Michigan Supreme Court will preside over major litigation against the State.

In February, the Michigan Supreme Court created a task force to explore whether attorneys should be required to join the Michigan Bar. The move came just a few weeks after the Michigan Senate proposed a bill that would make dues to the bar optional, mirroring the right-to-work law making union dues optional that lawmakers passed in December 2012. Critics of mandatory membership say the bar has become too political and that lawyers should not be forced to subsidize political activity that they disagree with. The task force will be led by Alfred Butzbaugh, a former president of the Michigan

Bar, and its report is due by June.

OKLAHOMA

In early November, state legislators in Oklahoma launched a study into how members of the state's Supreme Court and appellate courts are chosen and how long they should serve. The study on judicial selection comes in response to frustration with a recent Oklahoma Supreme Court decision that struck down civil justice reform legislation, which we described in our last issue. When asked about the study, Oklahoma Speaker of the House T.W. Shannon remarked, "I believe the Oklahoma Supreme Court has acted at times as a 'Super Legislature.' It is my opinion the court has attempted to derail laws and reforms that are not only constitutional, but benefit our great state and provide greater opportunity and freedom for our citizens. Now is the time to evaluate whether or not our judicial process is truly working for the people."

Three judicial selection reform bills passed the Oklahoma Senate in 2013 and could be taken up in the House during the current session. One measure would allow the Governor to select judicial nominees who would then be confirmed by the State Senate. Another bill would set a 20-year term limit for judges. A third would allow the Governor to select the chief justice, who oversees the entire judiciary, including local district courts.

TENNESSEE

In late October, Tennessee Governor Bill Haslam issued Executive Order No. 34, establishing the 17-member Governor's Commission for Judicial Appointments. This move came shortly after the Tennessee Attorney General issued an opinion confirming the Governor's authority to continue making judicial appointments after the state's statutory Missouri-Plan commission was terminated on June 30, 2013. The 11 members of the former Judicial Nomination Commission, whose terms did not expire with its termination, continued to serve on the Governor's Commission for Judicial Appointments,

while the Governor appointed the remaining six new members in consultation with the Lieutenant Governor and Speaker of the House. When asked about his decision to reestablish a nominating commission, Governor Haslam said, “I would like to keep the process virtually the same for selecting judges in Tennessee until Tennesseans have the opportunity to vote on the proposed constitutional amendment in 2014. This Commission allows us to continue to select the highest quality people and ensure a stable and effective judiciary.” In December, the Governor used his new nominating commission to name Court of Appeals Judge Holly Kirby to replace retiring Justice Janice Holder on the Tennessee Supreme Court.

OF INTEREST

In early 2014 we published the winter issue of *State Court Docket Watch*. The issue contains updates on state court decisions such as the **New Mexico** Supreme

Court’s significant decision regarding the First Amendment rights of business owners. Specifically, the New Mexico Supreme Court upheld civil liability against wedding photographers who refused to shoot a same-sex commitment ceremony. Other cases featured include the **Florida** Supreme Court’s ruling that to require a criminal defense lawyer employed as a public defender to represent excessive numbers of indigent clients violates a defendant’s Sixth Amendment’s right to effective legal representation, and the **New Jersey** Supreme Court’s ruling that overturned Governor Christie’s attempt to dissolve the state’s Council on Affordable Housing on the basis that it was beyond the scope of his authority. All State Courts Project white papers and *Docket Watch* are available to view online at www.StateCourtsGuide.com, along with many other resources.

Social Media



By Justin Shubow
Director of Social Media

Through its social media outlets—its blog, Facebook page, and Twitter feed—the Federalist Society is finding new ways to extend the reach of its events, publications, and multimedia beyond its membership and to the general public. Through these outlets, the Society also seeks to inform its audience about some of the latest developments in the legal community and to spark debate on issues that currently impact the making and the interpreting of the law.

FedSoc Blog. FedSoc Blog (<http://www.fedsocblog.com>) is the official weblog of the Federalist Society. The Society created the blog as an original source of news and information relevant to the legal and public policy communities. The blog links to papers and multimedia published by the Federalist Society and to materials published elsewhere on the web, including news articles, blog posts, and videos of interest to our

audience. It has been an effective means of advertising FedSoc’s popular SCOTUScast podcasts. FedSoc Blog also serves to highlight upcoming event announcements, new publications, and other online features from the Federalist Society website.

Facebook and Twitter. The Federalist Society has been using Facebook and Twitter to vastly increase the reach of its publications, multimedia, events, and programs. The Federalist Society’s Facebook fan page has over 114,000 followers, and it continues to grow in popularity as people from around the web receive alerts and updates highlighting legal news and opinion as well as various Society projects. A single popular post can be seen by as many as 200,000 Facebook users. Our Twitter feed has nearly 14,000 followers, including a number of opinion leaders, and the number that increases daily.