

A Question of Integrity: Politics, Ethics, AND THE Supreme Court

Speaking Appearance by Justices at Federalist Society Dinner Shows Need for Supreme Court to Formally Adopt the Code of Conduct for United States Judges

Supreme Court justices are the only federal judges not formally bound by the Code of Conduct, a set of ethical guidelines that exist to promote public confidence in the integrity of the judiciary. As a result, a handful of justices have again and again engaged in conduct that crosses the ethical lines set in the Code of Conduct. Most recently, Justices Antonin Scalia and Clarence Thomas served as the featured speakers for the Federalist Society's 2011 Annual Dinner, a function designed, in part, to thank donors and to raise money for the organization.

Any federal judge, aside from the nine on the Supreme Court, would be prohibited by the Code from speaking at, being honored at, or allowing their name and prestige of their office to be used to promote a fundraiser. Canon 4C of the Code of Conduct states that "a judge should not personally participate in fund-raising activities... or use or permit the use of the prestige of judicial office for that purpose." ⁱ Commentary on Canon 4C explains that "a judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event."ⁱⁱ

While there has been some question as to whether the Federalist Society dinner was actually a fundraiser, the facts make undisputedly clear that it was.

The Facts

- The November 10, 2011 dinner was advertised as "A Celebration of Service" honoring the 25 and 20 years of service, respectively, of Justices Scalia and Thomas. Promotional materials featured photographs of the justices captioned with their titles and positions as justices of the United States Supreme Court. People were urged to purchase tickets quickly since "[t]he Annual Dinner is a ticketed event, and sold out very early last year."ⁱⁱⁱ
- Both Justices Scalia and Thomas delivered speeches at the event in their roles as the advertised guests of honor.
- The black-tie optional event was held on the evening of the first day of the Society's annual National Lawyers Convention, but the dinner was held as a separate event. It had separate ticketing, with the ticket costs not included in the regular Convention fees. While all other convention events were held at the Mayflower Hotel, the dinner was held at an off-site venue, the Omni Shoreham.
- Tickets for the event were sold at a cost of \$175 per person. Tables at the dinner were purchased by donors, including over 30 law firms, and the event was sponsored by corporations such as Pfizer, Chevron, Coca-Cola, Verizon, Facebook, and Time Warner. These donors were thanked for their generous support of the event in the printed program, which listed their names in tiered levels of giving: Gold, Silver, and Bronze.

- Individual donors, law firms, and corporations were personally acknowledged for their contributions by Federalist Society President Eugene Meyer. Mr. Meyer was introduced by David McIntosh, the Federalist Society’s Vice-Chairman of the Board of Directors, as the person in charge of the “faithful stewardship of this organization” who “comes into the office and... travels around the country to raise money for the programs.”
- Speaking after Justices Thomas and Scalia, Mr. Meyer recognized all who made contributions to the Federalist Society during the past year. He specifically included members of the Society’s two primary donor groups—the Madison Club for major donors, with giving levels ranging from \$1,000 to \$100,000 per year, and the newly-formed Founders Club, created this year to make regular donors out of young lawyers who are within ten years out of law school and contribute a minimum of \$250 per year.
- Mr. Meyer opened his remarks by saying, “David mentioned raising money and we would not be here without those who have so generously given to us. I want to express our gratitude to all of our Madison Club, foundation, corporate, law firm donors, our individual donors, including our new Founders Club donors. Could all of our donors please stand so they can be recognized?”^{iv}
- According to the 2010 Annual Report, donor contributions account for over one third of the Federalist Society’s annual income. The total income for 2010 was \$9,595,919; income from contributions was \$3,448,578.^v
- Immediately preceding the dinner, a special reception was held for members of the Federalist Society’s major donors, the James Madison Club.

Justices Thomas and Scalia allowed their names and images to be used to promote attendance at an event specifically recognizing substantial donors and encouraging new donors to the Federalist Society. This appears to violate the Code of Conduct’s specific prohibitions on federal judges participating in fundraising events. Justice Samuel Alito also attended the dinner, but his appearance poses no ethical issues since he had no speaking role and did not lend his name to advance publicity promoting ticket sales.

If the Code of Conduct for United States judges formally applied to the justices of the Supreme Court, the participation of Justice Scalia and Justice Thomas at the 2011 Federalist Society Annual Dinner would constitute a violation of the Code.

ⁱ Model Code of Judicial Conduct Canon 4 (1973, revised 2009).

ⁱⁱ *Id.*

ⁱⁱⁱ Federalist Society, Events, 2011 National Lawyers Convention, Fed-Soc.org, available at <http://webcache.googleusercontent.com/search?q=cache:yQlqt5nEwVII:www.fed-soc.org/events/detail/2011-national-lawyers-convention+&cd=1&hl=en&ct=clnk&gl=us> (last visited Dec. 15, 2011). The Annual Dinner in 2010 featured an interview of Justice Scalia by Jan Crawford of CBS News; in 2002, he was one of several speakers at the Society’s 20th Anniversary celebration. In 2009, Justice Alito was the featured speaker; he was also the Annual Dinner speaker in 2006, the year he was confirmed to the Supreme Court. For the past three years, and for four out of the past six years, Federalist Society Annual Dinner attendees could count on being in the room with a Supreme Court justice.

^{iv} Eugene Meyer, President, Federalist Society, Remarks at Federalist Society Annual Dinner: A Celebration of Service (Nov. 10, 2011).

^v The Federalist Society 2010 Annual Report, Statements of Activities 36 (2010).