

**CRIMINAL LAW AND THE ADMINISTRATIVE STATE
DEFINING AND ENFORCING REGULATORY CRIMES**

**May 13, 2014
Senate Hart Office Building, # SH-902**

Agenda and Speaker Biographies

2:00 PM Introduction

The Administrative Conference, together with the American Bar Association's [Criminal Justice](#) and [Administrative Law and Regulatory Practice](#) Sections, the [American Constitution Society](#), and [The Federalist Society](#), is hosting a workshop to explore current topics at the intersection of criminal law and the administrative state.¹

2:15 PM Panel One: Defining Regulatory Crimes

Moderator: The Hon. Ronald Cass

Ronald A. Cass, a well-known administrative law scholar, is President of Cass & Associates and a member of the Council of the Administrative Conference of the United States. He also is Dean Emeritus of Boston University School of Law, where he served as Dean from 1990 to 2004, a former law professor at the University of Virginia, Boston University, and visiting professor at institutions in Europe and Latin America, whose writings include an internationally recognized book on the rule of law and a leading textbook on administrative law, as well as works on criminal law issues. Dean Cass has served as Vice Chairman of the U.S. International Trade Commission (1988-1990) and U.S. Representative to the World Bank Panel of Conciliators (2009-Present), among other positions. He is a Life Member of the American Law Institute, past Chairman of the Federalist Society Practice Group on Administrative Law, Past Chair of the American Bar Association Administrative Law Section, and former President of the American Law Deans Association.

Susan R. Klein, UT Austin School of Law

Susan R. Klein is the Alice McKean Young Regents Chair in Law at the University of Texas School of Law, and co-author of *Federal Criminal Law and Its Enforcement*, 5th ed. (West 2010), a casebook adopted by law schools across the country. Upon graduating Boalt Hall School of Law, she clerked for Judge Cynthia Holcomb Hall on the Ninth Circuit Court of Appeals and spent four years as a federal criminal prosecutor with the United States Department of Justice through the Attorney General's Honor Program. She serves as ex officio member of the federal judicial committee to draft the Fifth Circuit Pattern Jury Instructions (West 1997, 2001, 2013) and member of the State Bar of Texas Committee on Jury Charges (volumes 1 through 4, 2010 - 2014). Last year she was elected to the Executive Committee of the Faculty Council for UT-Austin.

¹ The Administrative Conference (ACUS) has issued a number of prior recommendations in this area. *E.g.*, Recommendations 72-3, 72-6, 76-4, 82-7, 86-2, 86-4, 93-1, 92-7, and 94-2. Available at www.acus.gov. ACUS hopes to use the workshop to identify subjects appropriate for future Administrative Conference research and recommendations.



CRIMINAL LAW AND THE ADMINISTRATIVE STATE DEFINING AND ENFORCING REGULATORY CRIMES

[John Malcolm, Heritage Foundation](#)

John G. Malcolm oversees The Heritage Foundation's work to increase understanding of the Constitution and the rule of law as director of the think tank's Edwin Meese III Center for Legal and Judicial Studies. Before being named director of the Meese Center in July 2013, Malcolm spearheaded the center's rule of law programs. His research and writing as senior legal fellow focused on criminal law, immigration, national security, religious liberty and intellectual property. In addition to his duties at Heritage, Malcolm is chairman of the Criminal Law Practice Group of the Federalist Society. He has ten years of experience as an Assistant United States Attorney, and Associate Independent Counsel, and a Deputy Assistant Attorney General at the Department of Justice.

[Daniel C. Richman, Columbia University](#)

Daniel Richman joined the Columbia Law faculty in, 2007, and was previously tenured at Fordham University. Prior experience includes: Chief Appellate Attorney and Assistant United States Attorney, Southern District of New York, 1987-1992. Law Clerk, Justice Thurgood Marshall, Supreme Court of the United States, 1985-1986. Law Clerk, Chief Judge Wilfred Feinberg, Second Circuit Court of Appeals, 1984-1985.

[George Terwilliger III, Morgan Lewis](#)

Mr. Terwilliger provides counsel in litigation, internal investigations, and enforcement proceedings, especially those involving the U.S. Department of Justice (DOJ), the Securities and Exchange Commission (SEC), and other primary enforcement agencies. Mr. Terwilliger served as a U.S. presidential appointee in two administrations. He was appointed a U.S. Attorney by President Ronald Reagan and served as Deputy Attorney General, the number two official of the DOJ, and as Acting Attorney General in the George H.W. Bush administration. He has 10 years of experience as a federal prosecutor. In private practice, Mr. Terwilliger has represented both U.S. and international companies facing litigation and government inquiries. He is regularly asked to provide his views on matters of legal and public policy, including to congressional committees and executive agencies.

3:30PM Keynote Remarks by Senator Michael S. Lee

[Senator Michael S. Lee](#)

Elected in 2010 as Utah's 16th Senator, Mike Lee has spent his career defending the basic liberties of Americans and Utahns as a tireless advocate for our founding constitutional principles. Senator Lee is a member of the Judiciary Committee, and serves as ranking Member of the Antitrust, Competition Policy and Consumer Rights Subcommittee protecting business competition and personal freedom. Lee graduated from Brigham Young University with a Bachelor of Science in Political Science, and served as BYU's Student Body President in his senior year. He graduated from BYU's Law School in 1997 and went on to serve as law clerk to Judge Dee Benson of the U.S. District Court for the District of Utah, and then with future Supreme Court Justice Judge Samuel A. Alito, Jr. on the U.S. Court of Appeals for the Third Circuit. Lee spent several years as an attorney with the law firm Sidley & Austin specializing in appellate and Supreme Court litigation, and then served as an Assistant U.S. Attorney in Salt Lake City arguing cases before the U.S. Court of Appeals for the Tenth Circuit. Lee served the state of Utah as Governor Jon Huntsman's General Counsel and was later honored to reunite with Justice Alito, now on the Supreme Court, for a one-year clerkship. He returned to private practice in 2007.



**CRIMINAL LAW AND THE ADMINISTRATIVE STATE
DEFINING AND ENFORCING REGULATORY CRIMES**

4:00PM Agency Enforcement and Prosecution of Regulatory Crimes

Moderator: [Richard A. Bierschbach, Cardozo Law](#)

Professor Bierschbach's scholarship examines the procedural and institutional structure of criminal justice and its relationship to criminal law's substantive and regulatory aims. Before joining Cardozo's full-time faculty in 2005, he served as an Attorney-Advisor in the U.S. Department of Justice's Office of Legal Counsel, a Bristow Fellow in its Office of the Solicitor General, and a law clerk to D.C. Circuit Judge A. Raymond Randolph and U.S. Supreme Court Justice Sandra Day O'Connor. He has also spent several years in private practice—first at Wilmer, Cutler & Pickering and later at Gibson, Dunn & Crutcher, each time specializing in appellate and public law issues—and has held various leadership roles in the ABA's Criminal Justice and Administrative Law & Regulatory Practice Sections.

[Kate Andrias, Michigan Law](#)

Kate Andrias teaches and writes in the areas of constitutional and administrative law, labor law, and the law of democracy. Prof. Andrias previously served as Special Assistant and Associate Counsel to the President of the United States, and as Chief of Staff of the White House Counsel's Office. While in the White House, she focused on constitutional and administrative law issues and on domestic policy, including labor and immigration. Prior to joining the Obama Administration, Prof. Andrias was an attorney in the Washington, D.C., office of Perkins Coie LLP, where she practiced in the political law and appellate litigation groups. In addition, she clerked for Justice Ruth Bader Ginsburg of the U.S. Supreme Court and Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit, and taught American Constitutional Law as a visiting professor at L'Institut d'Études Politiques (Sciences Po) in Paris.

[Matt Axelrod, Cohen Milstein Sellers & Toll, PLLC](#)

Matt Axelrod joined Cohen Milstein Sellers & Toll, a nationwide plaintiffs' firm, as a Partner at the beginning of 2014. Prior to joining the firm, Mr. Axelrod worked as a prosecutor for more than a decade at the United States Department of Justice ("DOJ"). From March 2011 until December 2013, Mr. Axelrod served as Associate Deputy Attorney General in the Office of the Deputy Attorney General, where he advised the Deputy Attorney General and Attorney General on DOJ's most significant white collar criminal matters and False Claims Act investigations, and oversaw the work of DOJ's Criminal Division, Tax Division, FBI, ATF, and U.S. Attorneys' Offices. He previously served as a law clerk for Judge Ralph K. Winter on the U.S. Court of Appeals for the Second Circuit and Judge Janet C. Hall on the U.S. District Court for the District of Connecticut.

[James R. Copland, Manhattan Institute](#)

James R. Copland is the director of the Manhattan Institute's Center for Legal Policy, which seeks to develop and communicate thoughtful ideas on how to improve the civil and criminal justice system. Prior to joining the Manhattan Institute, Copland was a management consultant with McKinsey and Company in New York. He had earlier served as a law clerk for Ralph K. Winter on the United States Court of Appeals for the Second Circuit. Copland received J.D. and M.B.A. degrees from Yale, where he was an Olin Fellow in Law and Economics and an editor of the Yale Journal on Regulation. He also has an M.Sc. in politics of the world economy from the London School of Economics and a B.A. in economics with highest distinction and highest honors from the University of North Carolina at Chapel Hill, where he was a Morehead Scholar.



**CRIMINAL LAW AND THE ADMINISTRATIVE STATE
DEFINING AND ENFORCING REGULATORY CRIMES**

Rena Steinzor, University of Maryland Law

Rena Steinzor is a Professor at the University of Maryland School of Law and the president of the Center for Progressive Reform (CPR). Before joining the law school faculty, Professor Steinzor was the partner in charge of the environmental practice at Spiegel & McDiarmid, a Washington D.C. Law firm specializing in the representation of state and local government entities in the energy and environmental areas. Prior to joining the firm, Professor Steinzor was counsel to the Subcommittee on Commerce, Transportation & Tourism of the House Energy & Commerce Committee, which was then chaired by James J. Florio (D-N.J.).

**5:15PM **Keynote Remarks by Senator Sheldon Whitehouse and U.S.
Sentencing Commissioner Rachel E. Barkow****

Senator Sheldon Whitehouse

A graduate of Yale University and the University of Virginia School of Law, Senator Whitehouse served as Rhode Island's Director of Business Regulation under Governor Sundlun before being recommended by Senator Pell and nominated by President Bill Clinton to be Rhode Island's United States Attorney in 1994. He was elected Attorney General of Rhode Island in 1998, a position in which he served until 2003. On November 7, 2006, Rhode Islanders elected Mr. Whitehouse to the United States Senate, where he is a member of the Budget Committee; the Environment and Public Works Committee (EPW); the Judiciary Committee; the Health, Education, Labor, and Pensions Committee; and the Special Committee on Aging. Senator Whitehouse chairs the Judiciary Subcomm. on Crime and Terrorism and the EPW Subcomm. on Oversight.

Commissioner Rachel Barkow

Rachel Barkow is the Segal Family Professor of Regulatory Law at the New York University School of Law and the Faculty Director of the Center on the Administration of Criminal Law at NYU. In June 2013, the Senate confirmed her as a member of the United States Sentencing Commission. Since 2010, she has also been a member of the Manhattan District Attorney's Office Conviction Integrity Policy Advisory Panel. Her scholarship focuses on applying the lessons and theory of administrative and constitutional law to the administration of criminal justice. She has written more than 20 articles, recently joined the leading criminal law casebook as a co-author, and is recognized as one of the country's leading experts on criminal law and policy. In 2013, she was the recipient of the NYU University-wide Distinguished Teaching Award. She won NYU Law's Podell Distinguished Teaching Award in 2007.

After graduating from Northwestern University (B.A. 1993), Barkow attended Harvard Law School (J.D. 1996), where she won the Sears Prize, which is awarded annually to two students with the top overall grade averages in the first-year class. Barkow served as a law clerk to Judge Laurence H. Silberman on the District of Columbia Circuit, and Justice Antonin Scalia on the U.S. Supreme Court. Barkow was an associate at Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, in Washington, D.C., from 1998-2002, where her practice focused on administrative law. She took a leave from the firm in 2001 to serve as the John M. Olin Fellow in Law at Georgetown University Law Center.

6:00 PM **Adjourn**

**More information and written CLE materials are available at
www.acus.gov/regulatorycrimeworkshop.**

