AMERICAN BAR ASSOCIATION

Section of Administrative Law & Regulatory Practice

2021 Administrative Law Conference

November 18-19, 2021 | virtual live CLE conference







Program Co-Chairs

Linda Jellum

Susan Prosnitz

Christopher J. Walker

Section Chair

Andrew Emery

12.5 Hours of General CLE
Including 1.5 Hours of Ethics Credit

Requested



A Message from the Chair
Andrew Emery

Welcome to the 2021 Administrative Law Conference! If I were to judge the annual conferences based on how difficult it is to decide which panel to attend during each time slot, this I judge the best conference during my involvement in the section. If you find yourself having the same problem, then the bad news is you have to pass up some incredible panels, however, the good news is you don't because you can watch recordings of all 20 panels for 30 days after the conference.

The 2021 Administrative Law Conference is brought to you by the ABA's Section of Administrative Law and Regulatory Practice. We are you. We are practitioners, scholars, and students of administrative law. The section is a collaborative workspace for all attorneys involved in and around the practice of administrative law and government policymaking. The conference is our collective effort to educate, challenge, and inspire one another to improve our skills, broaden our perspective, and improve the field of administrative law. So, thank you for attending, thank you for participating, and thank you for organizing and presenting such an amazing conference.

Some special thanks go to the Conference co-chairs, Linda Jellum, Susan Prosnitz, and Chris Walker for all their work putting this program together. Of course, nothing happens in the Administrative Law Section without the efforts of Anne Kiefer, Section Director, who makes all the tens of thousands of pieces come together. And a tremendous thank you to all the panelists and organizers who create the brilliant content for the conference. Also, a very special gratitude for our generous conference sponsors-as of this writing, The George Washington University Law School, The C. Boyden Gray Center for the Study of the Administrative State, FedEX, Proskauer Rose LLP, The Free State Foundation, and American University Washington College of Law. During the conference please visit the networking rooms for our sponsors and thank them for their generous contributions to make this conference possible. If you are not member of the section, please join. If you have any ideas for how we can improve what we do, increase our offerings, or expand our membership please reach out to me. I would love to hear from you.
Enjoy the conference!

Andrew Emery
Section Chair
President, The Regulatory Group, Inc.

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Administrative Law and Regulatory Practice Section

2021 Administrative Law Conference

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Administrative Law and Regulatory Practice Section

Administrative Law Conference CLE Panel Agenda

Thursday November 18, 2021

8:45 am – 10:15 am ET

- Researching and Interpreting the Administrative Procedure Act
- Understanding Immigration Law Challenges
- The Paperwork Reduction Act: Practice, Policy and Predictions

10:45 am – 12:15 pm ET

- OIRA in the Biden Administration: A Conversation with Former OIRA Administrators
- Pursuing Innovation in Administrative Enforcement
- Making FOIA Work

1:30 pm – 3:00 pm ET

- Administrative Law at the Intersection of Legislative, Judicial and Executive Powers
- What Does *Arthrex* Mean for Administrative Adjudication?
- Nationwide Injunctions and Federal Rulemaking

3:30 pm – 5:00 pm ET

- *Ex Parte* Communications in Informal Rulemaking
- Litigating Administrative Law Cases in the Roberts Court: Insiders' Accounts
- What the heck is going on with the Independent Agencies? A Discussion of recent controversies confronting the FTC and other independent agencies.

Friday November 19, 2021

8:45 am – 10:30 am

- Developments in Administrative Law Part 1

10:45 am – 12:30 pm ET

- Developments in Administrative Law Part 2

1:00 pm – 2:30 pm ET

- Artificial Intelligence in Agency Rulemaking
- Troubling Issues Raised by the Supreme Court's Shadow Docket
- Executive Orders in Theory and Practice

3:00 pm – 4:30 pm ET

- Regulatory Policymaking in the Biden Administration
- The Shifting Sands of Standing Doctrine
- Keeping the Appearance of Propriety: Ethical Challenges in Regulatory Lawyering

Administrative Law Conference: FREE Non-CLE Events Agenda

Wednesday November 17, 2021

7:00 pm – 8:30 pm ET (Includes Breakouts)
Moving from Practice (Back) to Law School

This panel will provide an overview of how to enter legal teaching, including non-clinical and clinical academic posts, in administrative law and regulatory practice, and will include break-out rooms for more detailed Q & A. The panelists will address preparation of materials for the job market, development of references, research agenda, conference interviews, call backs, and the preparation of a job talk paper. The panel will also discuss the importance of diversity and practical experience in law teaching and introduce a new Section-sponsored fellowship program for full-time practitioners. The fellowship matches fellows with academics for mentoring in the year or two prior to the fellow going on the job market. **REGISTER IN ADVANCE: ZOOM LINK HERE**

Panelists include:
Kevin M. Stack, Lee S. and Charles A. Speir Professor of Law, Vanderbilt Law School (moderator)
Bijal Shah, Associate Professor, Arizona State University, Sandra Day O'Connor College of Law
Emily Bremer, Associate Professor of Law, Notre Dame Law School
Shoba Sivaprasad Wadhia, Associate Dean for Diversity, Equity and Inclusion Samuel Weiss Faculty Scholar & Clinical Professor of Law, Penn State Law
Kathryn Kovacs, Professor of Law, Rutgers Law

Thursday November 18, 2021

12:30 pm – 1:15 pm ET
Administrative Law Section Awards Presentation – **REGISTER IN ADVANCE: ZOOM LINK HERE**

- **Mary C. Lawton Award for Outstanding Government Service** presented to Matthew Lee Wiener by Elaine Reiss, Committee Co-Chair
- **Award for Scholarship in Administrative Law** presented jointly to: Elizabeth Fisher and Sidney A. Shapiro, Administrative Competence: Reimagining Administrative Law (Cambridge University Press 2020); and Anne Joseph O'Connell, Actings, 120 Colum. L. Rev. 613 (2020) by Ronald Krotoszynski, Committee Co-Chair
- **Gellhorn Sargentich Law Student Essay Award** presented to Adira Levine for "FOIA Disclosure and the Supreme Court" by Michael Herz, Fellows Committee Chair

6:00 pm – 8:00 pm ET
Administrative Law Trivia

Think you know administrative law? Join your colleagues for a night of trivia! Build your own team with friends or sign up to be placed on a team and meet new colleagues. This is a great opportunity to test your Administrative Law knowledge! Everyone participating will need to register, even those already registered for the Fall Conference. **REGISTER IN ADVANCE: ZOOM LINK HERE**. If you are signing up with friends, when registering please use your Team Name as the first part of your name and use your full name as the second part. If you would like us to assign you to a team, simply use your first name and last name in the normal fields. Include a personal email address. The event is FREE and NO CLE CREDIT is available. Registration is limited and will close when capacity is reached. Deadline for registration is Wednesday, July 28 at 12 Noon Eastern. After registration, you will be sent an email including more information and a participation link. Questions or Special Needs?? Please e-mail Anne.Kiefer@americanbar.org

Administrative Law Conference: FREE Non-CLE Events Agenda

Friday November 19, 2021

4:45 pm – 5:45 pm ET
Administrative Law Job Opportunities for Recent Graduates

The panel will discuss opportunities for law students and judicial clerks to find administrative law jobs with the federal government. Panelists will discuss how to find job openings, how to tailor applications to a job opening, and how to best present oneself in an interview. The panel will be focused toward law students and judicial clerks, but will be applicable to attorneys of all experience levels. **Register in advance: Zoom Link Here.** Everyone participating will need to register for this FREE event on Zoom, even those already registered for the Fall Conference.

Moderator: Michael Vuong, Law Student, Southern Methodist University, Dallas, TX
Michael Vuong is a 2L at Southern Methodist University (SMU) Dedman School of Law. He serves as a staff editor for the SMU International Law Review Association, an advocate on the Thomas Tang Moot Court team, and as the student liaison for the American Bar Association's Section on Administrative Law & Regulatory Practice. In summer 2021, Michael was a law and policy intern for the U.S. Green Buildings Council, where he drafted model legislation to provide incentives for the construction of ecologically sustainable and energy efficient school buildings. Before law school, he interned with Representative Karen Bass and Los Angeles County Board of Supervisors Chair Hilda Solis. Michael earned his undergraduate degree magna cum laude and Phi Beta Kappa from SMU and his Master of Public Administration, Master of Public Policy, and Master of Urban Planning from the University of Southern California Sol Price School of Public Policy.

Panelist: Jennifer A. Lukas, Counselor for Professional Development, Diversity, and Alternative Dispute Resolution, U.S. Department of Justice, Washington, DC
As Counselor, since June 2020, Jennifer Lukas oversees ENRD's Office of Professional Development & Diversity, whose staff develops and implements training and other programming in legal skills, mentoring, career development, management and leadership, and diversity, equity, inclusion, and accessibility for ENRD's 600+ attorneys and professional staff. Jennifer joined ENRD's Environmental Enforcement Section as an Honors Attorney in 2002, spending the first ten years of her tenure litigating cases, primarily under the New Source Review Program of the Clean Air Act. In 2012, Jennifer joined the Section's management team as Senior Attorney for Human Resources where she held a small docket of cases while managing the Section's lateral attorney and professional staff hiring efforts, co-chairing the Section's year-round law clerk program, coordinating training programs, and supervising some of the administrative staff. She also participated on ENRD's Honors Attorney Program hiring committee for two years and is especially motivated by exposing law students to the exciting opportunities and benefits of a legal career in public service. Jennifer earned her B.A. from the University of Wisconsin-Madison, and her J.D. from Cleveland-Marshall College of Law.

Panelist: Sam Wice, Counsel, House Budget Committee, Washington, DC
Sam Wice is an attorney with experience at the White House, Congress, and a regulatory agency. Before law school, he worked at the Congressional Budget Office. After law school, Sam started working as a counsel at the U.S. Securities and Exchange Commission and has subsequently worked as a detailee/policy analyst at the Office of Information and Regulatory Affairs. He currently serves as a counsel at the House Budget Committee. Sam's legislative experience includes working on Dodd-Frank and the American Rescue Plan. His regulatory experience includes working on agency responses to COVID-19 and promulgating regulations for federal employees receiving paid parental leave. Sam earned a B.A. in economics from Grinnell College and a J.D. from Duke University School of Law.

Virtual Live Administrative Law Conference Agenda

Thursday November 18, 2021
8:45 am – 10:15 am ET
CLE Session 1

Researching and Interpreting the Administrative Procedure Act
In recent years, courts have shown more interest in interpreting the APA consistently with its text and history. Agency personnel and practitioners must respond with well-researched interpretations of this all-important statute. But the APA's history is as complex as its text is short. This panel will introduce a new resource coming to Hein Online in Fall 2021--The Bremer-Kovacs Collection: Historic Documents Related to the Administrative Procedure Act of 1946. The panel will explore the ~17 year history that lead to the APA's adoption, the documents that shed light on the statute's meaning, and the special challenges of integrating legislative history and judicial precedent into a persuasive and sound interpretation. It will also introduce some tools available with the Collection to make researching the APA more efficient and accurate. The ABA AdLaw Section's special role in the statute's enactment will be a point of focus. Panelists will also discuss particular interpretative issues that arise in adjudication, rulemaking, and judicial review and explore how the APA's history can yield greater fidelity to its text and purposes.

Speakers

- Emily Bremer, Associate Professor of Law, Notre Dame Law School, Notre Dame, IN
- Kathryn Kovacs, Professor of the Law, Rutgers Law School, Newark, NJ
- Clay Samford, Assistant Section Chief, Environment & Natural Resources Division, U.S. Department of Justice, Denver, CO
- Anthony Yang, Assistant to the Solicitor General, Office of the Solicitor General, U.S. Department of Justice, Arlington, VA

Thursday November 18, 2021
8:45 am – 10:15 am ET
CLE Session 2

Understanding Immigration Law Challenges
The panelists will discuss real world dilemmas in the world of immigration law, including viewpoints from academia, the private sector and the government. An introduction to the basic principles of immigration law will allow for a discussion of President Biden’s immigration policies.

Speakers

- Amy Fallon, Partner, Fragomen, New York, NY
- Jill Family, Commonwealth Professor of Law and Government, Widener University Commonwealth Law School, Harrisburg, PA
- Katherine Culliton-Gonzalez, Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, (Invited)
- A. Ashley Tabaddor, Chief Counsel, U.S. Citizenship and Immigration Services, Washington, DC

Moderator

- Jill Family, Commonwealth Professor of Law and Government, Widener University Commonwealth Law School, Harrisburg, PA

Thursday November 18, 2021
8:45 am – 10:15 am ET
CLE Session 3

The Paperwork Reduction Act: Practice, Policy and Predictions
The Paperwork Reduction Act (PRA) turned 40 years old in December of 2020. This bipartisan legislation addressed both the burdens and the utility of paperwork or information collections of the government, centralized statistical policy coordination, and created the Office of Information and Regulatory Affairs inside the Office of Management and Budget to manage its processes. Significant amendments were made in 1995 that situated agency reviews within the operations of Chief Information Officers (CIOs). And in 2001, Congress added additional responsibilities for the quality of information disseminated from federal agencies. Recently the Foundations for Evidence-Based Policymaking Act of 2018 further reinforced the critical role of government information collection and analysis to support government and private sector uses of data.

Technological change and the rising use of social media and new forms of information collection by government agencies started new conversation on the PRA's applicability and uses answered first in 2010. Efforts continue to modernize government uses of data and methods of collection alongside the processes of the PRA.

This panel will provide an overview of the PRA, its application for agency regulatory practice, and discussions of its future application to changing methods of information collection and dissemination. Recent litigation over the use of a "stay" and review of a collection at the Equal Employment Opportunity Commission in 2017 as well as the status of certain independent regulatory agencies and commissions in light of *Seila Law* will also be discussed.

Speakers

- Stephanie Tatham, Senior Analyst and Counsel, U.S. Office of Information and Regulatory Affairs, Washington, DC
- Rosario Palmieri, Attorney in private practice, former Associate Administrator, U.S. Office of Information and Regulatory Affairs, and former House Committee on Oversight staff, Washington, DC

Moderator

- Amy Wildermuth, Dean, School of Law, University of Pittsburgh, Pittsburgh, PA

Thursday November 18, 2021
10:45 am – 12:15 pm ET
CLE Session 4

OIRA in the Biden Administration: A Conversation with Former OIRA Administrators
One year into the Biden Administration there is an abundance of regulatory activity, but no nominated OIRA Administrator. The panel will discuss the current state of OIRA regulatory review, Biden regulatory initiatives, and the opportunities and challenges for OIRA.

Speakers

- Sally Katzen, Professor of Practice and Distinguished Scholar in Residence, New York University Law School, New York, NY
- Howard Shelanski, Professor of Law, Georgetown Law, and Partner, Davis Polk; former OIRA Administrator in the Obama Administration, Washington, DC
- Susan E. Dudley, Director, GW Regulatory Studies Center, and former OIRA Administrator in the George W. Bush Administration, Washington, DC

Moderator

- Michael Fitzpatrick, Director Strategy & Innovation, Google Global Affairs, former OIRA Associate Administrator in the Obama Administration, Washington, DC

Thursday November 18, 2021
10:45 am – 12:15 pm ET
CLE Session 5

Pursing Innovation in Administrative Enforcement
Regulators are increasingly adapting their enforcement procedures to balance central control and process. This panel surveys some of the new approaches.

Speakers

- Joel McElvain, Partner, King & Spaulding, Washington, DC
- Geeyoung Min, Assistant Professor of Law, Michigan State University, East Lansing, MI
- Christina Parajon Skinner, Assistant Professor of Legal Studies and Business Ethics, The Wharton School, Philadelphia, PA
- Daniel R. Walfish, Walfish & Fissell LLP, New York, NY
- Mark E. Van Der Weide, General Counsel, The Federal Reserve Board, Washington, DC

Moderator

- David Zaring, Elizabeth F. Putzel Professor, Professor of Legal Studies & Business Ethics, The Wharton School, University of Pennsylvania, Philadelphia, PA

Thursday November 18, 2021
10:45 am – 12:15 pm ET
CLE Session 6

Making FOIA Work
Since its enactment in 1966, the Freedom of Information Act (FOIA) has been celebrated as a pathbreaking open government measure. But disputes about responding to FOIA requests increasingly sap agency, court and requestor resources; contribute to a culture of adversarialism; and frustrate FOIA's transparency goals. The status quo – where fully responding to requests can involve years of back and forth – is widely regarded as unsatisfactory. This panel will explore different approaches for addressing the glut of FOIA disputes currently facing agencies and the public. Some of those approaches – such as alternative conflict management systems and technological solutions – fit within the existing system for resolving FOIA disputes, while others - such as alternative disclosure systems and affirmative disclosure requirements – would be outside the existing system.

Speakers

- Margaret Kwoka, Professor, Moritz College of Law, Ohio State University, Columbus, OH
- Bobak Talebian, Director, Office of Information Policy, U.S. Department of Justice & Co-Chair, Chief FOIA Officers Council, Washington, DC
- Nikhel Sus, Senior Counsel Complaints & Litigation, Citizens for Responsibility and Ethics in Washington, Washington, DC
- Danielle Schulkin, Attorney Advisor, Administrative Conference of the United States, Washington, DC

Moderator

- Mark Thomson, Deputy Research Director, Administrative Conference of the United States, Washington, DC

Thursday November 18, 2021
1:30 pm – 3:00 pm ET
CLE Session 7

Administrative Law at the Intersection of Legislative, Judicial, and Executive Powers
This panel—comprised of scholars whose works have been accepted for publication in *The George Washington Law Review*'s Vol. 90 *Annual Review of Administrative Law*—explores separation of powers and the administrative state. Professor Tara Grove will explore recent scholarly efforts to test what "ordinary people" view as the meaning of federal statutes in recent Supreme Court cases. Professor Robert Glicksman and Professor Richard Levy will delve into the contours of the new separation of powers formalism and consider its implications for adjudication by administrative agencies. Professor Bijal Shah will examine how presidents impact agency efforts to execute the law and argue for presidential administration that focuses on statutory values and purpose above presidents' own policy goals. Administrative law scholars, practitioners, and students will gain guidance and perspective on these pressing administrative law issues that they can utilize in their practice and studies.

Speakers

- Tara Leigh Grove, Charles E. Tweedy, Jr., Endowed Chairholder of Law, University of Alabama School of Law, Tuscaloosa, AL
- Robert L. Glicksman, J.B. and Maurice C. Shapiro Professor of Environmental Law, The George Washington University Law School, Washington, DC
- Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law, The University of Kansas School of Law, Lawrence, KS
- Bijal Shah, Associate Professor of Law, Arizona State University Sandra Day O'Connor College of Law, Phoenix, AZ

Thursday November 18, 2021
1:30 pm – 3:00 pm ET
CLE Session 8

What Does *Arthrex* Mean for Administrative Adjudication?
This past term the U.S. Supreme Court decided *United States v. Arthrex*, a case involving application of the Appointments Clause to judges of the Patent Trial and Appeals Board (PTAB), a tribunal established by Congress in 2012 within the U.S. Patent and Trademark Office (USPTO). In the *Arthrex* decision, the Court held that the administrative patent judges of the PTAB, who are appointed by the Commerce Secretary, were principal officers who had to be appointed by the President and confirmed by the Senate. The Court determined that it could remedy the Appointments Clause defect by holding unenforceable the patent statute provision that disallowed unilateral review of administrative patent judge decisions by the USPTO Director. With unilateral review by the Director (a Presidentially appointed and Senate confirmed (PAS) official) in place, the PTAB was constitutional. Going forward, the *Arthrex* decision has obvious implications for other agency adjudication schemes that do not provide for unilateral review by PAS officials. More broadly, it raises questions about how to structure PAS review and impacts on adjudicatory decision making that may result from PAS review. This panel will address those questions.

Speakers

- Chief Judge Scott Boalick, Patent Trial and Appeal Board, Washington, DC
- Jeremy S. Graboyes, Principal Deputy Research Director, Staff, Administrative Conference of the United States, Washington, DC
- Christopher J. Walker, John W. Bricker Professor of Law, Director Moritz Washington DC Summer Program, Michael E. Moritz College of Law, Columbus, OH

Moderator

- Arti Rai, Elvin R. Latty Professor of Law, Duke University Law School, Durham, NC

Thursday November 18, 2021
1:30 pm – 3:00 pm ET
CLE Session 9

Nationwide Injunctions and Federal Rulemaking
The debate over nationwide injunctions, begun several years ago, only continues to intensify. Although the debate has illuminated important doctrinal questions of constitutional and remedies law, it has given little, if any, attention, to the actual effects of nationwide injunctions and similar equitable relief on the actual regulatory activities of federal agencies. This panel will address that important subject for the benefit of agency officials, practitioners, academics, and other attendees.

The panel will ask, among other questions, how frequently courts issue nationwide injunctions (especially preliminary injunctions) involving agency rules; whether agencies understand judgments "vacating" and "setting aside" rules under the Administrative Procedure Act to provide for what the Department of Justice calls "universal vacatur" or instead vacatur/setaside for the benefit only of the actual parties challenging a rule; and how agency officials do and should respond to nationwide injunctions/universal vacatur of rules, especially when faced with duplicative suits in multiple courts and conflicting judgments. In addressing these and other questions, the panelists will draw heavily on their ongoing empirical study as consultants for the Administrative Conference of the United States. Their presentations, discussion, and responses to audience questions will help equip agency officials to administer federal programs most efficiently and conduct their rulemaking activities with an eye toward emerging developments in judicial doctrines.

Speakers

- Zachary D. Clopton, Professor of Law, Northwestern Pritzker School of Law, Chicago, IL
- Carol Ann Siciliano, former Associate General Counsel, U.S. Environmental Protection Agency, and Senior Fellow, Administrative Conference of the United States, Washington, DC
- Jed Stiglitz, Professor of Law, Cornell Law School, Ithaca, NY
- Mila Sohoni, Associate Dean of Faculty and Professor of Law, University of San Diego School of Law, San Diego, CA

Moderator

- Matthew Lee Wiener, Acting Chairman, Vice Chairman, and Executive Director, Administrative Conference of the United States, Washington, DC

Thursday November 18, 2021
3:30 pm – 5:00 pm ET
CLE Session 10

***Ex Parte* Communications in Informal Rulemaking**
The APA does not contain any explicit restrictions on ex parte communications in informal rulemaking, but that doesn't mean that anything goes. Join seasoned attorneys from both inside and outside government as they discuss similarities and differences in agency practices on this issue, the key concerns at stake, and potential best practices.

Speakers

- Edmund C. Baird, Associate Solicitor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC
- Sabrina Jawed, Senior Attorney, Federal Aviation Administration, Washington, DC
- Thomas M. Johnson, Jr., Partner, Wiley, Washington, DC; *former General Counsel, FCC*
- Amit Narang, Regulatory Policy Advocate, Public Citizen, Washington, DC
- Esa Sferra-Bonistalli, Attorney, Office of the General Counsel, Department of Homeland Security; former Team Leader and Senior Attorney, Office of the Judge Advocate General, U.S. Coast Guard, Washington, DC *appearing in personal capacity*

Moderator

- Eloise Pasachoff, Professor of Law, Georgetown University Law Center, Washington DC

Thursday November 18, 2021
3:30 pm – 5:00 pm ET
CLE Session 11

Litigating Administrative Law Cases in the Roberts Court: Insiders' Accounts
This panel addresses recent developments in the U.S. Supreme Court regarding administrative law and should be of interest to anyone who practices in the field of regulation. The panelists have all recently argued administrative law cases in the Supreme Court and will share their perspectives on the Supreme Court's current approach to issues such as agency adjudication, structural constitutionalism, and arbitrary-and-capricious review. The panel will focus on how to best frame arguments, identify potential targets of litigation, and think strategically when defending or challenging agency action**.**

Speakers

- Sarah Harris, Partner, Williams & Connolly LLP, Washington, DC
- Douglas Letter, General Counsel U.S. House of Representatives, Washington, DC
- Aaron Nielson, Professor, Brigham Young University Law School, Provo, UT
- Helgi Walker, Partner, Gibson Dunn & Crutcher LLP, Washington, DC

Moderator

- Judge Thomas Griffith, Special Counsel, Hunton Andrews Kurth LLP and former Judge, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC

Thursday November 18, 2021
3:30 pm – 5:00 pm ET
CLE Session 12

What the heck is going on with the Independent Agencies? A discussion of recent controversies confronting the FTC and other Independent Agencies
This panel will examine recent changes in independent agencies' decision-making through the lens of one such agency: the Federal Trade Commission. The panelists will review the dramatic recent changes at the FTC and discuss the implications thereof, including the selection and powers of the agency head, well-publicized recusal issues, Congress's reactions to all the changes (how much difference does it make?), and the benefits of competition rulemaking versus adjudication and the continued viability of *National Petroleum Refiners*. Audience members will leave the panel with a better understanding of the functioning of independent agencies including issues related to appointment, recusal, rulemaking, adjudication, and Congressional relations.

Speakers

- Stephen Calkins, Professor of Law, Wayne State University Law School, Detroit, MI
- Louis J. Virelli III, Professor of Law, Stetson University Law School, Gulfport, FL
- Howard Shelanski, Professor of Law, Georgetown University Law School, Washington, DC
- Todd Phillips, Director of Financial Regulation, Center for American Progress, Washington, DC

Moderator

- Linda D. Jellum, Visiting Professor of Law, University of Mississippi School of Law, Ellison Capers Palmer Sr. Endowed Chair in Tax Law, Mercer University School of Law, Macon, GA

Friday November 19, 2021
8:45 am – 10:30 am ET
CLE Session 13

Developments in Administrative Law Part 1

In this signature event of the Administrative Law Section's Fall Conference, scholars will present a comprehensive overview of the most important administrative law developments in the last twelve months. Administrative law moves fast, and the past year has seen many changes in the areas of government information and privacy, rulemaking, and adjudication, specifically. In this panel—the first of two separate Developments panels—our speakers take up these topics and provide essential information about the past year's biggest changes. Keeping track of everything that happens in administrative agencies, in the courts, in Congress, and in the White House across all substantive fields can be next to impossible, especially in a presidential transition year, but you'll have a leg up when you attend this survey panel. Each of the panelists will not only cover the year's key developments but will also emphasize broader themes and trends that can only be seen by looking at developments together. The panelists' prepared remarks will be followed by a short question and answer session.

Speakers

- Bernard Bell, Professor of Law and Herbert Hannoch Scholar, Rutgers Law School, Newark, NJ **(Government Information & Right to Privacy)**
- Bridget C.E. Dooling, Research Professor, George Washington University Regulatory Studies Center, Washington, DC; and **B**ethany Davis Noll, Executive Director of the State Energy & Environmental Impact Center and Adjunct Professor of Law, New York University School of Law, New York, NY **(Rulemaking)**
- Christopher J. Walker, John W. Bricker Professor of Law, Director Moritz Washington DC Summer Program, Michael E. Moritz College of Law, Columbus, OH; and Matthew Lee Wiener**,** Acting Chairman, Vice Chairman & Executive Director, The Administrative Conference of the United States, Washington, DC **(Adjudication)**

Moderator

- Daniel Walters**,** Assistant Professor of Law, Penn State Law, University Park, PA

Friday November 19, 2021
10:45 am – 12:30 pm ET
CLE Session 14

Developments in Administrative Law Part 2
In this signature event of the Administrative Law Section's Fall Conference, scholars will present a comprehensive overview of the most important administrative law developments in the last twelve months. Administrative law moves fast, and the past year has seen many changes in the areas of constitutional law, the scope of judicial review, and access to the courts. In this panel—the second of two separate Developments panels—our speakers take up these topics and provide essential information about the past year's biggest changes. Keeping track of everything that happens in administrative agencies, in the courts, in Congress, and in the White House across all substantive fields can be next to impossible, especially in a presidential transition year, but you'll have a leg up when you attend this survey panel. Each of the panelists will not only cover the year's key developments but will also emphasize broader themes and trends that can only be seen by looking at developments together. The panelists' prepared remarks will be followed by a short question and answer session.

Speakers

- **William Funk,** Lewis & Clark Distinguished Professor of Law Emeritus, Lewis and Clark Law School, Portland, OR **(Constitutional Law)**
- Linda D. Jellum, Ellison Capers Palmer Sr. Endowed Chair in Tax Law, Mercer University School of Law, Macon, GA **(Judicial Review: Scope of Review)**
- Richard W. Murphy, AT&T Professor of Law, Texas Tech University School of Law, Lubbock, TX **(Judicial Review: Access to the Courts)**

Moderator

- Daniel Walters, Assistant Professor of Law, Penn State Law, University Park, PA

Friday November 19, 2021
1:00 pm – 2:30 pm ET
CLE Session 15

Artificial Intelligence in Agency Rulemaking
Technology has created new challenges and opportunities in the area of agency rulemaking. On the one hand, AI has now evolved to the point that parties could flood agencies with millions of unique, credible comments that would require enormous resources to process. On the other hand, natural language processing tools can allow agencies to much more efficiently process both computer-generated and human-generated comments. And AI and other technological tools can help agencies open up new avenues of public participation (including those targeting traditionally underrepresented groups) and more efficiently conduct retrospective review of existing regulations. This panel will explore how agencies can best navigate the challenges and exploit the opportunities. It will draw upon several recent recommendations and statements of the Administrative Conference of the United States, including those relating to AI, mass comments, and retrospective review.

Speakers

- Virginia A. Huth, Deputy Associate Administrator, Office of Regulation Management, General Services Administration, Washington, DC
- Michael A. Livermore, Edward F. Howrey, Professor of Law, University of Virginia School of Law, Charlottesville, VA
- Catherine M. Sharkey, Segal Family Profess of Regulatory Law and Policy, New York University School of Law, New York, NY

Moderator

- Reeve T. Bull, Research Director, Administrative Conference of the United States, Washington, DC

Friday November 19, 2021
1:00 pm – 2:30 pm ET
CLE Session 16

Troubling Issues Raised by the Supreme Court's Shadow Docket
As described in the attached essay, the Supreme Court has taken 45 major actions over the past five years without providing any reasons for the actions. The members of this panel will discuss the increasing frequency with which the Court is making major decisions without any accompanying opinion. The panel members will describe the Court's new practice and identify what they see as some of the concerns arising from this trend. Panelists will explain and evaluate the problems with that practice for rule-of-law values.

Speakers

- Richard Pierce, Lyle T. Alverson Professor of Law, George Washington University School of Law, Washington, DC
- Mila Sohoni, Associate Dean of Faculty and Professor of Law, University of San Diego School of Law, San Diego, CA
- Stephen Vladeck, Charles Alan Wright Chair in Federal Courts, University of Texas School of Law, Austin, TX

Moderator

- Mark Thomson, Deputy Research Director, Administrative Conference of the United States, Washington, DC

Friday November 19, 2021
1:00 pm – 2:30 pm ET
CLE Session 17

Executive Orders in Theory and Practice
Presidents value executive orders because they allow for unilateral action, but they have their limits. This panel will consider the practical and legal limits of executive orders in the modern administrative state. Topics will include the role of executive orders in presidential policymaking, how the bureaucracy shapes draft executive orders, how that internal development process changed in the Trump and Biden administrations, and what can be learned from recent litigation involving executive orders.

Speakers
- Arpit Garg, Deputy General Counsel, U.S. Office of Management and Budget, Washington, DC
- Aram Gavoor, Professorial Lecturer in Law, George Washington University Law School, Washington, DC
- Andrew Rudalevige, Thomas Brackett Reed Professor of Government & Chair, Department of Government and Legal Studies, Bowdoin College, Brunswick, ME
- Allison Zieve, General Counsel and Director of Litigation Group, Public Citizen, Washington, DC

Moderator
- Bridget C. E. Dooling, Research Professor, George Washington University Regulatory Studies Center, Washington, DC

Friday November 19, 2021
3:00 pm – 4:30 pm ET
CLE Session 18

Regulatory Policymaking in the Biden Administration
Motivated in part by Congress's failure to legislate, presidents in recent years have turned ever more to administrative law and the regulatory process to make major policy. And they have experimented with different modes of regulatory action beyond notice-and-comment rulemaking. These include agency adjudication, interim final rulemaking, subregulatory guidance, and executive orders and other presidential directives.

Immigration is one area where we have seen much experimentation. The Obama Administration's DACA and DAPA immigration policies come immediately to mind. So does the Trump Administration's attempted recission of DACA, among other regulatory or executive branch actions such as the travel ban, regulation of "sanctuary" cities, and major adjudicative and rulemaking policy changes to asylum and related relief. Notably, the Biden Administration has signaled a return to notice-and-comment rulemaking as the main regulatory mode for major immigration policymaking.

Every administration announces some signature regulatory policy initiatives, and the Biden Administration is no different, having commissioned OMB to make recommendations on a range of regulatory topics, including how to take the distributional effects of regulation into account and the role of OIRA in promoting regulatory initiatives. This panel will explore the debate over the proper regulatory processes for promulgating major policy and current developments in regulatory policymaking in the Biden Administration. It will also explore how courts and Congress may respond to these developments.

Speakers
- Jamie Conrad, Principal, Conrad Law & Policy, Washington, DC
- Katie Keith, Research Professor, Center on Health Insurance Reforms, Georgetown University, Washington, DC
- Maureen Ohlhausen, Partner, Baker Botts; former FTC Commissioner, Washington, DC
- Shoba Sivaprasad Wadhia, Associate Dean for Diversity, Equity, and Inclusion, Samuel Weiss Faculty Scholar; and Clinical Professor of Law, Penn State Law, University Park, PA

Moderator
- Christopher Walker, John W. Bricker Professor of Law, The Ohio State University, Columbus, OH

Friday November 19, 2021
3:00 pm – 4:30 pm ET
CLE Session 19

The Shifting Sands of Standing Doctrine
The Supreme Court's last few terms have included several decisions with interesting and potentially significant statements about standing doctrine. With Justices Gorsuch, Kavanaugh, and Barrett replacing Justices Scalia, Kennedy, and Ginsburg, respectively, are we seeing the beginnings of a generational shift in how the Supreme Court approaches standing questions? Our panelists will identify and discuss potential trends in the Supreme Court's standing jurisprudence.

Speakers
- Jonathan H. Adler, Johan Verheij Memorial Professor of Law and Director, Coleman P. Burke Center for Environmental Law, Case Western Reserve University School of Law, Cleveland, OH
- Seth Davis, Professor of Law, University of California Berkeley School of Law, Berkeley, CA
- Erin E. Murphy, Partner, Kirkland & Ellis, Washington, DC
- Richard J. Pierce, Jr., Lyle T. Alverson Professor of Law, George Washington University Law School, Washington, DC
- Christopher J. Walker, John W. Bricker Professor of Law, Director of Moritz Washington DC Summer Program, Columbus, OH

Moderator
- Linda D. Jellum, Ellison Capers Palmer Sr. Endowed Chair in Tax Law, Mercer University School of Law, Macon, GA

Friday November 19, 2021
3:00 pm – 4:30 pm ET
CLE Session 20 -- ETHICS

Keeping the Appearance of Propriety: Ethical Challenges in Regulatory Lawyering
This panel brings together experts who will identify and offer solutions to complex conflicts-of-interest issues encountered by lawyers who practice regulatory and administrative law. Conflicts of interest arise in many contexts for the regulatory lawyer. Sometimes those issues are the result of personal actions or financial holdings; but other times, they are the result of various other individuals meddling in regulatory decision making—meddling that can be politically or financially motivated.

Conflicts of interest should be a serious concern to lawyers in this practice area because violations live in a very dangerous neighborhood where criminal penalties reside. It is, therefore, of paramount importance for regulatory lawyers in the private and public sectors to learn how to identify and avoid running afoul of the law in this area.

This panel will provide legal and practical guidance on a number of topics: recusal from particular matters (including matters that may arise at specific stages of a large program or when specific parties are introduced), post-employment restrictions (e.g., former agency employees practicing before their former agencies), financial relationships with regulated entities, gifts that present the appearance of a conflict, etc. Finally, the panel will discuss how the pandemic/remote-work environment may have further complicated the ethics landscape for the regulatory lawyer.

Speakers

- Richard Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School, New York, NY
- Hon. Michael Oths, Magistrate Judge, Ada County, ID
- James J. Sandman, Distinguished Lecturer & Senior Consultant to the Future of the Profession Initiative, University of Pennsylvania Carey Law School, Philadelphia PA

Moderator

- Shawne C. McGibbon, General Counsel, Administrative Conference of the United States, Washington, DC

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