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What Does It Mean to Give an Award *to* Solicitor General Noel Francisco?



UNIVERSITY OF CHICAGO
LAW SCHOOL
FRIDAY, MAY 11TH, 2018
12:15 PM IN THE COURTROOM

Noel Francisco's work exemplifies a worldview that prioritizes the powerful over the marginalized at every turn.

It is telling that this legacy is what the Federalist Society considers worth celebrating. Is this surprising? Perhaps not. After all, in a revealing joke, Mr. Francisco quipped that **"I always say yes to the Federalist Society."**¹

The award Mr. Francisco will be receiving today is meant to commend his "dedication to public service and a commitment to the ideals of the Federalist Society: individual liberty, traditional values, and the rule of law."²

Let's explore what that really means – not just to us, but to the people Mr. Francisco's work really affects . . .

¹ The Federalist Society, *The Second Amendment: Enforcing the Heller Decision*, YouTube (Nov. 19, 2016), <https://youtu.be/PQCikqgeYI4?t=32m17s>.

² See Easterbrook *Receives 2014 Otis Award*, University of Chicago Law School (last visited May 10, 2018), <https://bit.ly/2Idphlo>.

A STRONG ADVOCATE FOR THE RICH AND POWERFUL

When he argued before the Supreme Court both prior to and after becoming solicitor general, **Mr. Francisco consistently fought to strip rights from LGBTQIA people,³ women,⁴ Muslims,⁵ workers,⁶ and voters.⁷**

Today, racial, religious, and gender and sexual identity discrimination are ever more rampant and pervasive. Poor people are routinely denied equal opportunities in the workplace and the voting booth. Throughout his professional life and in his current position as solicitor general, **Mr. Francisco has personified the repressive and regressive Trump agenda.**

³ Transcript of Oral Argument at 25–46, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (U.S. Dec. 5, 2017) (No. 16-111).

⁴ Transcript of Oral Argument at 25–44, *Zubik v. Burwell*, 136 S.Ct. 1557 (2016) (No. 14-1418).

⁵ Transcript of Oral Argument at 3–38, *Trump v. Hawaii* (U.S. Apr. 25, 2018) (No. 17-965).

⁶ Transcript of Oral Argument at 22–35, *Janus v. American Federation of State, County, and Municipal Employees, Council 31* (U.S. Feb. 26, 2018) (No. 16-1466).

⁷ Transcript of Oral Argument at 27–37, *Husted v. A. Philip Randolph Institute* (U.S. Jan. 10, 2018) (No. 16-980).

FIGHTING AGAINST THE MOST MARGINALIZED

Here's an example. As solicitor general, Mr. Francisco filed a petition—over internal objections—urging the Supreme Court to punish ACLU lawyers. Why? For their successful advocacy on behalf of a 17-year-old undocumented woman locked in immigration detention, desperately seeking an abortion.⁸

This decision illustrates his conviction that our government's power is best used not only to advance a **brutal, hardline program**, but to **retaliate against anyone who dares oppose it**.⁹

⁸ Petition for a Writ of Certiorari at 26–28, *Azar v. Garza* (U.S. Nov. 3, 2017) (No. 17-654). See Carrie Johnson, *As Trump Pressure Builds, Spotlight Falls on Solicitor General Noel Francisco*, NPR (May 3, 2018), <https://n.pr/2Kdx6Im> (“[P]eople had urged the solicitor general not to file the document, but he went ahead.”).

⁹ See Marty Lederman, *The SG's Remarkable Cert. Petition in Hargan v. Garza, the “Jane Doe” Abortion Case*, Balkinization (Nov. 8, 2017), <https://bit.ly/2rByeh2> (presenting the view of a former deputy assistant attorney general in the Department of Justice's Office of Legal Counsel that the filing violated professional norms to the point that it is “difficult to avoid the conclusion that that it is fundamentally a press release, for an audience other than the Justices of the Supreme Court itself”); David Luban, *DOJ's Stance on Illegal Immigrant Abortion Case Is Clear Jab at ACLU*, *The Hill* (Nov. 9, 2017), <https://bit.ly/2qvXsAf> (presenting the view of a Georgetown professor of legal ethics that “[a]t best, the Department of Justice accusations are an attempt to deflect responsibility from themselves to their opponents,” and “at worst, [they are] a conscious effort to deter others who dare to challenge the Trump administration”).

THIS MATTERS!

On a familiar note, we are all lucky enough to be receiving the same fine legal education that Mr. Francisco enjoyed. It hurts to see up close the unfortunate ends to which some people choose to put that hard-earned, privileged knowledge.

But perhaps more importantly, as future lawyers, we know that our work has real consequences. The choices we make about whose interests we want to devote our professional lives to advancing are significant. **Our choices matter.** Mr. Francisco has made his choice. The Federalist Society has made theirs. **And you can make yours.**

It might be easy enough, amidst the abstract rules and detached reasoning we learn in class, for us to forget the law's visceral implications. **But we can be sure that the people who suffer from Mr. Francisco's life's work never do.**

Which side are you on?

“Interpretations in law ... constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence.”¹⁰

—Robert M. Cover



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“HUMAN RIGHTS OVER PROPERTY INTERESTS” SINCE 1937

¹⁰ Robert M. Cover, *Violence and the Word*, 95 Yale L.J. 1601, 1601 (1986).