

# Where conservatives debate the law

*Federalist Society mined for clues to thoughts of Bush pick for high court*

**BY STEPHANIE DESMON**

**SUN STAFF**

ORIGINALLY PUBLISHED JULY 28, 2005

A lot of speculation has gone into a simple matter of fact: Has Judge John G. Roberts Jr., the president's nominee to the Supreme Court, been a member of the Federalist Society?

The society won't say for sure, citing privacy concerns, but this much is clear: Roberts, a federal appellate judge, has spoken to the group and, in the late 1990s, was part of a steering committee for its Washington chapter while working at a prestigious D.C. law firm. Whether he has paid his \$50-a-year dues might be beside the point.

Why does anyone care? What do Roberts' opponents think they can read into his association with the society, and why does the White House seem to be distancing its nominee from an influential group that counts its membership in the tens of thousands?

"It's a perfectly legitimate activity, but it's an activity that people understandably are curious" about, said Michael Gerhardt, a law professor at the University of North Carolina.

The Federalist Society is alternately described as a fraternity of like-minded conservatives who get together to think big thoughts about the Constitution and an evil cabal out to turn the judicial system on its head. The truth about the organization, which counts among its founding advisers Justice Antonin Scalia, and is led by former federal Judge Robert H. Bork and Republican Sen. Orrin G. Hatch of Utah, lies in between.

"It's an awfully big tent," said member Ronald D. Rotunda, a law professor at George Mason University. "If there's a secret handshake, they never told me."

## **Society's history**

The society was founded in 1982 by Steven G. Calabresi and three friends who were students at top law schools that he called "monolithically on the left." Of the dozens of faculty members at Yale Law School, where he was enrolled, Calabresi said just two were conservative and both had just been appointed to judgeships by President Ronald Reagan.

"We wanted to encourage a discussion of right-of-center ideas," Calabresi, now a law professor at Northwestern University and national co-chairman of the society, said this week.

He's astonished at what his "extracurricular activity and hobby" has become. It now comprises 35,000 lawyers, law students, academics and others who have participated in

its events, seminars and conventions. It has lawyers groups in many cities and student groups at most of the nation's law schools.

"The Society's main purpose," according to its Web site, "is to sponsor fair, serious and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what they wish it to be."

The society doesn't lobby. It produces papers on various aspects of the law - from environmental law to that on intellectual property - but they are only to be considered think pieces, not the position of the society as a whole, said its president, Eugene B. Meyer.

Each November, the lawyers branch holds a convention in Washington - this year's topic will be constitutional interpretation - and about 1,000 attend to hear debate on subjects such as "The Emergence of a New Civil Rights Agenda" and to socialize with other conservatives. In February or March, the law students have their convention - held at a different law school each year.

Having the Federalist Society on a law student's resume may be an indication of conservative leanings - as membership in the American Civil Liberties Union often signifies the opposite - and can be instrumental in obtaining clerkships with conservative judges, law professors said.

The society has been so masterful at bringing together parts of the conservative movement that a group of liberal lawyers has attempted to imitate it.

The Federalist Society doesn't just count conservatives among its speakers, though. Liberal foils are often invited to stimulate debate.

With little to go on about Roberts' views as he gears up for confirmation hearings before the Senate this summer, court watchers are trying to glean what hints they can. The Federalist Society, they say, offers a glimpse at his connections.

"The Federalist Society is a location where conservative legal thinkers get together to talk about their ideas, and the reason people are interested is that John Roberts has a relatively thin public record and people are trying to figure out what his core beliefs are," said Mark Tushnet, a professor at Georgetown University Law Center. "Association with the Federalist Society is one indication that those core beliefs are likely to be one version of conservatism.

"There are varieties of conservatism, and they're all pretty much represented in the Federalist Society," Tushnet said. "So the fact that he's a member or associated with it doesn't tell you a whole lot."

News outlets reported his membership in the days following his nomination to the court. The White House quickly obtained printed corrections. Over the weekend, a liberal group

started providing reporters with a copy of a directory of the group's steering committee from 1997-1998 that listed Roberts' name and phone number. White House press secretary Scott McClellan told reporters that Roberts doesn't remember "joining or paying dues" to the society.

## **Opposing views**

In some liberal corners, the Federalist Society is viewed with suspicion. Alfred Ross, a lawyer who runs the Institute for Democracy Studies, a think tank in New York, says the society is "far outside the mainstream" and tries to push a Bush agenda of giving more power to the states. He said Roberts is being coy because he doesn't want attention brought to the group's leanings.

"Sunlight hurts if you're trying to keep things in the dark," Ross said.

Shannen W. Coffin, a Federalist Society member and former Justice Department official, said he doesn't understand why an association with the group is being portrayed as a right-wing stain that should taint Roberts' credentials.

He said that in the past, members of the Senate Judiciary Committee have asked nominees to the federal bench and other high-level positions about their membership in the group almost as if they were asking about membership in the Communist Party.

"If they can't see the parallel to McCarthyism, it's self-evident, except the Federalist Society is something we should be aspiring to rather than running away from," Coffin said.

Gerhardt, who worked as an unpaid adviser to President Bill Clinton, said Roberts "is likely to sail through" the confirmation process.

Still, he said, an association with the society does say something about Roberts. "It is likely to say, 'This is a conservative and not just any kind of conservative - someone with proven conservative commitments."

"Signing a brief at the Justice Department is one thing. Voluntarily joining the Federalist Society is another."