

What the Federalist Society Stands For

Group Is Haven for Conservative Thought

By *Michael A. Fletcher*

Washington Post Staff Writer

Friday, July 29, 2005; Page A21

After President Bush tapped John G. Roberts Jr. for the Supreme Court, the nominee was widely reported to be a member of the Federalist Society -- an assertion that White House officials vigorously disputed.

When it was later disclosed that Roberts was once listed as serving on the steering committee of the group's Washington chapter, Bush aides continued to insist that Roberts has no recollection of ever being a full-fledged member of the conservative legal group.

The eagerness of the White House to distance Roberts from the Federalist Society baffled many conservatives. They believe the reaction fed a false perception that membership in the organization -- an important pillar of the conservative legal movement -- was something nefarious that would damage Roberts's chances of confirmation.

"Are you now or have you ever been a member of the Federalist Society?" asked Roger Pilon, a vice president at the libertarian Cato Institute, mocking the suspicion that swirls around the group. "The Republicans and the White House in particular should take this issue on head-on. What are we talking about here? The Communist Party? The Ku Klux Klan? This is an organization of conservative and libertarian law students, lawyers and legal scholars."

Launched 23 years ago by a group of conservative students who felt embattled by liberals on the campuses of some of the nation's most elite law schools, the Federalist Society for Law and Public Policy Studies has grown into one of the nation's most influential legal organizations. The group claims more than 35,000 members, an increasing number of whom work in the highest councils of the federal government. Many Justice Department lawyers, White House attorneys, Supreme Court clerks and judges are affiliated with the group. Supreme Court Justice Antonin Scalia was a close adviser to the organization while he was a University of Chicago law professor.

Not only has the Federalist Society become a source of legal talent for Republican administrations, but through its frequent on-campus seminars and forums for practicing lawyers, the group is also credited with popularizing methods of legal analysis now widely advocated by many conservatives and employed by an increasing number of judges. Theories such as originalism, which holds that the Constitution has a fixed and knowable meaning rather than an evolving meaning that should adapt to contemporary times, is an idea put forward by many Federalist members. Using that standard, some judges have challenged previous court rulings allowing broad federal control over states on regulatory and civil rights issues, and maintaining the legal wall separating church and state.

"I think the Federalist Society and some other conservative organizations have played a really important role in changing the terms of legal and, ultimately, political debate in the United States," said Peter J. Rubin, a Georgetown University law professor and founder of the American Constitution Society, which aims to do for liberals and centrists what the Federalist Society has done for conservatives and libertarians.

The growing influence of the Federalist Society has coincided with the rise of a network of conservative research organizations and public interest law firms that together have challenged hot-button issues such as affirmative action and prohibitions against publicly funded school vouchers.

"I think there is some concern about what the ideology of the Federalist Society is," Rubin said. "I think there is some sensitivity that this is considered the hard core of the extreme right."

The idea that the Federalist Society would one day play a central role in the national legal debate, or that membership in the organization would be a point of contention for a Supreme Court nominee, seemed far-fetched when the group was formed by a law students in the early 1980s.

Northwestern University law professor Steven G. Calabresi, chairman and a founder of the group, said he started the organization after determining that he was one of few conservatives during his student days at Yale Law School. He said that notion crystallized after the 1980 election of Ronald Reagan when a professor asked a class of 90 who had voted for the new president. "I and one other person raised our hands," Calabresi said.

Calabresi envisioned the organization as a vehicle for bringing conservative and libertarian legal thinkers to campus to share their ideas and counteract what he saw as a liberal bias. The idea spread to other schools, notably the University of Chicago, and now there are chapters at the vast majority of the nation's 191 law schools.

Through the years, the Federalist Society, which has a \$5 million budget, has also received substantial financial backing from a network of foundations that has supported a diverse menu of conservative causes, including promoting school vouchers and investigating the personal life of former president Bill Clinton. These include the John M. Olin and Charles G. Koch foundations. Conservative activist Richard Mellon Scaife is also a major benefactor.

At the same time, the society's provocative legal forums and commitment to discussing legal principles have attracted sizable donations from companies such as Verizon, Microsoft and DaimlerChrysler. "From the beginning, my concern and the organization's concern has been about the ideas," said Eugene B. Meyer, the group's president. "We try to focus on constitutional principles, getting ideas heard and discussed."

For all its influence, Federalist Society supporters -- who include a handful of liberals -- point out that the organization does not litigate cases or lobby the government, even as it has been closely identified with conservative politics. Nor does it explicitly support a particular policy agenda beyond its ideas for limiting the power of government and emphasizing that the courts should "say what the law is, not what it should be."

"The Federalist Society has become kind of mythologized," said Nadine Strossen, president of the American Civil Liberties Union, who often speaks at the group's events. "For those who don't really know what they do, the ACLU can be shorthand for the liberal agenda and the Federalist Society can be shorthand for the conservative legal agenda."