



Balance Of Power Swings To Liberal Legal Group

by Ari Shapiro

Weekend Edition Saturday, January 3, 2009 · The past eight years were a good time to be in the Federalist Society. Members of that conservative legal group occupied every level of the Bush administration. Now that the Democrats are ascending, a different legal group is on the rise in Washington: the American Constitution Society.

"This is just a tremendous opportunity for us," says University of California Berkeley law professor Goodwin Liu. He's the new chairman of the board at ACS.

"Whereas I think in the last seven or eight years we had mostly been playing defense, in the sense of trying to prevent as many — in our view — bad things from happening, now we have the opportunity to actually get our ideas and the progressive vision of the Constitution and of law and policy into practice," Liu says.

At The Height Of Power

The perceived influence of the Federalist Society in the Bush administration infuriated some liberals. In 2005, Ralph Neas, then-president of People for the American Way, said the society's reach extended throughout the U.S. government.

"The Federalist Society once was on the outside; it now is on the inside," Neas told WHYY's *Fresh Air*. "It runs the White House counsel's office; it runs the Department of Justice; it runs most of the federal agencies."

The Federalist Society would dispute that description. The organization didn't literally run any part of government. But there's no question that in the Bush administration, the Society's members were among the most powerful people in Washington.

Essentially, the Federalist Society promotes a literal reading of the Constitution. ACS, by contrast, believes people should consider the changes to society over the past 200 years when they interpret the Constitution.

The groups have similar structures. In fact, the ACS was modeled on the Federalist Society. Both have debates, lectures and conferences to discuss how to approach the law.

Does Membership Have Its Privileges?

President-elect Barack Obama has already picked ACS Executive Director Lisa Brown as White House staff secretary. ACS board member Eric Holder is his choice for attorney general.

"The fact that the new president is tapping so many already from amongst our midst is very exciting, and I think, frankly, there's more to come," says Robert Raben, an ACS board member. Raben has been active in the society since it was created eight years ago. "But to be clear, there is no litmus test. There should be no litmus test; there's no list. Membership in a particular organization should never be a criteria for entrance to public service. Never."

It's important for Raben to say that because in the past eight years, some Bush administration officials did use a litmus test for jobs that were supposed to be apolitical.

The Justice Department's inspector general found that managers there regularly hired conservative Federalist Society members over liberal ACS members for nonpartisan jobs, even if the ACS members were more qualified.

That violates federal laws and civil service rules. ACS Chairman Liu says it won't happen again.

"I have a lot of confidence, actually, that the new people in the Justice Department and elsewhere in the government are keenly aware of that issue, and that in the hiring of career staff, that will not be an issue," he says.

"However," Liu says, "in the hiring of political staff as well as, frankly, in the nomination of judges, the decision-makers are entitled to consider a broad range of factors, including the political backgrounds or affiliations of the candidate."

This sounds a lot like the argument that Federalist Society leaders made during the past eight years. They say people who gravitate toward these societies also gravitate to government work, but that the society isn't the reason they're tapped for government jobs.

"I don't think Eric Holder is going to be attorney general because he was an ACS board member any more than I think Spence Abraham was appointed energy secretary because he'd been a Federalist Society board member earlier," says Eugene Meyer, who has been president of the Federalist Society since its inception in the early '80s.

The Mission Stays The Same

Now, as the ACS gains strength, the Federalist Society's philosophy is losing clout in Washington. Meyer isn't bothered.

"My view is that our role basically remains much the same, which is to vigorously examine and look at such ideas as interpreting the Constitution according to the original understanding of what it meant," he says.

The difference is that now those discussions will happen from the outside looking in — just as members of the American Constitution Society did for the past eight years.