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A new day for liberal legal group?

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Eight years after the Clintonite legal elite were cast out to the wilds of academia and white-collar private practice by *Bush v. Gore*, a new optimism was on display at the eighth annual national convention of the American Constitution Society, which convened a host of law professors, lawyers and judges — many of them former Clinton administration officials — at the D.C. Hyatt Regency over the past three days.

This year's keynote speaker was Eric Holder, a co-chair of Barack Obama's campaign, a member of his vice presidential search committee and the cover subject of the current issue of *The American Lawyer*, whose headline asks, "Is he the next AG?"

"With this new administration that will be taking its place in January of 2009, we're going to be looking for people who share our values, and I suspect those people are here today," Holder told the receptive crowd.

The opening panel, "What's at Stake: Law and Justice Policies in a New Administration," was moderated by Elena Kagan, the dean of Harvard Law School who is often mentioned as a potential Supreme Court nominee under a Democratic president, a nomination most observers had predicted was more likely to come from a President Hillary Rodham Clinton. The panel included President Bill Clinton's Deputy Attorney General Jamie Gorelick and Chief of Staff John Podesta, now the president of the Center for American Progress, which rents the ACS office space in its building.

The attendees "are the people who hope and believe they'll be Barack Obama's legal apparatus," said Thomas Goldstein, an ACS member and the co-head of Akin Gump Strauss Hauer & Feld's Supreme Court practice. "But I don't think anyone's necessarily asked Obama."

The convention drew "largely the same group of people" as in previous years, said Ron Klain, an ACS board member and former chief of staff to Vice President Al Gore. "Four years ago, this was the same group that was going to form the backbone of the Kerry administration ... [this isn't] some special gathering in honor of the Obama nomination."

Like other left-leaning groups that have emerged since 2000, ACS actively emulates a successful organ of the conservative movement, in its case the Federalist Society, the legal organization founded in the late 1970s by ideologically isolated law students with aid from conservative legal stars such as future Supreme Court nominee Robert Bork and future Supreme Court Associate Justice Antonin Scalia. The group helped incubate Supreme Court Chief Justice John Roberts and Associate Justice Samuel Alito, and a raft of other prominent conservative lawyers.

"ACS was founded on the heels of the Supreme Court decision on *Bush v. Gore*. It was the wake-up call to progressives on how successful the Federalist Society and conservative legal movement has been," says Lisa Brown, the group's executive director and a former counsel to Gore. "And I say that in a complimentary fashion."

Though both groups were started by students, the Federalist Society only slowly gained powerful and prominent supporters and members, while the ACS began under the watch of Georgetown University professor Peter Rubin, who had previously served as counsel to Gore in *Bush v. Palm Beach County Canvassing Board* and *Bush v. Gore*, and with a board packed with top lawyers who had worked for the Clinton administration.

Steven Teles, author of "The Rise of the [Conservative Legal Movement](#)," notes that "The society started out at the bottom of the profession, with students, and brought in legal elites as they went along — ACS's trajectory seems to have been the reverse."

Brown said that ACS was less of an ideological vanguard than an attempt to counterbalance years of conservative political success culminating in the appointments of Alito and Roberts. "We needed to do something to push back on that, and to balance the conversation," she said.

But though ACS has grown to 6,000 members, 30 lawyers' groups and more than 160 student chapters, including more than half of current Yale Law students, it has yet to match the influence of its model.

When asked for examples of ACS shifting the debate, Brown pointed to specific political moments: research the group provided to Sen. Joseph I. Lieberman (I-Conn.) when he held a hearing on D.C. voting rights and their role during the 2005 Roberts confirmation battle. "There was a lot of conversation about how judicial nominees shouldn't answer questions about substance," Brown said, as Democratic senators and questioners tried to tease out Roberts' views on cases such as *Roe v. Wade*. "One of our members went back through all the hearings" that Ruth Bader Ginsburg went through in 1993, "demonstrating that in fact she had answered a lot of [substantial] questions."

"Absent ACS answering that question, that would've been a one-sided dialogue," Brown said. Roberts was confirmed by a vote of 78-22, and Alito was confirmed months later.

Although many of D.C.'s liberal legal organizations are single-issue groups, ACS aims to provide a middle ground between advocacy and the academy. "There are people in the advocacy community, policymakers, people in the press, who rely on" ACS, said Virginia E. Sloan, founder of the Constitution Project, which tries to find consensus between conservatives and liberals on constitutional debates. And despite the obvious political undercurrent — Sen. Patrick Leahy (D-Vt.) spoke at a Friday lunch about the importance of Supreme Court nominees — most of the panels were technical discussions of issues such as criminal sentencing, corporate governance and free speech.

"On the conservative end, the Federalist Society is where things happen," said David Lat, who served as vice chairman of the Yale Law School Federalist Society chapter when he was a student and currently edits Abovethelaw.com, a legal news and gossip blog that focuses on the judiciary. "ACS, I think, aspires to the weight and connectivity that the Federalist Society has in conservative circles, but I don't think they're quite there yet."

"The Federalist Society has had the benefit that conservatives care a ton about judges as a political issue," Goldstein said. "The people on the left never embraced the importance of judicial appointments in the same way."

While Obama is a former University of Chicago senior lecturer, he rarely brings up judicial appointments on the trail, and neither did Hillary Clinton. John McCain — who frequently mentions that he would appoint judges like Roberts and Alito — last month delivered a high-profile speech on the dangers of "judicial activism" while flanked by conservative legal stalwarts Fred Thompson and Theodore Olson.

Conservative lawyers have mostly welcomed the group, though some are skeptical of the void it filled. "ACS has a less compelling reason for its existence than the Federalist Society does because its vision of law is so redundant of the dominant forces in the legal academy," said Federalist Society member Edward Whelan, a former Bush administration lawyer and current president of the Ethics and Public Policy Center, a conservative think tank.

Before the ACS, liberals had no comparable apparatus to the Federalist Society for the exchange of ideological ideas — or for developing and maintaining relationships and careers. Lat recalls that at last year's conference, "I was sitting in the vicinity of one prominent liberal judge and she was chatting with a former clerk to another liberal judge about a couple prospects she had on her radar."