

Liberal legal group comes to the fore

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Sixteen appointees and advisers helping president-elect Barack Obama's Justice Department transition efforts all recently sat on the board of an organization little known outside legal circles: The American Constitution Society for Law and Policy.

The liberal legal network, which blossomed during eight years of Democratic exile, counts as its veterans Obama's choice for attorney general, Eric Holder; Vice President-elect Joe Biden's chief of staff, Ron Klain; and future White House Staff Secretary Lisa Brown.

Seven other recent board members are advising the incoming administration on legal, education, and labor-related issues. Theresa Wynn Roseborough is rumored to be a top candidate for solicitor general. And, at least two other members were also rumored to be in the running for key Cabinet posts.

The ACS links also reach far into Obama's past legal career. Harvard University law professor Laurence Tribe, a member of the ACS Board of Advisors, taught Obama constitutional law and later advised his campaign on legal issues. Geoffrey Stone hired the president-elect for his first teaching post at the University of Chicago law school. And Abner Mikva, who first met Obama at the University of Chicago, was a political mentor during the president-elect's failed bid for Congress in 2000.

"It's a natural thing to see that the administration would tap people who are aligned in some sense with this vision," said the society's incoming Board Chairman Goodwin Liu, noting that the group is "not in an intentional way a staging ground for campaign workers or people who are going to work in the administration."

Holder put it a slightly different way when he appeared at the group's annual meeting in June.

"With this new administration that will be taking its place in 2009, we're going to be looking for people who share our values," he told the 350 member audience. "I suspect that a substantial number of those people are here today."

The society was modeled after the conservative Federalist Society, the go-to legal network for Republican administrations, and quickly became a natural holding ground for Democrats during the Bush years.

"ACS has functioned as a place and organization to keep some of us together, both physically at convention and conferences and also intellectually by developing issues,

papers, and talking about legal theory,” said Dawn Johnsen, an outgoing board member who’s helping review the Justice Department for the incoming administration.

In recent months, the society has become an informal Justice Department in waiting, laying out what some Washington lawyers expect will be the broad contours of the next administration’s legal policy.

In his June address before the group, Holder described his vision for reversing what he called the “the disastrous course” set by the Bush administration, advising the next administration to close the Guantanamo Bay military prison, declare that the U.S. does not torture, and end warrantless domestic surveillance - all positions backed by Obama.

Future Deputy White House Counsel Cassandra Butts co-authored an ACS issue paper proposing policies to address the legal challenges posed by current identification requirements at polls, airports and elsewhere. The paper was featured in at October event entitled “A Fresh Start for a New Administration: Reforming Law and Justice Policies.”

The Society also hired Obama’s future domestic policy adviser, Melody Barnes, to lobby Congress on civil rights and civil liberty issues in 2003 and 2004. The group paid Barnes, then a lobbyist for a firm owned by board member Robert Raben, about \$38,000 for her work.

The society's leaders were sensitive to the idea that membership was a mandatory credential for aspiring administration employees, taking pains to distinguish Obama’s hiring process from that of the current administration. During the Bush years, the Justice Department considered applicant’s affiliations with ideological groups, like the Federalist Society, even when hiring for nonpartisan positions, a practice that later ballooned into a major political scandal.

“I don’t think that American Constitutional Society is going to be the kind of political credential that the Federalist Society has become during the Bush years,” said Mikva. “It’s just someplace that’s natural for the administration to turn to for new ideas.”

The Society was founded in 1999 by Georgetown law professor Peter Rubin, now a Massachusetts judge. The group aimed to counter what supporters saw as a rising tide of conservatism in the legal world. It expanded into a national organization in 2001, when progressive lawyers were galvanized by the Supreme Court’s 2000 Bush v. Gore decision, which ended the Florida recount and delivered the White House to Bush. A July 2001 conference held at Georgetown attracted over 1,000 attendees, including sitting judges, senators, and other legal superstars.

Today, the group regularly hosts conferences, produces white papers, runs a journal at Harvard Law School, and boasts 165 law school chapters and 30 city chapters. ACS has roughly 24,000 recipients, according to the group, and 13,000 dues-paying members.

The group takes no position on individual cases or specific policy proposals. Rather, it's modeled around a broad legal philosophy that eschews strict constitutionalism for what Liu calls the "lived circumstances of the law" or including the consideration of outside factors in constitutional law cases.

The group's explosive growth does not worry Eugene Meyer, head of the conservative Federalist Society.

"Frankly, we have grown fairly steadily regardless of who's in office," said Meyer.

"Whoever may be in the White House, whoever may be in Congress, the type conversations we want to generate are important."

And the society feels confident that it will play a role in Washington, even after all the new administration jobs are filled.

"We can provide the kind of intellectual center for arguing about some of the ideas that are about to go into the reform of our legal system," said Mikva. "ACS can be the ongoing ideas factory."