

**Received(Date):** 1 MAY 2001 17:59:58

**From:** Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )  
**To:** Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )  
**Cc:** alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] ), timothy e. flanagan ( CN=timothy e. flanagan/OU=who/O=eop@eop [ WHO ] ), brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] ), helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] ), h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] ), stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] ), noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] ), rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )  
**Subject:** : Re: FW: Bush and Judiciary; "tort reformers" head administration

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)  
CREATOR: Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )  
CREATION DATE/TIME: 1-MAY-2001 17:59:58.00  
SUBJECT:: Re: FW: Bush and Judiciary; "tort reformers" head administration  
TO: Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN  
CC: alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )  
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CC: noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )  
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READ: UNKNOWN  
##### End Original ARMS Header #####

I love the British press. It's so enthusiastic and unconstrained by facts.

Bradford A. Berenson  
05/01/2001 05:10:57 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: FW: Bush and Judiciary; "tort reformers" head administration

FYI: this is an article from the London Guardian that trial lawyers are blast e-mailing across the country. Our man in Montana got it from a

friend of his.

----- Forwarded by Bradford A. Berenson/WHO/EOP on  
05/01/2001 05:07 PM -----

Julie Edgar <jedgar@bkhlaw.com>  
05/01/2001 05:03:49 PM  
Record Type: Record

To: Bradford A. Berenson/WHO/EOP  
cc:  
Subject: FW: Bush and Judiciary; "tort reformers" head administration

I am forwarding this e-mail to you at the request of Sam Haddon.

-----Original Message-----  
From: Al\_Smith\_MTLA [mailto:(b)(6)]  
Sent: Monday, April 30, 2001 12:02 PM  
To: "All MTLA Members"  
Subject: Bush and Judiciary; "tort reformers" head administration

MTLA members - FYI - Following are two articles on the current  
administration that are applicable to trial lawyers.

Al Smith

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FROM THE GUARDIAN IN LONDON  
Cabal of lawyers drives Bush further to right  
The Bush Files

Ed Vulliamy  
Sunday April 29, 2001  
The Observer

George W. Bush's administration - 100 days old today - is being hailed as  
his country's most ideologically right-wing of the past 100 years, across a  
spectrum of policies ranging from the environment to labour, civil rights  
to social issues.

But the rip tide that cuts beneath all Bush's plans to transform the  
landscape, with more durable results than any other policy, is the  
hijacking - behind closed doors - of the US judiciary.

The administration - to which power was in effect granted by the Supreme  
Court in a controversial ruling last December - is preparing not only to  
set the highest court in the land on course for a conservative generation,  
but has quietly revolutionised the way in which all federal judges are  
appointed to benches across the country, guaranteeing politically  
right-wing selections.

At the core of this manoeuvre, which will weave a new fabric in US society,  
is a tightly organised right-wing lawyers' group which has come in from the



fringes to the core of the administration.

It is called the Federalist Society, of which Bush's Solicitor General Theodore Olson, Interior Secretary Gale Norton, Energy Secretary Spencer Abraham and Senate Judiciary Committee chairman Orrin Hatch are leading members - as are many members of the new White House counsel team.

Stalwart conservative judges on the Supreme Court Anthony Scalia and Clarence Thomas are patrons and guests of the group, and Attorney General John Ashcroft is a close affiliate.

The emergence of the Federalists is traced in a study by the New York-based Institute for Democracy Studies, which concludes that 'extreme conservative organisations sponsoring a combination of right-wing litigation and advocacy are opening the way for a radical transformation of the American legal system'.

Ralph Neas, President of the Washington think-tank People for the American Way, says that 'the White House counsel's office and the Department of Justice are being turned over to the Federalist Society, a bastion of far-right legal thought'.

The Federalist Society's philosophy underpins, and is ready to steer, all the administration's cornerstone policies on deregulation of environmental and labour law, education, civil rights and abortion. The author of the IDS study, Julie Gerchik, says that 'the agenda is to dismantle everything built since the New Deal'. There was even a Federalist panel in Chicago on 28 March entitled 'Rolling Back the New Deal'.

'Where is the divide between politics and the law here?' says Gerchik. 'This is politics enforced by legal mechanisms.'

The society has already had an impact on major decisions: when Bush pulled America out of the Kyoto treaty on climate change, he did so after reading what he called 'important new information'. That information was a report commissioned by David McIntosh, a Federalist Society founder, arguing that toxic emissions were exaggerated and warning of costs to business.

But above all, the society has ousted the legal establishment which - in the form of the profession's traditional representative body, the American Bar Association - has helped oversee the selection of judges and guarantee the profession's integrity for five decades.

Since Eisenhower, the ABA has had a semi-official role in advising on judicial appointments. But in a sudden, little-noticed move last month, President Bush cut the ABA entirely out of the appointment process. The Federalists were delighted, having for years targeted the association (in a special publication, ABA Watch) for such issues as its support for gun control and opposition to the death penalty.

The ABA's removal creates a vacuum in the recommendation of judges, and into it has moved a 15-person committee formed between the White House and Justice Department urgently to seek candidates for some 100 vacancies to federal benches (one-eighth of all judges).

This recommending committee is firmly in the hands of the Federalist

Society, controlled by Deputy Attorney General Larry Thompson, a society member, and others. Sources add that some 70 judges have so far been interviewed, a quarter of them recommended by the Federalist Society.

The society was founded 20 years ago with a mission to beat back what it saw as a liberal orthodoxy permeating public policy and the courts since the Civil Rights movement.

Society members propelled the attempted impeachment of President Clinton over the Lewinsky scandal. Prosecutor Kenneth Starr was an active member, as were many of his team.

Its major benefactor is the Scaife Foundation, controlled by billionaire conservative magnate Richard Mellon Scaife, who deploys his fortunes to advance right-wing causes. Among those causes was the 'Arkansas Project', initiated by Scaife at a cost of \$24 million to mount the suit by Paula Jones - and eventually Lewinsky - against the President.

The first meeting between Scaife and the 'Arkansas Project' was chaired by Theodore Olson, who steered it and is now Solicitor General of the US, the country's most influential lawyer, head of the Federalist Society's Washington chapter, based in the White House.

Olson cut his teeth under Starr in the Reagan administration, and was counsel to Reagan during the Iran-Contra affair. He was himself investigated (but not indicted) by a special prosecutor for lying to Congress, and went on to become chairman of the American Spectator magazine, which 'broke' the Paula Jones story. His wife Barbara is a pivot of the Washington right-wing social circuit, herself chairwoman of a conservative women's organisation funded by Scaife.

>From this background, Olson emerged into the public glare as George Bush's knight and mouthpiece, triumphantly arguing the President's case against the Florida recounts in the Supreme Court and ultimately winning him the election.

The Federalists' other channel to power has been through clerkships at the Supreme Court under sympathetic judges Scalia, Thomas, Kennedy - and Chief Justice William Rehnquist.

Many saw Bush's victory as a watershed moment when the judges put politics above the law. But it is to the future of the court over the next four years - and thence a generation - that the Federalists are looking.

The backgrounds of the Supreme Court's main conservatives are contentious: Justice Rehnquist was author of the memo during the historic Brown vs. Board of Education case in 1952 supporting racial segregation, saying: 'It is about time the court faced the fact that white people in the South don't like the coloured people'.

But Rehnquist and the court's other conservatives have always toiled in counterpoint with liberal appointees and moderate Republicans. However, only this week, a 5-4 verdict on an apparently innocuous case about driving licences in Alabama cut a major inroad into the 1964 Civil Rights Act, ruling that individuals cannot now sue federal agencies over discrimination cases.



In the hands of Bush's legal team now are two possible appointments during his term of office which could swing the court decisively to the right.

The Federalists are not the only group taking care to ensure a conservative federal judiciary. Three right-wing organisations funded by the Scaife Foundation have organised a series of junkets so that judges can attend political seminars on the advantages of deregulation in environment, labour and civil rights law.

They are the Law and Economics Centre, the Liberty Fund and FREE - the Foundation for Research on Economics and the Environment, which funded all-expenses-paid trips, some lasting as long as two weeks, to luxury venues, featuring golf and horse-riding for the justices.

As well as money from the ubiquitous Scaife family, both the FREE and the LEC trips for judges are bountifully funded by oil giants Shell and Exxon, and Philip Morris cigarettes.

Many of the judges who enjoyed them failed - by their own admission - to disclose these junkets on their annual financial reports, as required by their own federal ethics laws, according to the Washington-based watchdog group Community Rights Counsel.

The CRC found that judges' attendance at the junket seminars 'increased significantly between 1992 and 1998' with a record 88 judges taking trips in 1998. With 800 active judges at any time, this means that about 10 per cent of the federal judiciary takes a trip each year.

An exhaustive study by the CRC of seminars and subsequent verdicts by judges who attended them finds 'doctrinal shifts' and 'considerable evidence that the education judges receive' has led to 'a strand of judicial activism that is distinctly pro-market, clearly hostile to federal environmental regulations and decidedly in keeping with the curriculum of FREE seminars'.

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Wednesday, April 25, 2001

"THE WLF GOES INSIDE"

The WLF might sound like another spin-off from the World Wrestling Federation, but it's really in a much bigger league although it does engage in a kind of wrestling.

Instead of wearing wrestling tights and strutting around a ring, however, the performers in the WLF wear pinstripe suits and strut around courthouses. They are lawyers for the Washington Legal Foundation, a corporate front group that specializes in clogging the courts and administrative agencies with tons of legal filings that are anti-consumer, anti-worker, and anti-environment.

For example, WLF lawyers have recently intervened in auto-safety lawsuits on behalf of Honda and Goodyear, it tried to prevent financial punishment of Exxon for its catastrophic Valdez oil spill, and it stood up for Brown & Williamson Tobacco Company in a case against the FDA. In addition, the foundation produces articles and "educational" programs spouting corporate propaganda on such issues as the public's right-to-know laws and patients-rights laws. It is also a major proponent of corporate "civil

liberties" and corporate "free speech." It just might be that WLF's fervor for all-things-corporate stems from the fact that the bulk of its funding flows from corporate interests.

Now, this anti-government outsider has quietly moved inside, as George W. Bush—who also embraces all-things-corporate—has placed many WLFers into key positions. For example cabinet members John Ashcroft, Gale Norton, Tommie Thompson, and Spencer Abraham serve on WLF advisory boards, and Energy Secretary Abraham and Interior Secretary Norton also are listed as "educational program speakers" for this cozy corporate club. Attorney General Ashcroft also is staffing the justice department with WLF alums, including his deputy AG, and his assistant AG for anti-trust

This is Jim Hightower saying...WLF's infiltration of the Bush presidency represents the continuing corporatization of our government.

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Official Position of WLF from their website.

The Washington Legal Foundation (WLF) has one goal: to defend and promote the principles of free enterprise and individual rights.

Since it was founded 24 years ago, WLF has developed into the nation's preeminent center for public interest law—advocating free-enterprise principles, limited government, property rights, and reform of the civil and criminal justice system.

WLF is a unique institution with three essential cornerstone programs:

- shaping public policy through aggressive litigation and advocacy;
- publishing timely legal studies; and
- educating policy-makers and the public through extensive communications outreach.

<http://www.wlf.org/>

Thanks, Al Smith, Executive Director, Montana Trial Lawyers Association

Message Sent

To:

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