

Two years ago the Washington Monthly published an article entitled "The Conservative Cabal That's Transforming American Law," which cited a 1999 decision by a panel of the D.C. Circuit's Court of Appeals as the "network's most far-reaching victory in recent years". The decision overturned some of the EPA's clean-air standards on the grounds that it was unconstitutional for Congress to delegate legislative authority to the executive branch. C. Boyden Gray, a former White House Counsel for the first President Bush and a member of the Federalist Society's Board of Visitors, filed an amicus brief making the winning argument.

However, this is not the smoking gun case that opponents of the Federalist Society would have us believe it to be to prove that it is part of the vast right wing conservative conspiracy. First, the case was overturned on appeal by the Supreme Court, in a decision written by Justice Antonin Scalia, a frequent participant in Federalist Society activities who was the faculty advisor to the organization when he taught at the University of Chicago.

Second, the Washington Monthly piece also attacked Boyden Gray as a water carrier for the Federalist Society for advancing Microsoft's effort against antitrust enforcement. Of course, Mr. Gray serves on the Society's Board of Visitors with Robert Bork, who has been Microsoft's chief intellectual adversary.

Not quite the vast right wing conspiracy hobgoblin some of my colleagues would have the American people believe in.

A close examination of the Federalist Society reveals not a tight-knit organization that demands ideological unity, but an association of lawyers, much like the early bar associations that first appeared in this country in the late 19th century, made up of individuals from across the political spectrum who are committed to the principles of freedom and the rule of law according to the Constitution. As a former co-chairman myself, I applaud that the President has sought out its members to fill the federal bench.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

60 DIVERSE PARTICIPANTS IN FEDERALIST SOCIETY EVENTS

SUPREME COURT JUSTICES

1. Justice Stephen Breyer
2. Justice Ruth Bader Ginsburg
3. Justice Anthony Kennedy
4. Justice Antonin Scalia
5. Justice Clarence Thomas

CABINET MEMBERS

6. Griffin Bell
7. Abner Mikva
8. Bernard Nussbaum
9. Zbigniew Brezinski
10. Alan Keyes

ELECTED

11. Barney Frank
12. Michael Dukakis
13. George Pataki

14. Eugene McCarthy
15. Charles Robb
16. Jim Wright
17. Mayor Willie Brown

JUDGES

18. Robert Bork
19. Guido Calabresi
20. Richard Posner
21. Alex Kozinski
22. Pat Wald
23. Stephen Williams

LAW SCHOOL DEANS

24. Robert Clark—Harvard
25. Anthony Kronman—Yale
26. Paul Brest—Stanford
27. John Sexton—NYU
28. Geoffrey Stone—Chicago

LAW SCHOOL PROFESSORS

29. Alan Dershowitz—Harvard
30. Laurence Tribe—Harvard
31. Cass Sunstein—Chicago

INTEREST GROUPS

32. Nadine Strossen—President, ACLU
33. Steve Shapiro—General Counsel, ACLU
34. Ralph Nader—Public Citizen Litigation Group
35. Patricia Ireland—Fmr. President, NOW
36. Anthony Podesta—People for the American Way
37. Martha Barnett—Fmr. President, ABA
38. George Bushnell—Fmr. President, ABA
39. Robert Raven—Fmr. President, ABA
40. Talbot "Sandy" D'Alemberte—Fmr. President, ABA
41. Larry Gold—Assoc. General Counsel, AFL-CIO
42. Damon Silvers—Assoc. General Counsel, AFL-CIO
43. Nan Aron—Exec. Dir., Alliance for Justice

44. Richard Sincere—Pres., Gays and Lesbians for Individual Liberty

45. Michael Myers—NY Civil Rights Commission

46. Samuel Jordan—Fmr. Dir., Program to Abolish the Death Penalty—Amnesty Int'l

47. Marcia Greenburger—Co. Pres., National Women's Law Center

48. Victor Schwartz—Gen. Cnsl., American Tort Reform Assoc.

49. Linda Chavez—Pres., Center for Equal Opportunity

50. Ward Connerly—Founder/Chairman, American Civil Rights Initiative

51. Thomas Sowell—Hoover Institute

52. Michael Horowitz—Hudson Institute

53. Clint Bolick—VP, Institute for Justice

COLUMNISTS

54. Christopher Hitchens—The Nation

55. Michael Kinsley—Slate/The New Republic

56. Juan Williams—NPR/The Washington Post

57. George Will—ABC News

58. Bill Kristol—The Weekly Standard

59. Nat Hentoff—The Village Voice

60. Richard Cohen—The Washington Post

FURTHER EVIDENCE THAT ONE DAY IS NOT ENOUGH TIME

Mr. LEVIN. Mr. President, yesterday a report was released by the General Accounting Office, Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records. The report provides evidence that one day is simply not enough time for law enforcement agencies to complete thorough and accurate analysis of purchase records. Under current National Instant Criminal Background Check System regulations, records of allowed firearms sales can be retained for up to 90 days, after which the records must be destroyed. On July 6, 2001, the Department of Justice published proposed changes to the NICS regulations that would reduce the maximum retention period from 90 days to only one day.

Yesterday's GAO report found that during the first 6 months in which the 90-day retention policy was in effect, the Federal Bureau of Investigation used the records to launch 235 firearm-retrieval actions, an investigation and coordinated attempt to retrieve a firearm with state or local law enforcement assistance. Of the 235 firearm-retrieval actions, 228 or 97 percent could have not been initiated under the one-day record destruction policy. An additional 179 firearm-retrieval actions could have been initiated under the 90-day record retention policy, according to records, but the firearm had not yet been transferred to the buyer. The one-day destruction policy, according to the report, would make it difficult for the FBI to assist law enforcement agencies in gun-related investigations, and ultimately, compromise public safety. Internal Department of Justice memos further indicate that the FBI's 90-day retention policy is within the scope of the Brady Law.

The retention of NICS Background Check Records for a 90-day period of time is critical, and I am greatly concerned by the Attorney General's action. I support the "Use NICS in Terrorist Investigations Act" introduced by Senators KENNEDY and SCHUMER. This legislation would simply codify the 90-day period for law enforcement to retain and review NICS data. The GAO report provides further evidence that the Schumer-Kennedy bill is good policy. I urge my colleagues to support this common sense piece of gun-safety legislation.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred May 14, 1994 in National City, CA. A gay man was beaten