

CONSERVATIVE AGENDAS AND CAMPAIGNS

SECURING A CONSERVATIVE INFRASTRUCTURE

The Right has capitalized on a variety of methods to secure support for its ideas and programs. This process, commonly known as “building infrastructure,” has developed over the past 25 years to create an impressive web of supports that buttress a right-wing agenda. This section addresses the structural elements that support the Right’s criminal justice agenda.

The most common method of codifying political ideas is to secure the successful passage of supportive legislation. A surefire way to do this is to gain strength in state and federal legislative bodies. The passage of laws like Truth in Sentencing statutes and the USA PATRIOT Act illustrates the Right’s political power in creating harsher penalties and compromised civil rights in the name of public safety by mobilizing majorities of legislators.

Another successful approach has been to have conservatively dominated legislatures enact laws that disenfranchise blocs of voters. According to the Sentencing Project’s 1998 report, “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,” the racial impact of laws that prevent convicted felons from voting is enormous. 13% of African American men cannot vote because of these laws, and in six states, mostly in the South, over 25% of African American men are disenfranchised. In all, 3.9 million U.S. citizens were denied the right to vote in 1998.¹ Undoubtedly it was even greater in 2004.

Presenting conservative ideas through voter referenda has proved successful for the Right. The eleven marriage referenda that passed in 2004 are excellent examples. In the criminal justice arena, another example is the California anti-youth referendum Proposition 21 which passed in 2000 expanding punitive penalties against minor offenders. In 2004, again in California, a progressive initiative to ease the effects of the “three strikes law” by limiting its reach only to those convicted of violent crimes was defeated.

A more under-the-radar method has been to create an organization that simultaneously provides model legislation to busy legislators and lobbying opportunities for business interests that stand to gain particular legislation. Alan Greenblatt’s article, “What Makes ALEC Smart?” which is included in this section, describes the American Legislative Exchange Council’s history and influence. Conservative think tanks, both at the national and state levels, also influence legislation through their publications, networks and lobbying efforts.

A fourth approach is to influence legal thought on the bench, at law schools, and among influential lawyers. The Institute for Democracy Studies has explained the workings of The Federalist Society, an organization with a mission to “reorder priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law” by reaching out to lawyers, judges and law professors.

SECTION OBJECTIVE

This section discusses the various judicial, legislative and legal strategies the Right uses to maintain and strengthen a conservative criminal justice and legal system.

IN THIS SECTION

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RIGHT-WING JUDICIAL STRATEGIES

The judicial system itself has been a target for influence on criminal justice issues. The system's structural flaws benefit conservatives, the Right has been particularly adept at crafting a strategy aimed at increasing its judicial influence. The following are some of the Right's key strategies.

CONSERVATIVE JUDGES. Securing the placement of conservative-friendly judges at all levels of the court system is one way to affect the outcome of criminal trials. Judicial appointments are now highly politicized along partisan lines, with conservatives accusing liberals of selectively endorsing “activist judges” who are accused of passing judgment based on their political perspectives, not on an objective reading of the law. The review time for new appointments can be very lengthy as conservatives and liberals battle on the floor of their legislatures. Organizations like the American Center for Law and Justice, headed by Jay Sekulow, actively lobby against “judicial activism” as well as argue cases before the Supreme Court and other federal and state courts with the hope of establishing precedent in case law.

CURBING JUDGES' POWER. Some conservatives seek to curb current judges' powers. Edwin Meese, at the time a Heritage Foundation Fellow, wrote in 1997 that “The doctrine of judicial review gives unelected federal judges awesome power to usurp the democratic process.”² There has even been an unsuccessful attempt to argue for the impeachment of sitting Federal judges who do not conform to a very conservative viewpoint represented by the theocratic National Legal Foundation.³

ABOLISHING PAROLE. Many of these ideas are presented by spokespeople in conservative journals that members of the legislative and judicial communities read. *Policy Review* is one such journal, first published by the Heritage Foundation and now by the Hoover Institution at Stanford. In 1995, ahead of the curve, it published both an attack on the Legal Services Corporation and an argument for the abolition of parole.⁴

LIMITING PLEA BARGAINING. Another avenue at altering the court system is to take advantage of the backload of cases in the criminal system. About 90% of these cases are settled out of court through the process of plea bargaining. Much criticized for its flaws by both the Left and the Right, the plea bargaining system allows prosecutors to negotiate with defendants who exchange the right to a trial for a more lenient sentence. The price is the requirement of pleading guilty, often to a lesser charge. These pleas result in higher conviction rates and more rapid imprisonment of defendants. In 2003 Attorney General Ashcroft changed a Department of Justice policy, requiring federal prosecutors to seek “the most serious readily provable chargeable offense,” limiting prosecutors' ability to offer a lesser charge bargain. Plea bargaining, at least in federal courts, becomes less attractive to defendants and limits their options. The poor, who rely on public defenders, are especially affected by this kind of policy change.⁵

ELIMINATING JUDICIAL DISCRETION. A related tactic associated with the courts has been influencing the legislation of mandatory minimum sentencing and harsher sentencing guidelines. Both of these attempts to influence the length of prison sentences have successfully limited the discretion judges can use in issuing sentences from the bench. Furthermore they increase prison populations by requiring the issuance of longer sentences and prison time for more offenses.

CHALLENGING THE RIGHT TO A LAWYER. There has even been an attack on the ability of people to seek legal representation. Over the past 30 years Legal Services Corporation (LSC), which runs 200 local legal assistance bureaus and receives federal funds, has provided access to justice for low-income Americans to legal aid when they have a civil problem and cannot afford to hire a lawyer. For most of its existence, the LSC has been attacked by several interest groups that do not want federal money spent to provide a service to the most vulnerable members of our society. On the surface, the criticism focuses on the LSC as holding a left-wing agenda and supporting people who do not deserve federally-funded help. But a report from the Brennan Center for Justice at New York University's School of Law, "Hidden Agendas: What is Really Behind Attacks on Legal Aid Lawyers?" uncovers the actual reasons for three different advocacy groups' opposition to the LSC.

The American Farm Bureau Federation, which represents agribusiness interests, criticized LSC workers for "stirring up controversy, particularly among migrant and seasonal farm workers."⁸ The Farm Bureau successfully joined forces with other conservative groups, beginning in the 1980s, to decrease federal funding for LSC, to restrict the types of cases LSC lawyers could take on, and to prevent undocumented workers from receiving LSC aid.⁷

Another group, the National Legal and Policy Center (NLPC), began its watchdog Legal Services Accountability Project in 1995, shortly after its Chair Kenneth Boehm was fired from the LSC itself. According to the Brennan Center, Boehm's anti-LSC tactics include targeting legislators who support LSC and conducting smear campaigns through the publication of the LSC Report's "Horror Stories." Much of Boehm's opposition appears to stem from his dissatisfaction as an employee of the LSC, yet he was able to get funding for his attacks from the well-known conservative funders Scaife and Olin. These days the NLPC seems to have shifted its resources away from its Legal Services Corporation Accountability Project to other NLPC concerns about ethics in public life.

A third source of attacks on the LSC has been the Religious Right. The Christian Coalition, under the leadership of Ralph Reed in the 1990s, James Dobson and Gary Bauer's The Family Research Council, and the American Family Association in 2000 have in turn attacked LSC on

THE FEDERALIST SOCIETY

The Federalist Society for Law and Public Policy Studies is an organization of lawyers, law students, judges and law school faculty which, since its founding in 1982, has developed into a body that holds influence over the entire American legal system. Its leaders include federal judges, law school faculty and Congressional conservatives like Orrin Hatch (R-UT) and Supreme Court nominee Robert Bork. It does not file cases and remains technically non-partisan, but its conservative/libertarian influence is widely recognized.

The Federalist Society states that its purpose is to foster debate and discussion about the issues, but the articles and interpretations in its publications are all decidedly conservative and/or libertarian. It affects a wide swath of legal thought, and it weighs in on judicial appointments at all levels of the judiciary as well as clerkships with judges. In fact, it has created the leadership pipeline for conservative law students who find joining one of its 140 law school affiliates a career necessity.

Much of the work of the society is done by its members who may join its fifteen Practice Groups, including one on Criminal Law and Procedure. This groups has sponsored panels at legal conferences on such topics as the Exclusionary Rule, Miranda, and sentencing guidelines, where members analyze the approaches they have taken in arguing for conservative or libertarian interpretations.

moral grounds. They have claimed LSC lawyers annually represent 200,000 low-income women who challenge the institution of marriage by getting divorced. Anti-women rhetoric from these groups backfired, however, when other religious groups pointed out that poor women need legal support when attempting to leave abusive or violent marriages.

These campaigns demonstrate that opposition to LSC is the result of complaints some conservative groups have with the legal system in general and its impact on issues they hold important, such as moral values, limited regulation, and decreased federal support for poor and immigrant groups. Over the years the LSC has watched its budget shrink, illustrating another infrastructure technique, defunding programs that challenge the Right's agenda.

While some of these methods are not immediately obvious to a casual viewer or they affect a small area of the criminal justice system, when combined as a package, they exercise a much larger influence on the system than you may think. Thanks to conservative strategists who successfully identified campaigns with potential high impact, the combined impact of these structural elements is significant.



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RIGHT-WING LEGISLATIVE STRATEGIES

The Right has been extremely successful in proposing and passing conservative legislation at all levels of government—local, state and federal. Much of that success can be attributed to the American Legislative Exchange Council (ALEC), a conservative organization that drafts bills that favor corporate and conservative interests.

What Makes ALEC Smart?

By Alan Greenblatt

For many years, the state of Ohio has put its convicts to work making furniture. This not only gives the prisoners something productive to do with their time but supplies state offices with desks, chairs and other furnishings. Now, in the age of the Internet, the prisoners' work products are up for sale on the Web, available to anyone, not just state agencies. That expansion of the customer pool drew the attention of state Representative Steve Buehrer, who decided he wanted to stop it. "To me, they've crossed the line—they've opened a furniture store," Buehrer says. "I think the government ought not to be running enterprises that compete with the private sector."

So Buehrer introduced legislation to block state agencies from offering any service or information on the Internet that was also provided by two or more private companies. In fact, though, the bill wasn't entirely his idea. It was based on legislation drafted by the American Legislative Exchange Council, better known by its acronym, ALEC.

All over the country, ALEC has been promoting the idea that state governments are overstepping their intended missions by offering Internet services in direct competition with private business. States allow citizens to complete their tax returns on public Web sites, for instance, or offer them free e-mail accounts, as Pennsylvania does.

ALEC is against that. It drafted model legislation addressing the matter, which, in turn, was introduced by Buehrer and legislators in about half a dozen other states. Model legislation is the core of what ALEC does. Founded in the early 1970s as a conservative counterweight to the mainstream National Conference of State Legislatures (NCSL), ALEC now boasts the participation of more than 2,400 legislators—nearly one-third of all legislators nationwide. That includes 125 floor leaders, among them three dozen speakers and speakers pro tempore and 25 state Senate presidents and presidents pro tempore. But the group boasts much more than a fancy masthead. Hundreds of bills initially drafted at ALEC meetings become law in the states every year.

The organization bills itself as bipartisan, but about 80 percent of its members are Republicans, and that makes a big difference, because Republicans have a working majority in many more states now than they did a few years ago (nationally, GOP legislators outnumber Democrats this year for the first time in half a century).

ALEC also counts as members some 270 representatives of trade associations, conservative foundations and many of the largest corporations in America. Interest groups are involved in other legislative organizations, such as NCSL and the Council of State Governments, but there they don't enjoy the kind of influence ALEC gives them. ALEC has standing task forces composed of both legislators and private-sector representatives. The private-sector folks help draft and have a

veto over any proposed legislation that the task forces create. “ALEC is unique in the sense that it puts legislators and companies together and they create policy collectively,” says Oklahoma state Representative Scott Pruitt, an ALEC task force chair.

In Pruitt’s opinion, the regular legislative process doesn’t allow for enough time listening to business. “The actual stakeholders who are affected by policy aren’t at the table as much as they should be,” he says. “Serving with them is very beneficial, in my opinion.”

Attracting Imitators

ALEC’s nine public-private task forces put forward draft legislation that gets introduced in the states at a rate of about 1,500 bills a year. On average, more than 200 of those bills are enacted into law every year. “You’ve had the interest groups having access and sitting on other task forces, but here you’ve really perfected it,” says Rutgers University political scientist Alan Rosenthal, author of a book on lobbying in the states. “You’ve not only got them gaining access and interacting with legislators but you have them shaping policy together. It seems to me that’s a pretty major advance.”

Liberal legislators feel the same way, although they are more likely to describe ALEC’s growing role as a threat rather than an advance. Recently, several progressive groups have been set up as a direct counterweight to ALEC’s agenda of promoting the free market and limited government. “We need to build an ALEC for our side,” *The Nation* editorialized a couple of years ago, and the left has responded.

This summer, a consortium of major labor unions, environmental organizations and public interest groups set up the Partnership for Public Trust to keep an eye on ALEC and the progress of its model legislation. Groups of legislators have formed themselves into coalitions to fight ALEC on a regional basis or in a specific policy area. Several other groups, patterning themselves on the ALEC model, have fashioned themselves as ideological alternatives, crafting and promoting model legislation more to their own liking. “It took progressives a while to realize what the hell was going on,” says Leon G. Billings, a former Maryland legislator. “Conservatives have lots of money to propagate their viewpoint and the left doesn’t.”

One of the new groups, based in Madison, Wisconsin, cheekily calls itself ALICE, short for the American Legislative Issue Campaign Exchange. “We like to think of ALICE as ALEC’s feistier, more aggressive little sister,” says director Andy Gussert. But it’s doubtful whether ALICE, which just got underway a couple of months ago, can be fairly described as feistier or more aggressive—or more anything—than ALEC. Several similar groups are better established than ALICE, but they can’t come close to matching ALEC’s penetration into the legislative ranks or productivity in creating new laws.

The groups on the left are at a disadvantage because of ALEC’s enormous fundraising capacity and 30-year head start in attracting members. ALEC’s annual budget is \$6 million, which is supplemented by expenditures from private sector members who provide campaign contributions and “scholarships” that cover travel expenses for legislators attending ALEC functions. Legislators pay just \$50 for a two-year membership, but businesses pay up to \$50,000 to join. “You have to recognize that because ALEC is funded by profit-making industries, they have tremendous resources at their disposal,” says Julian Zelazny of the State Environmental Resource Center, one of the critics. “You can sum all these groups together and our budgets still won’t come anywhere near to being a fraction of ALEC’s.”

Focus On Regulation

ALEC was founded, somewhat ironically, by conservative activists and legislators who believed the right needed a voice at the state level to counter better-organized liberals. “I always look at what the enemy is doing and, if they’re winning, copy it,” ALEC founder Paul Weyrich said a decade ago. The group attracted only 27 legislators to its first conference, but its early membership included many figures who became prominent later as governors or members of Congress.

Initially, the group concentrated on social issues such as abortion and the Equal Rights Amendment, both of which it opposed. But in recent years, as Congress and the courts have devolved greater authority to the states, ALEC has focused on business and regulatory matters. It produces bills that cover taxes and spending, energy, health, education, insurance, labor, telecommunications and the environment. And it has recorded a long list of successes.

While nearly all states have been strapped for cash this year, ALEC has opposed a federal bailout, arguing that state governments had worked themselves into fiscal crisis through excessive spending. The group has provided background material and talking points to help stiffen the backs of legislators resisting tax increases—including increases proposed by conservative Republican governors who once belonged to the organization. In addition, ALEC is promoting moves in GOP-controlled states to restructure government agencies to cut workforces and privatize more functions. It is encouraging legislators to abolish Medicaid’s entitlement-based benefit structure.

At the same time, ALEC has sponsored a flood of land-use bills, covering both environmental regulation and defense of private property. Its best-known bill in this area is the Environmental Audit Privilege and Immunity Act, which shields private companies from liability for environmental violations that the companies report themselves. Versions of this bill have become law in half the states, although at least three states have seriously amended their bills in response to federal concerns.

Many ALEC members say there is more conflict within the organization among the businesses involved than among legislators, with competing companies constantly maneuvering for advantage. That was especially true in the 1990s in the case of electricity deregulation. Enron took a leading role within ALEC in pushing for deregulation, which eventually led the Edison Electric Institute, a utilities trade association, to withdraw its membership. As it turned out, Enron’s position prevailed in many states as well. An ALEC bill provided the framework for electricity restructuring laws that have been enacted in nearly two dozen states.

ALEC has been a major force behind both privatizing state prison space and keeping prisons filled. It put forward bills providing for mandatory minimum sentences and three-strikes sentencing requirements. About 40 states passed versions of ALEC’s Truth in Sentencing model bill, which requires prisoners convicted of violent crimes to serve most of their sentences without chance of parole. “What makes ALEC different is its effectiveness in not just bringing the people together but selling a piece of legislation that was written by the industry and for the industry and selling it as a piece of mainstream legislation,” says Edwin Bender, executive director of the National Institute on Money in State Politics.

In many ways, Steve Buehrer’s bill limiting state commerce on the Internet was typical ALEC legislation. It was pro-market and reflected a suspicion of government power. Like most bills drafted by the organization, it was introduced by a key ALEC member. Buehrer, an ALEC state

co-chair, was named a “Legislator of the Year” by the group last year.

ALEC’s critics claim that Buehrer moved in typically stealthy ALEC fashion. He inserted his bill, without a hearing, into the House version of the state budget. Still, he drew plenty of opposition from people concerned that if private companies could shut down the government’s ability to put materials on the Web, they would profit unfairly from public information. A group of law librarians, for example, warned that courts could not put their records and decisions on the Web if publishers such as Westlaw and Lexis beat them to it.

Buehrer dismissed these concerns as “paranoia.” Nevertheless, the controversy his proposal generated—the *Cleveland Plain Dealer* called his furniture sales concerns “simply asinine”—sent his bill to the back burner.

Meeting Of Minds

ALEC’s critics are hoping that failures such as Buehrer’s can provide them with a new model. They believe they can fight the ALEC machine through the simple means of exposing the group’s bills to greater scrutiny than they’ve received in the past. Allowing industries affected by legislation to write the legislation, they say, is going too far, and once the voters hear about this, they will agree. “It doesn’t take rocket science to figure out that if you fly legislators to exotic locations and spoon feed them legislation to introduce in their state that you’re going to be effective,” says Wisconsin state Representative Marc Pocan. ALEC’s success is prima facie evidence, he and other critics believe, that the group gives an unfair advantage to its participating corporations and their lobbyists.

Members of ALEC reply that their group is simply one more forum among many in which they can meet with like-minded colleagues and listen to the concerns of businesses and other groups that they would hear from anyway, even if the organization never existed. “ALEC has never been intended to supplant the legislative process,” says Ray Allen, who chairs the Texas House Committee on Corrections and plays an active role on criminal justice task forces for both ALEC and NCSL.

Allen argues that ALEC helps him and other legislators vet ideas that have been tried in other states. He says he’s under no illusion that the private companies that serve with him on ALEC committees are doing anything other than promoting their own interests. But at the end of the day, Allen says, it’s up to legislators to evaluate a variety of opinions and find out who is being truthful and which position would ultimately benefit the state. Within ALEC, the legislators who serve on task forces have to give their approval to any legislation proposed by corporate lobbyists before it is acknowledged as an ALEC model bill. Obviously, it’s also up to legislators to decide whether to introduce or support a live bill back in their states.

ALEC does do a few things that reinforce its secretive image. It keeps its model legislation locked under password protection on its Web site, and gives its bills innocuous-sounding names that mask their actual significance. Rarely is any ALEC bill acknowledged as such; a legislator who proposes one offers it as though it were his own idea, the way Buehrer did in Ohio.

On the other hand, there is nothing furtive about meetings of the organization: Many of the complaints that critics register are drawn from their own experiences attending ALEC sessions, which are generally open to the public and media. “As a Democrat, I could attend and find out what is on the conservative agenda for state government,” says North Carolina state Representative

Paul Luebke. And while corporations pay big bucks for ALEC memberships and seats on the task forces, ALEC usually invites a range of speakers to its meetings.

Kentucky state Representative Paul Marcotte, who chairs a task force, says he once invited a left-leaning public interest group to testify about a transportation issue. The assembled legislators ended up siding with that group's position.

In the end, it's hard to make the claim that ALEC's agenda is much of a secret or that its members are being co-opted to endorse legislation they wouldn't support anyway. In the words of Louisiana state Representative Donald Ray Kennard, ALEC's national chairman, "We are a very, very conservative organization...We're just espousing what we really believe in."

To the extent that liberal opponents make clear the connection between ALEC and its corporate sponsors, they may be able to gain increased public attention and place obstacles in the way of ALEC's model bills. But in order to win significant victories, they will need to convince legislators that those bills are dangerous on their merits, and not simply tar ALEC as "Corporate America's Trojan Horse," the way one report by environmental organizations recently did. In many states, the corporate connection is not particularly threatening to average voters.

"Nebraska is a very conservative state and ALEC is a very conservative organization, so I think there is a natural affinity there," says Pam Brown, who, like 46 out of Nebraska's 49 state senators, is an ALEC member. "I don't think the conspiracy theory about any legislation is particularly valid. I think it says very little about legislators to think that any of the national organizations are going to lead us around by the nose."

Steve Buehrer, sponsor of the Internet bill in the Ohio House, says ALEC has always been highly supportive when he has introduced legislation the group favors, sending staff members out to testify in a couple of instances when he has introduced bills he's drawn off of the ALEC priority list. "They're certainly very active in being helpful on the proponent side," he says. Buehrer maintains he hasn't given up on his effort to block the state from competing with private retailers on the Internet. He's already hatching plans to overcome the negative publicity his bill engendered the first time. "I expect ALEC to be a part of that," Buehrer says, "but we have to get some Ohio stakeholders involved as well."

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RIGHT-WING LEGAL STRATEGIES

The Right's legal strategy is focused on using litigation to systematically change the legal system in its favor. The Right has deliberately and strategically selected plaintiffs and issues that further its long term goals. By building upon incremental victories, the Right, over the last few decades, has succeeded in laying the legal groundwork to implement a conservative agenda.

The Center For Individual Rights (CIR)

Note: Excerpted from Nikhil Aziz, "Colorblind: White-washing America." The Public Eye vol. 16, no. 2, Summer 2002, pp. 1-13.

While the Center for Individual Rights (CIR) does not directly address issues of criminal justice, which is the focus of this Activist Resource Kit, its strategy for challenging affirmative action and other issues is a central element of the Right's larger legal strategy. The Right has been very strategic in pushing its agenda on a number of fronts. Electoral politics—fighting and winning elections—is just one of them. Recognizing the importance of the judicial branch, the Right has paid detailed attention to the composition of judicial benches at the federal, state, and local levels. Central to the composition of a bench is the appointment of judges to it, and here again the Right has focused its attention on multiple levels. At the same time, it has not neglected issues such as affirmative action, gay marriage, and abortion; or individual cases pertaining to these issues. Its emphasis on challenging affirmative action is an illustrative case in point.

The Center for Individual Rights (CIR) describes itself as a "nonprofit public interest law firm dedicated to the defense of individual liberties."¹⁰ Founded in 1988 by Michael McDonald and Michael Greve, both previously at the rightist Washington Legal Foundation,¹¹ CIR is now an established presence in the nation's capital, and its influence is felt across the country through various high-profile cases that it has taken up, including more than a few that it has fought and won in the U.S. Supreme Court. Over the last 14 years, CIR has grown from the 2 founders in a small nondescript space to a swanky office with administrators, in-house counsel, interns, high-flying pro bono lawyers, a number of publications, and a sizeable and growing budget.

CIR is one of a number of conservative right-wing legal advocacy organizations founded to bring legal cases in support of rightist campaigns. It has been very successful in replicating liberal public interest law firms such as the American Civil Liberties Union (ACLU).¹² CIR has concentrated on specific areas of concern, and within them zeroed in on cases that it felt would "change the law," as opposed to simply winning a victory. Changing the law has clearly been its goal in the area of affirmative action, particularly in higher education. According to Terry Carter, CIR "does go where its plan works best"¹³ which allows it to "attack affirmative action at its weakest links . . . [and] rely in large measure on conservative judges who go beyond the facts of individual cases to proclaim things that have broader implications."¹⁴ CIR's lawyers contend that it has won before judges who are not conservative, but according to journalist W. John Moore, "they concede that the appointment of conservative judges by Presidents Reagan and Bush have made the courts more receptive to their arguments."¹⁵

As David Segal of the *Washington Post* reported, "[Michael] Greve searched hard for a test case that would land in the 5th U.S. Circuit Court of Appeals, widely considered to be a conservative

bench. He then sought plaintiffs at the University of Texas Law School, which he had studied for months and thought was vulnerable to attack. And he was meticulous about finding a lawyer to argue the case, recruiting [now Solicitor-General] Theodore Olson, a pricey Washington lawyer known for winning before the Supreme Court.”¹⁶ For CIR, winning the war was more important than winning a battle.

The pick and choose strategy CIR has employed with regard to cases is not new. Ironically, it mirrors the National Association for the Advancement of Colored People (NAACP) Legal and Educational Defense Fund’s struggle—led by [later Justice] Thurgood Marshall—to overturn racial segregation and ‘separate but equal’ laws in the 1940s and 50s, culminating at the U.S. Supreme Court in *Brown v. Board of Education*.¹⁷ CIR’s staff has adopted, and adapted, that basic strategy to argue that the U.S. Constitution should allow only legislative policies and institutional practices that are “colorblind.”

George W. Bush now has the opportunity to continue where Reagan left off, including possibly ensuring a comfortable conservative majority on the Supreme Court.¹⁸ Another factor in the move to the right is the enormous financial resources being granted by right-wing foundations and moneyed individuals to ensure that conservative ideas and policy prescriptions are implemented. Cass Sunstein, writing in the *New York Times*, notes that, “In the last 30 years, one glaring difference between Republicans and Democrats has been that Republicans, unlike Democrats, have been obsessed with the composition of the federal judiciary.”¹⁹ CIR is but one political instrument in the Right’s toolkit to make the most of an increasingly hospitable judiciary.

The Law Arm of the Right

The rightward march is also evident in the legal arena. The emergence and rapid growth of the Federalist Society for Law and Public Policy Studies, which has gained enormous influence in conservative administrations like the current Bush Administration, for whom it has handpicked many judicial candidates, is an important feature;²⁰ especially now in light of reports that the Bush White House is eliminating the traditional consultative role played by the nonpartisan American Bar Association in the selection and nomination of judges for the federal judiciary.²¹ Ronald Reagan’s two terms as president, followed by former President George Bush, saw the large-scale appointment of conservative judges at all levels of the federal judiciary in the United States.²² President Clinton’s two terms were marked by his inability to appoint judges to many vacancies in the federal courts—in part because of his administration’s preoccupations in other areas, and in part because many of his appointments were blocked by the Republican-controlled Senate.²³

The following is a list of some of the prominent, and well-funded right-wing conservative or libertarian legal organizations. The Federalist Society, established in 1982, has lawyer and student chapters across the country, as well as issue-oriented practice groups. Some of the leading conservative and libertarian legal luminaries (including many who are now on the federal courts) are or have been members of the Federalist Society.

While the Federalist Society is a membership organization, the others in this list are law firms that bring cases at the state and federal level arguing the Right’s perspective on property rights, free speech and first amendment issues, equal protection, affirmative action, and religion. The Center for Individual Rights is the focus of this article. The Mountain States Legal Foundation is a Denver-based law firm that brought two lawsuits on behalf of its client Adarand Constructors Inc., on the issue of affirmative action in federal contracting. The Southeastern Legal Foundation

in Atlanta filed an *amicus curiae* brief on behalf of the Boy Scouts of America in their case against James Dale, a gay scoutmaster. The Landmark Legal Foundation (outside of DC) has been active against teachers' unions including the National Education Association. The American Center for Law and Justice, in Virginia Beach, focuses on Church-State issues, and has been involved in cases defending antichoice protestors (what it calls 'sidewalk counselors'), and against the City of Louisville's (KY) ordinance extending protected status in employment to the categories of sexual orientation and gender identity.

Conservative Legal Organizations

American Center for Law and Justice

P.O. Box 64429
Virginia Beach, VA 23467
<http://www.aclj.org>

Atlantic Legal Foundation

150 East 42nd St.
New York, NY 10017
<http://www.atlanticlegal.org>

Center for Individual Rights

1233 20th St., NW, Suite 300
Washington, DC 20036
<http://www.cir-usa.org>

Federalist Society for Law and Public Policy Studies

1015 18th St., NW, Suite 425
Washington, DC 20036
<http://www.fed-soc.org>

Institute for Justice

1717 Pennsylvania Ave.
NW, Suite 200
Washington, DC 20006
<http://www.ij.org>

Landmark Legal Foundation

445-B Carlisle Dr.
Herndon, VA 20170
<http://www.landmarklegal.org>

Mountain States Legal Foundation

707 17th St., Suite 3030
Denver, CO 80202
<http://www.mountainstateslegal.com>

New England Legal Foundation

150 Lincoln St.
Boston, MA 02111
<http://www.nelfonline.org>

Pacific Legal Foundation

10360 Old Placerville Rd., Suite 100
Sacramento, CA 95827
<http://www.pacificlegal.org>

Southeastern Legal Foundation

3340 Peachtree Rd., NE, Suite 2515
Atlanta, GA 30326
<http://www.southeasternlegal.org>

Washington Legal Foundation

2009 Massachusetts Ave., NW
Washington, DC 20036
<http://www.wlf.org>

ADDITIONAL RESOURCES

Alliance for Justice

11 Dupont Circle NW 2nd floor
Washington, DC 20036
Phone: 202-822-6070
<http://www.alliance@afj.org>

A national coalition of organizations promoting fair judicial nominations among several other campaigns.

Center for Constitutional Rights (CCR)

666 Broadway, 7th Floor
New York, NY 10012
Phone: 212-614-6464
<http://www.ccr-ny.org>

CCR is a legal and educational organization that protects and advances the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction.

Institute for Democracy Studies

177 East 87th Street, Suite 501
New York, NY 10128
Phone: 212-423-9237
<http://www.institutefordemocracy.org/index.html>

IDS has published reports on the Federalist Society, “The Federalist Society and the Challenge to a Democratic Jurisprudence” and “Slouching Towards Extremism: The Federalist Society and the Transformation of American Jurisprudence.”

Brennan Center for Justice at NYU School of Law

161 Avenue of the Americas, 12th floor
New York, NY 10013
Phone: 212-998-6730
<http://www.brennancenter.org/>

The Brennan Center sponsors a Criminal Justice Institute and publishes a number of articles, pamphlets and books on issues related to criminal justice, poverty and democracy, such as “Hidden Agendas: What is Really Behind Attacks on Legal Aid Lawyers?”, 2001.

People for the American Way (PFAW)

2000 M Street, NW, Suite 400
Washington, DC 20036
Phone: 202-467-4999 or 800-326-7329
<http://www.pfaw.org>

PFAW tracks right-wing legislation, policymakers, judicial appointments, activists and other conservative efforts at the state and federal level. PFAW uses litigation to counter the efforts of right-wing groups and works to advance a progressive legislative agenda on Capitol Hill. PFAW’s website has a useful Right-Wing Watch section.

Websites

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

Sponsored by two environmental organizations, this watchdog site includes their publication, “Corporate America’s Trojan Horse in the States: The Untold Story Behind the American Legislative Exchange Council.”

Books/Reports

Kozlowski, Mark. 2003. *The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts*. New York: New York University Press.

Schwartz, Herman. “The New Right’s Court Packing Campaign.” Washington DC: People for the American Way, 1999.

Endnotes Available Online!

All citations and references are available at www.defendingjustice.org or by contacting PRA.