

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

by four men who yelled anti-gay slurs. The assailants, Juan Gonzales and Maico Amon, both 20, were charged in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### CORRECTION OF THE RECORD REGARDING RESOURCES FOR MEDICARE PRESCRIPTION DRUGS AND TAX RELIEF

Mr. GRASSLEY. Mr. President, yesterday some on the other side attacked last year's bipartisan tax relief legislation. They were led by the distinguished Majority Leader, Senator TOM DASCHLE. As an example of these claims, I ask unanimous consent to place in the RECORD an article from yesterday's edition of Roll Call Daily.

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

[From the Roll Call Daily, July 25, 2002]

#### DASCHLE BLAMES BUSH TAX CUT FOR FAILURE ON PRESCRIPTION DRUG REFORM

(By Polly Forster)

Senate Majority Leader Thomas Daschle (D-S.D.) expressed frustration with the chamber's failure to enact a sweeping Medicare prescription drug benefit and blamed President Bush's \$1.35 trillion tax cut for "starving" the opportunity to pass substantial reform.

Daschle also expressed doubt that a conference committee will be able to work out the differences in the House and Senate versions of trade legislation before the Houses recesses this week.

Daschle charged that House Ways and Means Chairman Bill Thomas (R-Calif.) was possibly undermining a key component of the Senate trade bill by revisiting the details of the Trade Adjustment Assistance bill and thereby delaying a final result.

"It sounds like he's trying to undermine the TAA package," Daschle said. "If that's the case, we'll wait until September."

Legislation on prescription drug benefits appeared similarly in flux. Daschle said Democrats were forced to revise their priorities because last year's tax cut shrunk the possibilities available to them.

"We don't have the resources because, in large measure, the tax cut precludes it," Daschle said. "Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost."

But a Senate GOP leadership aide dismissed the validity of that argument, saying

that Democrats now find themselves in a corner and are "grasping at straws" to avoid the blame.

"Because Democrats stopped the bipartisan Finance Committee from doing its work, they've caused every possible drug proposal to fail in the Senate," said the GOP aid.

Since none of the proposals for drug benefit reform passed through the Finance Committee, all measures are subject to a 60-vote threshold.

Senate Finance Chairman Max Baucus (D-Mont.) has spent the last several days in meetings with key lawmakers from both sides in an effort to craft something most Senators could agree to.

Daschle said the goal of the talks is to find a proposal broad enough to win over at least 10 Republicans. "We only got 52" for a Democratic bill, he said, "and we need the other eight. That means we've got to scale back and to broaden our level of support."

Daschle said Democrats will not be offering any more proposals but instead will be looking to craft a bipartisan measure.

Baucus spokesman Michael Siegel said the Senator was looking at two approaches to the issue: using Medicare as the channel to deliver drug benefits and where unavailable using private companies, and also to extending a "catastrophic" coverage bill that was short of nine votes Wednesday.

Daschle said the Senate will stay on the issue as long as it takes, including the early part of September after the recess, until there is a result—possibly forestalling consideration of a bill to create the federal department of Homeland Security.

"It means our highest priority is to get the bill done and we don't do other things until we get it done," he said.

Daschle vowed an equal commitment to retaining the worker protection element in the trade package now in conference.

"We're in no hurry," he said. "It's more important to me to have a good package even if that means we have to wait until October."

A top Senate Democratic aide said negotiations broke down Thursday morning over the TAA element, which would provide health coverage for workers displaced by international trade.

Senate Democrats expected Thomas to concede ground on that part as the House was only just able to pass their bill on the floor.

The breakdown left at least one Senate Democratic leadership aid frustrated. "It's ridiculous for Thomas to be stuck on this because it's his chamber that needs to attract the votes to pass the bill, not the Senate," said the aide.

Mr. GRASSLEY. There is a very sophisticated, well-coordinated campaign on the part of the Democratic Leadership to derail last year's bipartisan tax relief. It seems that everything that ails us as a nation is laid at the feet of the tax cut. I'm sure that the next attack will be that tax relief causes the

Decline of Western Civilization. Or, perhaps, the Democratic Leadership would twist a phrase from Justice Oliver Wendell Holmes and claim that "record high taxes are the price we must pay for a civilized society."

Many in the media agree with this concept and rarely, if ever, challenge the factual basis for these attacks on last year's tax cut bill. Well, let me tell my friends in the Democratic Leadership, I'm going to correct the record every time. It's fine to attack tax relief, if you must, on ideological grounds. If the Democratic Leadership thinks we need to maintain record levels of taxation and keep growing government. That's something on which we can disagree.

On facts, however. I'm going to correct the use of incorrect data. I'm also going to compare the record of the Democratic Leadership against the specific attack on the tax cut.

A couple days ago, I corrected the record on incorrect data used with respect to the scoring of permanent death tax relief. Today, I'm going to take the latest attack and compare it with the record of the Democratic Leadership.

The Roll Call Daily article is entitled "Daschle blames Bush Tax Cut for Failure on Prescription Drug Reform." According to the article, the Distinguished Majority Leader said and I quote:

We don't have the resources, because, in large measure, the tax cut precludes it. Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost.

Now, I noticed this same point being made by others in the Democratic Leadership. I must say the Democratic Leadership spends a lot of time coordinating messages. They are very good at it. Perhaps, though, if less time were spent on perfecting partisan attacks on the President and Congressional Republicans, we might resolve more problems. After all, isn't that what we're paid to do? That is, do the People's business.

So, the charge is the tax cut ate the surplus and there's not enough money left for a Medicare prescription drug benefit. It's all the President's fault. It's the fault of the bipartisan budget resolution. Boy, do I get tired of hearing this stuff. It gets very old.

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

#### COMPARISON OF BUSH, DEMOCRATIC, AND SENATE PASSED BUDGETS (Fiscal year 2002 through 2011)

	Bush budget	Democratic alternative	Senate passed
Project Surplus .....	5.6 T	5.6 T	5.6 T
• Social Security Trust Fund (for debt payoff)* .....	2.0 T	2.5 T	2.5 T
• Medicare Trust Fund (for debt payoff)* .....		0.4 T	**0.4 T
Projected Available Surplus .....	3.6 T	2.7 T	2.7 T
Tax Cuts .....	1.6 T	745 B	1.2 T
High Priority Needs .....	212 B	744 B	849 B
• Education .....	13 B	139 B	308 B
• Prescription Drugs .....	153 B	311 B	300 B
• Defense .....	62 B	100 B	69 B
• Agriculture .....	-1 B	88 B	58 B