

**THE FEDERALIST SOCIETY**

*Presents the*

**2003 NATIONAL LAWYERS CONVENTION**

**ADDRESS BY**

**THE HONORABLE JOHN ASHCROFT**

**U.S. Attorney General**

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**FEDERALIST SOCIETY****ADDRESS BY THE HONORABLE JOHN ASHCROFT**

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3           SPEAKER: I promise that our first  
4 speaker and the debate that follows will awaken the  
5 senses.

6           About three months ago, the Constitution  
7 Project and the Federalist Society came together to  
8 discuss how we might collaborate on a debate series  
9 that would touch upon some of the legal issues that  
10 currently are making the headlines. Today's panel  
11 on civil liberties and the War on Terror is the  
12 first in this collaborative series we've launched.  
13 We are most grateful to Virginia Sloan and others  
14 at the Constitution Project with whom we have been  
15 working for their partnership on this new venture  
16 and the panel that will follow.

17           What a great way to start our morning and  
18 to mark this new series of Federalist Society/  
19 Constitution Project panels, we have with us the  
20 Attorney General of the United States, the  
21 Honorable John Ashcroft. Last year at the  
22 Federalist Society's 20th Anniversary Gala, we were

1 privileged to have General Ashcroft with us. We  
2 were most grateful for his kind words about the  
3 Society and very well entertained by his wonderful  
4 wit and sense of humor that evening. Thinking back  
5 on that night, though, what struck me most about  
6 his remarks was the deep sense of humility that  
7 drives his life, and more specifically his service  
8 as the nation's chief law enforcement officer. The  
9 General's respect for the rule of law, for example,  
10 was unflinching.

11           Federalists, as you know, are a pretty  
12 tough crowd, but General Ashcroft made his  
13 obligations, even in unpopular cases, very clear.  
14 He said, "As Justice Department employees, some of  
15 your colleagues have the federal government as a  
16 client. If that client has interests, its lawyers  
17 must defend those interests, even if, from time to  
18 time, the lawyers might take an opposite side in a  
19 Federalist Society debate. Even if they are not,  
20 perhaps, the view of the law that a consensus in  
21 this group might think appropriate." And he added,  
22 "First and foremost, we must follow the

1 Constitution."

2           I was also very impressed by the  
3 appreciation that General Ashcroft demonstrated for  
4 the value of fair debate in finding the right  
5 answers. At last year's dinner, the General  
6 observed, "Just a sharp dissent in a judicial  
7 opinion can force the majority to refine and  
8 ultimately improve its reasoning. A sharp debate  
9 on public policy questions can improve our  
10 resolution of these challenges. From those  
11 debates, America will learn. A learning America  
12 will be a free America, stronger and safer."

13           This willingness to keep an open mind  
14 about issues and a strong belief that one's  
15 personal preferences are subordinated to the law  
16 and the search for truth are the real hallmarks of  
17 General Ashcroft's humility as a public servant,  
18 and such humility is an indispensable  
19 characteristic for leaders of a limited  
20 constitutional government.

21           General Ashcroft, it is a great privilege  
22 once again to have a man of such integrity visit us

1 here at the Federalist Society. We are most  
2 appreciative for your continued interest in our  
3 work and efforts, and far more importantly for your  
4 dedication to, and affection for, the republic.

5 Ladies and gentlemen, the Attorney  
6 General of the United States.

7 HON. ASHCROFT: Thank you very much. You  
8 can skip the rest of the workout. It's Saturday  
9 morning. I'd like to know when the Federalist  
10 Society began keeping farmer's hours, getting up to  
11 give a speech at 8:00 a.m. on Saturday; I commend  
12 you.

13 Let me just pause for a moment to say how  
14 much I appreciate the Federalist Society. Freedom  
15 is based on an awareness that the Creator endowed  
16 us with the capacity to make choices, and  
17 consequential choices. I say consequential choices  
18 because there seems to be rampant in the culture  
19 the myth that somehow freedom is the ability to  
20 choose without consequence. A choice without  
21 consequences does not define freedom; it defines  
22 meaninglessness. Real freedom shapes events. It

1 shapes the future in which we live. And the  
2 fundamental blessing of freedom is that our choices  
3 do have consequences, and because they do, it is  
4 essential that we know the truth and that we make  
5 good choices based on strong analysis and accuracy.  
6 That's why, in the crucible of debate, those who  
7 love the truth and pursue it promote freedom more  
8 therapeutically than any other group in the  
9 culture. I'm grateful for your desire to know,  
10 your industry in seeking, and your persistence in  
11 pursuing the truth.

12           Now, there are times when I'm sure you  
13 look around yourselves in this culture, and I  
14 certainly observe it, when you think that the  
15 Federalist Society must be some sort of target-rich  
16 environment because there may be those who maybe  
17 aren't as concerned about discovering what's at the  
18 barebones of the argument, what are the fundamental  
19 constructs that relate to a discussion. But I want  
20 to thank and commend everyone who pursues the truth  
21 aggressively, who is willing for the light, the  
22 bright light, of inquiry to shine upon the issues

1 that we face so that we make those consequential  
2 decisions in a way that the consequences are a real  
3 asset, not only to us as individuals but to those  
4 who follow us. So, I commend you and I thank the  
5 Federalist Society, and I am grateful to you.

6           When your friends at the American  
7 Constitution Society for Law and Public Policy held  
8 their inaugural event, they let Janet Reno speak at  
9 a far more civilized hour than 8:00 in the morning.  
10 I mean, how do you expect me to speak this morning  
11 and still be fresh for John Ashcroft's Dance Party  
12 this evening? I do appreciate this great  
13 opportunity.

14           The Federalist Society, its membership,  
15 have been the resolute defenders of the nation's  
16 founding ideas. These are values. They don't have  
17 value because our founders embraced them; our  
18 founders embraced them because they had universal  
19 value, ideals of liberty, the rule of law. It is in  
20 this capacity that the Federalist Society is so  
21 necessary today. For the past two years, you've  
22 been a part of the debate about how best to

1 preserve and protect our liberty in the face of a  
2 very real terrorist threat. America has an honored  
3 tradition of debate and dissent under the First  
4 Amendment, and it's an essential piece of our  
5 constitutional and cultural fabric.

6           As a former politician, I've heard a few  
7 dissents in my time, and even expressed a few of my  
8 own. The founders believed that debate should  
9 enlighten, not just enliven. It should reveal the  
10 truth; it should not obscure it. The future of  
11 freedom does, then, demand that our discourse be  
12 based on solid facts and the sincere desire and  
13 pursuit of that which is valid and true. As we  
14 consider the direction and the destiny of our  
15 nation, our friends and those of us who embrace  
16 freedom must practice this pursuit, this  
17 willingness to demand from ourselves and others a  
18 debate informed by fact and directed toward the  
19 truth. Take away all the bells and whistles, the  
20 rhetorical flourishes, and occasional vitriol, and  
21 the current debate is about the rule of law and the  
22 role of law.

1           The notion that the law can enhance, not  
2 diminish, freedom is an important one, and it is an  
3 old one. John Locke said, "The end of law is not  
4 to abolish or restrain, but to preserve and enlarge  
5 freedom." George Washington called this "ordered  
6 liberty."

7           There are some voices in this discussion  
8 of how best to preserve freedom that reject the  
9 idea that law can enhance freedom. They think that  
10 passage and enforcement of any law is necessarily  
11 an infringement of liberty. Ordered liberty is the  
12 reason we are most open, and that we are not only  
13 the most open but the most secure society in the  
14 world. Ordered liberty is a guiding principle. It  
15 is not a stumbling block to security.

16           When the first societies passed and  
17 enforced the first laws against murder, against  
18 theft and rape, the men and women of those  
19 societies unquestionably were more free as a result  
20 of the law, not less free as a result of the law.  
21 A test of a law, then, is this: Does it honor or  
22 degrade or devalue liberty? Does it enhance or

1 diminish freedom?

2           The founders provided the mechanism to  
3 protect our liberties and preserve the safety and  
4 security of the republic. It's more than a  
5 mechanism; it's a framework -- the Constitution of  
6 the United States. It is a document that  
7 safeguards security, but not at the expense of  
8 freedom. It celebrates freedom, but not at the  
9 expense of security. It protects us and our way of  
10 life.

11           Since September 11, 2001, the Department  
12 of Justice has fought for, and Congress has  
13 created, and the judiciary has upheld legal tools,  
14 tools that honor the Constitution, tools that make  
15 America safer while enhancing American freedom. It  
16 is a compliment to all who worked on the PATRIOT  
17 Act to say that it is not constitutionally  
18 innovative. These are not new ideas. The Act used  
19 and uses court-tested safeguards and time-honored  
20 ideas to aid the War against Terrorism, at the same  
21 time protecting the rights and the lives of  
22 citizens.

1           Madison noted in 1792 that the greatest  
2 threat to our liberty was centralized power. "Such  
3 focused power," he wrote, "is liable to abuse."  
4 That's why he concluded a distribution of power  
5 into separate departments as a first principle of  
6 free government. The PATRIOT Act honors Madison's  
7 first principles, giving each branch of government  
8 a role in ensuring both the lives and the liberties  
9 of American citizens are protected. The PATRIOT  
10 Act grants the executive branch critical tools in  
11 the War on Terrorism. It provides the legislative  
12 branch with extensive oversight. It honors the  
13 judicial branch with court supervision over the  
14 Act's most important powers; first, the executive  
15 branch.

16           At the Department of Justice, we are  
17 dedicated to detecting, disrupting, and dismantling  
18 the networks of terror before they can strike our  
19 nation again. In the past two years, no major  
20 terrorist attack has been perpetrated on our soil.  
21 Now, let me just say consider the bloodshed of  
22 terrorism elsewhere in the world in that time.

1 Women and children slaughtered in Jerusalem;  
2 innocent young lives snuffed out in Indonesia;  
3 Saudi citizens savaged in Riyadh; church-goers in  
4 Pakistan murdered by the hands of hate. I would  
5 pause for a moment just to say that terrorism has  
6 not abated in the last two years; it has  
7 intensified.

8 I would also note that we are not a  
9 nation that terrorism has sought to forsake. We  
10 are a primary target. We are still referred to as  
11 the great Satan. We are the target of preference.  
12 We must keep that in mind.

13 We are using the tough tools provided in  
14 the U.S. PATRIOT Act to defend American lives and  
15 liberty from those who have shed blood and  
16 decimated lives in other parts of the world. The  
17 PATRIOT Act does three basic things. It closes,  
18 first, gaping holes in the law enforcement  
19 community's ability to collect vital intelligence  
20 information on terrorist enterprises. It allows  
21 law enforcement to use proven tactics, long used in  
22 the fight against organized crime and drug dealers.

1 Second, the PATRIOT Act updates our anti-terrorism  
2 laws to meet the challenges of new technology and  
3 new threats. And third, with these critical new  
4 investigative tools created by the PATRIOT Act, law  
5 enforcement can share information and cooperate  
6 better with other law enforcement agencies. From  
7 prosecutors to intelligence agents, the Act allows  
8 law enforcement to connect the dots and uncover  
9 terrorist plots before they are launched.

10           Here's an example of how we use the act.  
11 Some of you are familiar with the case of Iman  
12 Ferris, a naturalized United States citizen who  
13 worked as a truck driver out of Columbus, Ohio.  
14 Using information sharing allowed under the PATRIOT  
15 Act, law enforcement pieced together Ferris'  
16 activities -- how Ferris met senior al Qaeda  
17 operatives in a training camp in Afghanistan; how  
18 he was asked to procure equipment that might cause  
19 train derailments and sever suspension systems of  
20 bridges; how he traveled to New York to scout a  
21 potential terrorist target. Now, Ferris pleaded  
22 guilty on May 1, 2003, and on October 28, he was

1 sentenced under the PATRIOT Act's tough sentences.  
2 He'll serve 20 years in prison for providing  
3 material support to al Qaeda and the conspiracy for  
4 the terrorist organization, providing them with  
5 information about possible U.S. targets for attack.

6           The Ferris case illustrates what the  
7 PATRIOT Act does. One thing the PATRIOT Act does  
8 not do is to allow the investigation of individuals  
9 "solely on the basis of activities protected by the  
10 First Amendment to the Constitution of the United  
11 States." We know that it does not do that. And  
12 even if the law did not prohibit it, the Justice  
13 Department has neither the time nor the inclination  
14 to delve into the reading habits or other First  
15 Amendment activities of our citizens.

16           Despite all the hoopla to the contrary,  
17 for example, the PATRIOT Act, which allows for  
18 court-approved requests for business records,  
19 including library records, has never been used to  
20 obtain records from the library, not once. Senator  
21 Diane Feinstein said, "I have never had a single  
22 abuse of the PATRIOT Act reported to me." I'll go

1 on to quote her more extensively. "My staff," she  
2 said, "emailed the ACLU and asked them for  
3 instances of actual abuses. They emailed back and  
4 said they have none."

5           The PATRIOT Act has enabled us to make  
6 quiet, steady progress in the War on Terror. Since  
7 September 11, we've dismantled terrorist cells in  
8 Detroit and Seattle, Portland, Northern Virginia,  
9 and Buffalo, New York. We've disrupted weapons  
10 procurement plots in Miami, in San Diego, in  
11 Newark, and in Houston. We've shut down terrorist  
12 affiliate charities in Chicago and Dallas and  
13 Syracuse. We've brought criminal charges against  
14 280-some individuals and secured convictions for  
15 over 155 of them as those cases continue to make  
16 progress. Terrorists who are incarcerated,  
17 deported, or otherwise neutralized threaten fewer  
18 American lives, and for two years, our citizens  
19 have been safe. There have been no major terrorist  
20 attacks on our soil. American freedom has been  
21 enhanced; it has not been diminished. Our  
22 Constitution has been honored, not degraded.

1           Second, the role Congress plays. In six  
2 weeks of debate in September and October of 2001,  
3 both the House of Representatives and the Senate  
4 examined studiously and debated vigorously the  
5 merits of the PATRIOT Act. Let me just indicate,  
6 there was an intense focus on this particular  
7 enactment, the intensity of which was probably  
8 unparalleled, at least in my period of observation  
9 of the activities of the United States Congress,  
10 and in the end, both houses overwhelmingly  
11 supported its passage, by a 98-1 vote in the Senate  
12 and a 5-1 margin in the House.

13           Congress built into the PATRIOT Act  
14 strict and structured oversight of the executive  
15 branch. Twice annually -- every six months -- the  
16 Justice Department provides Congress with reports  
17 of its activities under the PATRIOT Act,  
18 comprehensive reports. Since September 24, 2001,  
19 Justice department officials, myself included, have  
20 gone before the Congress, testified on the PATRIOT  
21 Act and other homeland security issues more than  
22 115 times. We've responded to hundreds of written

1 and oral questions and provided reams of written  
2 responses to the Congress about the act. To date,  
3 no congressional committee has found any evidence  
4 that law enforcement has abused the powers provided  
5 by the PATRIOT Act in a way that would offend the  
6 Constitution or in any other way.

7           Legislative oversight of the executive  
8 branch is critical to ordered liberty. I spent  
9 some time in the legislature. I understand how  
10 important it is for the representatives of the  
11 people to understand the way the laws which they  
12 enact are being implemented. That oversight  
13 ensures that the laws are administered in ways that  
14 respect the rights and liberties of the citizens.

15           There has not been a major terrorist  
16 attack within our borders in this time. Time and  
17 again, Congress has found the PATRIOT Act to be  
18 effective against terrorist threats and respectful  
19 and protective of citizens' liberties. The  
20 Constitution has been honored; it has not been  
21 degraded.

22           Finally, the PATRIOT Act and its relation

1 to the judicial branch of government -- the PATRIOT  
2 Act provides for close judicial supervision of the  
3 executive branch's use of PATRIOT Act authorities.

4 The act allows the government to utilize many long-  
5 standing, well-accepted law enforcement tools in  
6 the fight against terror. These tools include  
7 delayed notification, judicially supervised, of  
8 searches. They also include things that we've had  
9 for quite sometime, like so-called roving wiretaps.

10           Just for a moment, let me pause. Roving  
11 wiretaps were authorized by the Congress in 1986 in  
12 the fight against organized crime and drugs.  
13 Sometime, we in the law enforcement community  
14 appropriate to authorities names which are frankly  
15 more threatening than the authority is itself. The  
16 use by some of the name "sneak a peek", when you're  
17 talking about a judicially supervised, court-  
18 authorized delay in the notification for a search  
19 warrant, suggests that you can go peeking around  
20 somehow independently without cause or without  
21 reason. The name has eroded our capacity to do  
22 what ought to be done and can be done respectfully

1 of the Constitution.

2           Similarly, the roving wiretap has  
3 confused Americans. They think, well, if you're  
4 just roving around tapping phones, that's wrong.  
5 And they would be right in thinking that's wrong,  
6 if they were not wrong in thinking that's right.  
7 That will not be on the final exam. If it is, it  
8 will be in the form of a trick question.

9           The point is this. A roving wiretap is  
10 carefully supervised, and it is designed merely to  
11 allow an individual to be surveilled individually  
12 once the courts have determined that surveillance  
13 is appropriate, so that, if an individual uses his  
14 home phone and then his car phone and then his  
15 office phone and then another cell phone, or  
16 perhaps even uses a throw-away instrument of  
17 communication, we have the ability to follow the  
18 communication pursuant to the judicial supervision  
19 and court authority. That's been available since  
20 1986 in the war on drugs. And I have within myself  
21 a deep conviction that it is within not only the  
22 opportunities expressed in the Constitution, but in

1 the duties of the Constitution that we use the full  
2 range of tools appropriate against organized crime  
3 and drug dealers. We use those tools to safeguard  
4 the security and liberty of the American people  
5 against terrorists.

6           In using these tactics to fight  
7 terrorism, the PATRIOT Act includes an additional  
8 protection for individual liberty. A federal judge  
9 supervises the use of each of the tactics. Here we  
10 speak about very important issues. Were we to seek  
11 an order to request business records, that order  
12 would need the approval of a federal judge. Now,  
13 grand jury subpoenas issued for similar requests by  
14 police in standard criminal investigations are  
15 issued without that kind of judicial oversight, so  
16 that under the PATRIOT Act there is this additional  
17 supervisory oversight by the federal judiciary  
18 throughout the PATRIOT Act. Tools provided to  
19 fight terrorism require that the same predication  
20 be established before a federal judge as would  
21 similar tools provided to fight other crime.

22           In addition, the PATRIOT Act includes yet

1 another layer of judicial scrutiny by providing a  
2 civil remedy in the event of abuse. Section 223 of  
3 the PATRIOT Act allows citizens to seek monetary  
4 damages for willful violations of the PATRIOT Act.  
5 This civil remedy serves a further deterrent  
6 against infringement upon individual liberties.  
7 Now, given our overly litigious society, you are  
8 probably wondering how many such civil cases have  
9 been filed to date. It is a figure as astronomical  
10 as the library searches: zero. There is a simple  
11 reason for this. The PATRIOT Act has not been used  
12 to infringe upon individual liberties.

13           Now many of you have heard the hue and  
14 cry of critics of the PATRIOT Act who allege that  
15 liberty has been eroded. But more telling is what  
16 you have not heard. You have not heard of one  
17 single case in which a judge has found an abuse of  
18 the PATRIOT Act because, again, there have been no  
19 abuses. It is also important to consider what we  
20 have not seen: no major terrorist attacks on our  
21 soil over the past two years. The PATRIOT Act's  
22 record demonstrates that we are protecting the

1 American people while honoring the Constitution and  
2 preserving the liberties we hold dear.

3           While we're discussing the judiciary, let  
4 me make one additional point. To be at its best,  
5 the judiciary requires a full bench. Now, this is  
6 not like football or basketball where the bench  
7 consists of reserves who might not see action.  
8 We're talking about a different kind of bench. The  
9 judicial bench, to operate best for the people,  
10 must be at full strength. Let me say this.  
11 President Bush has performed his duties admirably -  
12 - admirably -- in selecting and nominating highly  
13 qualified jurists to serve.

14           Since I have the privilege of signing the  
15 commissions for judges, you know, I read them  
16 occasionally. The language in a judge's commission  
17 reads, "George W. Bush, President of the United  
18 States of America, to all who shall see this,  
19 presents greeting. Know ye that reposing special  
20 confidence and trust in the wisdom, uprightness and  
21 learning, I have nominated. . . ." and you can fill  
22 in the blanks with Bill Pryor, Janice Rogers Brown,

1 Priscilla Owen or Carolyn Kuhl. Well, this  
2 language may seem anachronistic, but the ideals of  
3 the men and women of the bench that they must  
4 uphold are not anachronistic. They are ideals of  
5 wisdom and uprightness and learning. I must say  
6 that the President's nominees personify those noble  
7 ideals. His nominees are proven defenders of the  
8 rule of law, and they should be treated fairly.  
9 The rule of law itself is a concept which indicates  
10 that there should be equity between the way  
11 individuals should be treated without regard to  
12 their personhood.

13           In the effort to populate the bench,  
14 which enforces the rule of law in the country, it  
15 is important that this government observe the  
16 similar and important identical principles, as a  
17 matter of fact, supporting the rule of law. That  
18 is, equity and treatment. They deserve to be  
19 treated with the dignity that befits the position  
20 to which they are being appointed and in which they  
21 would seek to serve our country to defend freedom  
22 and our citizens.

1                   You may think that some of the  
2 President's best nominees are being treated  
3 unfairly. I can understand that. In that case,  
4 you may want to exercise your right to dissent.  
5 The future of freedom and the rule of law depend on  
6 citizens informed by fact and directed toward  
7 truth. To be sure, the law depends on the  
8 integrity of those who make it, of those who  
9 enforce it, and those who apply it. It also  
10 depends on the moral courage of citizens, and of  
11 lawyers like you, to insist on being heard, whether  
12 in town hall meetings, in county council meetings,  
13 or in the United States Senate.

14                   There is nothing more noble than fighting  
15 to preserve our God-given rights, and our proven  
16 tactics against the terrorist threat are doing just  
17 that. For more than two years, with God's help, we  
18 have protected the lives of our citizens here at  
19 home again and again. Congress has determined that  
20 the courts have determined that our citizens'  
21 rights have been respected, and the Constitution  
22 respected as well.

1           Twenty-six months ago, terrorists  
2 attacked our nation thinking our liberties were a  
3 weakness of this country. They were wrong. The  
4 American people have fulfilled the destiny shaped  
5 by our forefathers and founders, and they have  
6 revealed that liberty is the strength of America.  
7 It is the source of power within our freedom.

8           Time and again, the spirit of our nation  
9 has been renewed and our greatness as a people has  
10 been strengthened by our dedication to the cause of  
11 liberty, to the rule of law, and to the primacy and  
12 dignity of each individual. I know we'll keep  
13 alive these noble aspirations that are at the base  
14 of the hearts of all of our fellow citizens and for  
15 which our young men and women at this moment are  
16 fighting and making the supreme sacrifice.

17           What we are defending is what generations  
18 before us fought for and what they defended: a  
19 nation that is a standard, a beacon, an aspiration  
20 to all who desire a land that promises to uphold  
21 the best hopes of all mankind, a land of justice.  
22 We defend a land of liberty. I am grateful for

1 your defense, for your dedication to these values  
2 and ideas. May God bless you, and God bless  
3 America.

4           SPEAKER: General, we have a long-  
5 standing tradition at the Federalist Society of  
6 giving a great little book to public officials, one  
7 that I'm sure you're familiar with -- *The*  
8 *Federalist Papers*. As I'm sure you wear your  
9 copies out quite often, here's another one that you  
10 can turn to in the future. Thank you for joining  
11 us today.

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