

1 THE FEDERALIST SOCIETY

2

3 + + + + +

4

5 21st ANNIVERSARY

6

6 NATIONAL LAWYERS CONVENTION SESSIONS

7

8 + + + + +

9

10 2003 ANNUAL DINNER

11

11 HONORABLE ANDREW H. CARD, JR.

12

12 WHITE HOUSE CHIEF OF STAFF

13

14 + + + + +

15

16 Thursday, November 13, 2003

17

18

19

20

21

22

1 PRESENT:

2 THE HONORABLE DAVID M. McINTOSH, Mayer, Brown  
3 Rowe & Maw

4 THE HONORABLE C. BOYDEN GRAY, Wilmer, Cutler &  
5 Pickering

6 THE HONORABLE ANDREW H. CARD, JR., White House  
7 Chief of Staff

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1                   MR. MCINTOSH:     If you'll take your  
2 seats, we'll get started with our speaker for  
3 tonight.

4                   Thank you very much. It's always fun to  
5 visit with friends. But we've got other people who  
6 have important things to say, so I will call this to  
7 order.

8                   As the first order of business, I'd like  
9 to bring up here to the podium Father McAfee for an  
10 invocation. Father McAfee.

11                  FATHER MCAFEE:    Let us pray. To the  
12 Father, and the Son, and the Holy Spirit. Almighty  
13 Father, sovereign Lord, we praise and magnify Your  
14 holy name. You alone are king and law giver. You  
15 alone are the throne of justice, the font of wisdom  
16 by which rulers govern and legislators enact just  
17 laws. You created in Your own image man, the  
18 pinnacle of creation. You embedded in the human soul  
19 a lasting hunger for the good and a thirst for  
20 righteousness.

21                  In the human soul You also instilled for  
22 the common good a love for law. The same finger with

1 which You fashioned the stars and planets, the seas  
2 and the mountains, You carved upon the human heart  
3 Your own immutable law. We ask that You send Your  
4 blessings on those gathered here this evening. May  
5 they be always faithful disciples of the law,  
6 recognizing her beauty, and earnestly attending to  
7 her preservation.

8           Enable them to be wise law givers, as  
9 was Moses, just judges, as were Samuel and Deborah,  
10 righteous rulers, as was David. Grant that they may  
11 always heed and remember in their many duties the  
12 words of Your beloved servant Thomas Moore, himself a  
13 lawyer, judge, and high government official, that we  
14 always be the king's good servants, but Yours first.

15           We humbly ask You in the name of Your  
16 beloved Son, Jesus Christ. Amen.

17           MR. MCINTOSH: Thank you, Father. I  
18 wish you could have been there several times in  
19 Congress in session to get people quieted down. If  
20 you will now please join me, we will recite the  
21 Pledge of Allegiance. Everyone please stand.

22           "I pledge allegiance to the flag of the

1 United States of America, and to the republic for  
2 which it stands, one nation under God, indivisible,  
3 with liberty and justice for all.”

4           Thank you. We did receive a telegram  
5 earlier today that I wanted to share with you. It’s  
6 from the People for the American Way. It says, “Dear  
7 Federalist Society, To Whom it May Concern. I  
8 understand that you’re planning to recite the Pledge  
9 of Allegiance at your upcoming National Lawyers  
10 Convention banquet. Our lawyers have researched your  
11 charter as a not-for-profit educational organization  
12 and believe that you’re prohibited from reciting this  
13 pledge under the Ninth Circuit Court of Appeals’  
14 decision in *Newdow*. Should you do so, we are  
15 prepared to take appropriate legal action.  
16 Sincerely, Norman Lear, Founder.”

17           I’m glad that Leonard handed me that  
18 after the pledge, so that we were able to continue  
19 with our plans. My duty now is to introduce a  
20 gentleman who is known to everyone, but I want to  
21 make a few remarks about how important he is to the  
22 Society. Then he’s going to introduce our featured

1 speaker.

2           Boyden Gray has been a friend of the  
3 Federalist Society virtually from the founding. As  
4 you know, he served as the legal counsel to President  
5 Bush, the 41<sup>st</sup> President, and shepherded the  
6 appointment and confirmation of many conservative  
7 judges to the bench. He's long been a champion of  
8 rationality and federal regulatory programs. In  
9 fact, at one point this work earned him a write-up in  
10 the *Washington Post* Style section, where they  
11 described him as Mr. Vrrrooom, because he not only  
12 talked about alternative fuels, but he drove a car  
13 that was fueled by alternative fuels.

14           Boyden has been the driving force behind  
15 efforts to have rationality in regulation, as well as  
16 to reconcile two philosophical points that have been  
17 discussed much today and will be tomorrow, the  
18 tension between federalism and the decision to  
19 enforce the written Constitution and the role of the  
20 Commerce Clause. When those two come into play, he's  
21 been a strong advocate for getting it right under the  
22 principles of our Constitution.



1 Boyden Gray.

2                   MR. GRAY: I hope you can hear me. I'm  
3 tempted to tell this story. I judge hotel rooms by  
4 the height of the shower curtain. My height comes  
5 from an ancestor who was six-eight. Before the Civil  
6 War, he was a member of Congress. He didn't like  
7 dueling. He ridiculed dueling, being from the state  
8 of North Carolina, where I'm originally from. This  
9 was a bad development in my view because with today's  
10 ethics wars, dueling would be a far simpler way of  
11 dealing with it. One shot and it's over, you know.  
12 Usually a shot misses, but if it doesn't, you're  
13 still better off.

14                   He got into a debate with Stephen  
15 Douglas of the Lincoln-Douglas debates, who, as you  
16 all know, was a short guy, but not lacking in a  
17 certain confidence. As a result of some argument, he  
18 was challenged by Douglas to a duel and given a  
19 choice of both weapon and place. My ancestor said,  
20 okay if that's the way you want it, draw swords in  
21 the middle of the Potomac. He went under water  
22 first.

1           It is a great pleasure for me to be able  
2 to introduce Andy Card, one of the best people in  
3 government I have ever worked with, one of my  
4 favorite people. He blends the most extraordinary  
5 combination of absolute excellence and anonymity,  
6 which is what a Chief of Staff really should do.  
7 There really isn't anybody quite like him having  
8 really been effectively the Chief of Staff for two  
9 Presidents. I know that someone might take offense  
10 at that for his work with 41. But those of us who  
11 knew him and knew the White House knew who was really  
12 keeping things going on an even keel.

13           There's only one person, I think, in  
14 modern times who might be a parallel, and that's  
15 Brent Scowcroft, who was NSC advisor for President  
16 Ford and for 41. You're in very rarified company,  
17 Andy. You certainly deserve it.

18           Now people wonder what explains this  
19 success. How could this guy from Massachusetts of  
20 all places end up in these two administrations as a  
21 supporter of Republican causes? Some people  
22 attribute it to his extraordinary disposition, which

1 is extraordinary. His even-handed disposition, his  
2 level head -- I think that accounts for some of it.  
3 But the real reason, I'm sure, is because in order to  
4 balance the growing up in Massachusetts, he went  
5 south to the Carolinas for college. I think that's  
6 what explains it. The trouble is Andy went to the  
7 wrong Carolina, but that's all right.

8           Andy was best when things were in  
9 turmoil. Without him I don't know that we would have  
10 gotten through the Thomas nomination. Everybody was  
11 flying off in every different direction. Andy kept  
12 things steady at a time when things really could have  
13 cratered.

14           He was the same way earlier when Senator  
15 Tower was defeated. I think Tower was one of the  
16 first, maybe the only in modern times, cabinet  
17 secretary to be defeated by the Senate. Again, we  
18 ended up, of course, with Secretary Cheney, which  
19 some have argued was a better deal.

20           He was very, very good in the transition  
21 at the very, very end when we lost the election and  
22 people's moods were not very good, as you can

1 probably well imagine. There's one anecdote. There  
2 were laws about what we could release to an incoming  
3 set of transition teams. The laws were such that the  
4 other side, not having been in power for a while,  
5 thought that we were gaming them. Andy, you may  
6 remember this, but there was a very tense meeting in  
7 the Roosevelt Room which involved Mike Berman, who  
8 had been Walter Mondale's last counsel, Vice  
9 Presidential counsel, and he was going to do a Dutch-  
10 uncle thing on me and say, "Boy come on, you know  
11 you're playing games."

12           Andy very patiently explained to these  
13 gentlemen and ladies just what the deal was, and by  
14 the end of the meeting, everything had calmed down.  
15 This was potentially very, very explosive and not  
16 good for President Bush 41's legacy. It worked out.

17           Later John Schmitz and I and some others  
18 went up to shut down our office. Then a few minutes  
19 later we drifted down to West Exec to get our cars.  
20 A front group of the Clinton transition people were  
21 still there, and one of them said to us, "We've  
22 decided boys to let you have it for another four

1 years."

2                   Now, if Andy had been in the White House  
3 instead of at Transportation, I think we probably  
4 would have had it for another four years. But he was  
5 vindicated by getting the current four years by  
6 coming back and helping run President Bush 43's  
7 campaign.

8                   All I can say to you, Andy, is, I hope  
9 you take care of yourself so that you're ready to run  
10 George P.'s campaign.

11                   MR. CARD: I weigh as tall as Boyden  
12 Gray.

13                   Boyden, I am intrigued with the *New*  
14 *Republic*, your photo on the cover. But when it was  
15 described as not flattering, I had to admit that I  
16 don't think I've ever seen a flattering picture of  
17 you.

18                   Boyden Gray has been a friend for a long  
19 time, but the truth is, he's been a friend of what  
20 you believe in individually and collectively for a  
21 much longer time than I have known him. He is  
22 someone who has great stature, in part because of his

1 height, but actually because he works hard for that  
2 which you believe in and he makes sure that others  
3 have the opportunity to learn about it.

4           That contribution is extremely  
5 significant. You can witness the fruits of that  
6 effort on the floor of the Senate right now as Boyden  
7 is helping to educate Senators first and Americans  
8 second of the need to have members of the judiciary  
9 that can serve with an honest up or down vote. So I  
10 take great pride in being here with Boyden Gray.

11           I also am not naïve. I know that Don  
12 Rumsfeld was supposed to be standing where I'm  
13 standing right this minute. And he did not give me a  
14 speech. So you'll have to listen to mine. I  
15 disappoint Frank Fahrenkopf because this speech is  
16 between you and dinner. You will be hungry.

17           I had the pleasure of working with David  
18 McIntosh in the White House. I had the privilege of  
19 supporting David McIntosh when he first ran for  
20 Congress and then when he chose to run for Governor  
21 of Indiana. He is one of your founding members and  
22 someone who has worked tirelessly for the causes that

1 you believe in. He's also a really nice guy. So I'm  
2 pleased to be with you and him. I note that the  
3 founding members of the Federalist Society are all  
4 pretty terrific people, but one of them happened to  
5 have served as an intern with me when I was a member  
6 of the Massachusetts Great and General Court. That  
7 was Spence Abraham. I don't know if Spence is here  
8 tonight, but he doesn't admit to too many people that  
9 he was actually an intern for the Republican Party in  
10 Massachusetts.

11 Now I found out yesterday that C-SPAN  
12 was going to be at least filming this, filming so  
13 they don't cover it live, because we don't want to  
14 compete with what the good Senators are doing. But  
15 if you have a paper bag and want to put it over your  
16 head so that you'll have a chance to be confirmed  
17 sometime, go ahead and do it.

18 I love watching the Senate and the  
19 House. I really love collecting the ingredients that  
20 will go into the sausage machine, and I don't mind  
21 watching the sausage as it is being made, but last  
22 night I did catch some of the debate on the floor of

1 the Senate. You should take great pride in the fact  
2 that you are talked about in that Senate. So that  
3 Lexis/Nexis searches in the future will include the  
4 names of some other people, and my prayers are with  
5 them, I would like to say hello to Dick Durbin, the  
6 Federalist Society; Chuck Schumer, the Federalist  
7 Society; Ted Kennedy, the Federalist Society; and Tom  
8 Harkin, the Federalist Society.

9           Gene Meyer and Leonard Leo, you maintain  
10 the stability that allows this organization to go on  
11 doing what it's doing, and I thank you. But most of  
12 all, I thank the people who have been the backbone of  
13 this institution now, that started as a small club, a  
14 small society, that has become an institution for  
15 common sense and respect for our constitution.

16           One who leads that charge on behalf of  
17 all of us who are tax payers and citizens in this  
18 great country is Ted Olson. So I want to pay tribute  
19 to Ted.

20           I would be remiss if I didn't remember  
21 Barbara Olson and how she worked hard to make sure  
22 that the Federalist Society could go on with the

1 programs that it feels are so important. She did  
2 make extraordinary contributions to the Federalist  
3 Society, and we do miss her.

4           This is the time when I really should  
5 introduce the luminaries in the room. Judge  
6 González, who keeps me honest and keeps the White  
7 House consistent with Article II of the Constitution.  
8 Justice Scalia and his wife, who is actually from  
9 Braintree, Massachusetts, right next to my hometown.

10           But I will not try to go around the room  
11 and point out everyone who has done so much for this  
12 country, who cares so much for this country, and  
13 those of you who are doing so much for this country  
14 and those of you who will be called on to do even  
15 more. So I thank you.

16           I will pay one tribute to Ed Meese, who  
17 welcomed me into the White House. You have to  
18 understand, when you're a Republican from  
19 Massachusetts, you weren't always welcomed into the  
20 Reagan White House.

21           Obviously I bring you warm greetings  
22 from two people who not only care about what you care

1 about, but live what you care about, and that's the  
2 President and the Vice President of the United  
3 States.

4 Both the President and the Vice  
5 President truly understand, in fact they have great  
6 empathy for, the concerns that you talk about and  
7 write about and defend. That's our Constitution.

8 You know the Constitution is such a  
9 remarkable document. I do want to start my  
10 conversation with you centering around a day our  
11 Constitution anticipated and I looked forward to for  
12 eight long years. It was January 20, 2001. You  
13 remember it as a cold, rainy day. It was almost  
14 snowy. The President was escorted to take a seat on  
15 the south side of the Capitol. Members of Congress  
16 were there, members of the Senate. Thousands of  
17 people. The Justices were there. The President-  
18 elect was escorted down the stairs and took a seat.  
19 Promptly at noon time, Chief Justice Rehnquist rose,  
20 went to the podium, and invited Laura Bush to join  
21 him. She took a bible and the President-elect  
22 stepped forward.

1                   Consistent with Article II of the  
2 Constitution, there would be an executive of our  
3 great land. That executive would have all the power  
4 that an executive should have because the  
5 Constitution says all of it shall be vested in the  
6 President of the United States of America. When the  
7 right hand went into the air and the Chief Justice  
8 asked the President-elect to repeat after him, the  
9 President-elect took an oath. It's right in that  
10 Constitution, right in Article II.

11                   It's a very special collection of words.  
12 "I do solemnly swear that I will faithfully execute  
13 the office of the President of the United States and  
14 will to the best of my ability preserve, protect and  
15 defend the Constitution of the United States." Ever  
16 since President Washington, words have been added:  
17 "so help me God."

18                   That oath gives one responsibility to  
19 the President. It's the paramount responsibility.  
20 There are many others who take an oath and in that  
21 oath they say more words. The oath that I took, the  
22 oath that Ted Olson took, the oath that Ed Meese

1 took, or Justice Scalia, we are required to support  
2 and defend the Constitution of the United States as  
3 well. But we also promise to perform the duties that  
4 we are expected to perform in the positions that we  
5 are about to enter.

6           The President has the sole  
7 responsibility of protecting and defending the  
8 Constitution of the United States of America. That's  
9 an awesome responsibility. The President, when he  
10 took that oath, did not waiver. He gave a great  
11 inaugural address right after he gave that oath. He  
12 talked a lot about other things consistent with being  
13 President: a desire to leave no child behind in  
14 education, a hope for freedom and democracy, a  
15 recognition of faith and its role in our society, and  
16 how a partnership between faith and community and  
17 government can help people.

18           I'm not sure many people paid attention  
19 to the oath the President took that day. They  
20 focused a lot on that speech. Some great debates  
21 took place around education and tax policy and faith-  
22 based initiatives. Those debates produced results.

1 But then in September of 2001, on a day that we  
2 should never forget, that oath meant most of all.

3 I was traveling with the President in  
4 Florida on September 11, 2001. The President was  
5 going to a school to talk about education and  
6 children and reading and teachers and mentoring.  
7 Just as the day had started and the President was  
8 about to enter the classroom, he was told that it  
9 looks like a small twin-engine plane had crashed into  
10 one of the towers at the World Trade Center in New  
11 York City.

12 As the President walked into the  
13 classroom he said to me, "What a horrible accident;  
14 the pilot must have had a heart attack or something."  
15 The door shut and I was left to hear, "Gee it looks  
16 like it was a jet liner." Then, "Oh my God, another  
17 plane." I stood at that door and I wondered, if I  
18 were President, would I want to know that? The  
19 answer is obvious.

20 Then the challenge of how to tell the  
21 President became the burden of the moment. He was  
22 with students in front of a press corps. So I chose

1 to state two facts and then make one editorial  
2 comment. I walked into the classroom, went up to the  
3 President's right ear, and bent down and said, "A  
4 second plane hit the second tower. America is under  
5 attack."

6 I stepped back from the President. I  
7 did not want to invite a question or a debate. A  
8 very short period of time went by and then the  
9 President excused himself from the classroom. He  
10 immediately undertook the obligations of the oath  
11 that he took on January 20<sup>th</sup> at noon time.

12 That attack did challenge our  
13 Constitution. That attack was designed to disrupt  
14 our society, to invite anarchy in place of  
15 government, and to cause fear in society. The  
16 President knew what his job was, and he did it.

17 Now, yes, America had been attacked  
18 before. In 1812 this city burned. On December 7,  
19 1941, Pear Harbor was attacked. But those attacks  
20 were not as sinister as the attack on September 11,  
21 because the attack on September 11 was truly an  
22 attack on our organization of society, which comes

1 through the document that you respect most.

2           That attack called for the President to  
3 take extraordinary effort to protect and defend the  
4 Constitution of the United States. I won't go  
5 through all that he had to meet as a challenge that  
6 day, but I will tell you this: after we arrived back  
7 in Washington, D.C., and he had exercised the  
8 responsibilities of a commander-in-chief, giving  
9 orders that no president could anticipate having to  
10 give, he had to deal with his responsibilities not  
11 just as commander-in-chief, but as executive.

12           He strained the limits of his executive  
13 authority to better protect this country. He did so  
14 by writing an executive order that called for the  
15 creation of the Homeland Security Council within the  
16 White House. He couldn't have created a department,  
17 that was up to Congress. All he could do was push  
18 the limits of his executive authority to an executive  
19 order to get 100 entities of the executive branch to  
20 work together to protect our homeland.

21           By acting quickly, he did help to  
22 mobilize our bureaucracies in directions that

1 Congress had never anticipated and which were able  
2 later on to get Congress to embrace when they created  
3 the Department of Homeland Security. The President  
4 did that which was obvious. He mobilized our forces  
5 and our troops. He got our intelligence communities  
6 to work together as never before. In his capacity as  
7 commander-in-chief he anticipated how to deal with  
8 those who had done wrong to us by creating military  
9 tribunals and authorizing them to take action for  
10 those who were on the battlefield and might be party  
11 to doing us harm.

12           He called for the PATRIOT Act to ensure  
13 that we can use all of the tools that are available  
14 under our Constitution to prevent the next attack.  
15 That Act updated our laws to meet the updates in  
16 technology that are part of our everyday life. That  
17 PATRIOT Act is working. I don't often agree with  
18 Senator Joe Biden, but recently he'd said that he'd  
19 seen some criticism of the PATRIOT Act, but those who  
20 were offering criticism, and I quote, "were  
21 misinformed and their arguments were over blown."

22           The President used his powers to rally

1 the world to meet an unusual terrorist threat. Make  
2 no bones about it, the resolve that the President has  
3 is there every single day. The hunt goes on, and the  
4 terrorists will be found, and our Constitution will  
5 be protected. The successes in this war on terror  
6 are far greater than those that you may read about in  
7 the newspapers, because the successes are taking  
8 place not just on the battlefield of Afghanistan or  
9 Iraq, but in banks, in charity organizations that do  
10 not perform charity, and through covert activity, and  
11 in partnership with allies, known and unknown, around  
12 the world.

13           So the war against terror is a critical  
14 war for this land, because the terrorists are truly  
15 there to undermine that which you represent and  
16 defend and which the President has sworn to protect.

17           Now it would be wrong if we didn't  
18 recognize those in our society who make the  
19 extraordinary effort to meet the obligations of  
20 protecting our Constitution. They wear the uniforms  
21 of our armed services, and they're called to unusual  
22 duty today. They serve in distant places and are

1 making tremendous sacrifices, and their families are  
2 making sacrifices. So what I would ask, as you  
3 defend the Constitution, is that you praise those who  
4 fight to defend the Constitution.

5           But as you are remembering those who do  
6 wear the uniforms of our armed services, don't forget  
7 those who are not wearing the uniforms of our armed  
8 services that are also on the front lines in this war  
9 on terror. Their names are not known, but their  
10 headquarters is in Langley, Virginia.

11           There are also people who are working at  
12 the Treasury Department, and the State Department,  
13 and the Commerce Department, the Justice Department,  
14 who are in the front lines of this war on terror.  
15 When they do disrupt the financial networks of those  
16 who would do us harm. We can't forget the role that  
17 they play. I point those people out because  
18 collectively they are the executive branch of  
19 government.

20           See, it's the executive branch of  
21 government that has the duty to stand up and do the  
22 work of defending our Constitution. Congress has to

1 make sure that we have the tools to be able to do it  
2 in the executive branch, but it's the executive  
3 branch that has to meet the challenge. It's the  
4 President's command that sends the troops into harm's  
5 way, or invites the CIA to meet a responsibility,  
6 frequently untold, or motivates a bureaucrat to do  
7 the work above and beyond the normal call to duty.

8 I do want to talk about the executive  
9 branch if you don't mind, because the executive  
10 branch is the one branch of our government that seems  
11 to be most under attack. Congress loves to attack  
12 the executive branch of government. I don't think  
13 the judiciary necessarily loves it, but their work  
14 sometimes has the impact of an attack.

15 I would like to talk about Congress and  
16 their equal role in our Constitution to that of the  
17 executive or the judiciary. Congress want to eat  
18 away at what we call the Presidency. There are great  
19 dangers of immediate gratification as they choose to  
20 devour us. When a communication official in the  
21 White House says, let them nibble at the finger of  
22 the President, it's okay, or when someone in the

1 Legislative Affairs Office says, let them chew on  
2 your foot for a while, Mr. President, that's the  
3 attack on the Presidency that is a cancer that we  
4 have to protect our Constitution from being consumed  
5 by.

6           The Presidency is so important. Our  
7 democracy is a little bit different than many others  
8 around the world because of our President and the  
9 executive authority that Article II ascribes. There  
10 aren't many people who pay attention to just how  
11 important that executive responsibility under Article  
12 II is. Congress does not. Judge González does. Ed  
13 Meese did. Ted Olson does. Boyden Gray did. And a  
14 Chief of Staff should.

15           I do come to work every day not wanting  
16 to be pinched in case it really is just a dream. But  
17 I come to work recognizing that that dream is so  
18 special because of our Constitution. I do think a  
19 responsibility that I have is to make sure that  
20 immediate gratification or political expediency or  
21 communications opportunities should not diminish the  
22 role of the President of the United States. That's

1 not an easy thing to do, because the role of the  
2 President of the United States is not the role that  
3 an individual has as President, it's the role that  
4 our Constitution gives to the individual who is  
5 serving as President.

6           The President that I am blessed to work  
7 with every day understands that the Office of the  
8 Presidency is much bigger than George W. Bush. So he  
9 is not looking to do that which is convenient or  
10 easy. He is looking to do that which is right and  
11 which will allow the next President to meet his  
12 responsibilities.

13           One of the responsibilities that a  
14 President has is to be able to pick people and  
15 nominate them to serve in that other branch of  
16 government, the judicial branch. He knows that  
17 federal judges sit for life. They are not political  
18 opportunities or philosophical opportunities or  
19 policy solutions. They are lifetime commitments to  
20 the core value that our forefathers put into a  
21 document that lives today.

22           So the President takes great time and

1 deliberation in selecting the best to serve in our  
2 Court. He wants people of character, people with  
3 experience and integrity. He wants people who will  
4 interpret the law fairly, and he's frustrated when he  
5 makes those decisions on merit, with thought and very  
6 wise counsel, and they're denied a chance to take a  
7 seat in an American constitutional institution that  
8 requires only a simple majority vote from the United  
9 States Senate.

10 Today the President invited to the Oval  
11 Office Priscilla Owen, Carolyn Kuhl, and Janice  
12 Rogers Brown. These three women are remarkable  
13 women, worthy of your greatest respect and worthy of  
14 being able to take our greatest document and having  
15 it considered with respect every time there is a  
16 challenge. But the President noted this morning that  
17 they're having a hard time getting to that bench that  
18 they so rightly deserve to be able to sit on because  
19 of what he called ugly politics in the United States  
20 Senate.

21 Nominees who have the support of a  
22 majority in the Senate should be able to take their

1 constitutionally eligible place on the bench.

2           Last       October,       the       President,  
3 understanding the irresponsible impasse that makes up  
4 the politics of the Senate, proposed a plan to end  
5 the confirmation log jam. An awful lot of work and  
6 thought went into that proposal. It set reasonable  
7 time tables for both the nomination process and for  
8 Senate deliberation. Then it would provide for an  
9 honest up or down vote, no matter who was the  
10 President or which party is in the majority in the  
11 Senate. It's time for the Senate to consider that  
12 plan so that they can move forward.

13           We have a crisis in the judiciary that  
14 is not a crisis of confidence. It's a crisis of  
15 vacancy. That's something that we collectively can  
16 do something about by putting people on the bench.  
17 The Senate's not done its job and we've got to  
18 challenge them to do it.

19           I'm going to close. By the way, I'm an  
20 engineer, so I can say things that are absolutely not  
21 consistent with your logic and be logical.

22           But I was very frustrated recently when

1 I read that some very learned people, some in law  
2 school, some teaching law school, some serving on the  
3 Court, suggested that the interpretation of our laws  
4 should not be limited to our Constitution. It  
5 troubled me because I just don't understand how the  
6 Constitution that we have allows them to get there.

7           So I say this, the Federalist Society  
8 would do great justice if it would help me better  
9 understand how important it is that American law be  
10 judged on America's Constitution.

11           The core values in that Constitution  
12 have lasted far longer than our forefathers  
13 anticipated, and it's because our Constitution was  
14 written as a living document. So I say this: the  
15 President shows up in the Oval Office between quarter  
16 of seven and seven o'clock in the morning, and I'm  
17 there to greet him. One of the greatest privileges  
18 that anyone can have in any democracy is to say,  
19 "Good morning, Mr. President."

20           I see that President come into the Oval  
21 Office every day the same way he entered the Oval  
22 Office on January 20, 2001, with the respect for the

1 Constitution and a respect for the Office of the  
2 Presidency, and with respect for you because you're  
3 helping to defend it.

4           So God has blessed this land. May he  
5 continue to. And may you work to make sure that the  
6 blessings are well received.

7           Thank you.

8           MR. MCINTOSH: I hate to interrupt that  
9 applause. It's very, very well deserved. Andy, we  
10 have a tradition in the Federalist Society of  
11 presenting our speakers with a bound copy of the  
12 Federalist Papers. I know how busy your job is and  
13 how little time you have to do recreational reading,  
14 but I will share with you I found in Congress that on  
15 the rare occasion where I just didn't know what to do  
16 and remembered that I had a copy of it and actually  
17 looked at the Federalist Papers, there were often  
18 nuggets of wisdom there that helped me in figuring  
19 out what the right path was.

20           So I don't know how often you'll get a  
21 chance to break it open, but if you get to one of  
22 those impasses and it's sitting there on your desk, I

1 hope it's helpful to you.

2 MR. CARD: Thank you.

3 MR. MCINTOSH: Please enjoy your dinner.

4 We'll be back after the meal for a few closing  
5 remarks. Thank you.

6 [BREAK IN TAPE]

7 MR. MCINTOSH: I can't resist reading  
8 this. "Dear David, I am sorry that I cannot join you  
9 tonight at the Federalist Society Annual Dinner -- as  
10 I explained, he's here -- as you know, the Senate has  
11 been debating my nomination to the United States  
12 Court of Appeals. I will miss seeing all of you and  
13 wish you all the best. On a side note, I understand  
14 the Federalist Society has been threatened with a  
15 lawsuit should you continue to recite the Pledge of  
16 Allegiance. I am, of course, a strong supporter of  
17 the Pledge, and, of course, it has always been a  
18 highlight of the Federalist Society Annual Dinners.  
19 However, I must admonish you that should a court of  
20 law enjoin the Federalist Society from reciting the  
21 Pledge, you must not do so. Sincerely, Bill Pryor."

22 Bill is a good friend, and for the C-

1 SPAN record, I made that up. But we've enjoyed  
2 tonight tremendously, and for a few closing remarks,  
3 I want to bring forward a gentleman who is the  
4 president of the Federalist Society and someone  
5 without whom none of this could be possible, Gene  
6 Meyer.

7 MR. MEYER: Thank you. Thank you very  
8 much. As the program suggests, I want to acknowledge  
9 some of the many people who've helped the Federalist  
10 Society. Before you all panic about that, I will  
11 keep this brief. Our success is based on about 2,500  
12 volunteers around the country. I'd like to recognize  
13 and ask to stand our volunteer officers for our  
14 lawyer and student chapters, our practice groups and  
15 their subcommittees. If they could all stand and be  
16 recognized.

17 The convention and banquet program  
18 specifically recognizes the various firms and  
19 corporations and individuals that supported this  
20 banquet. I would like to express our thanks to all  
21 of them.

22 We have here tonight -- of course you've

1 been hearing from David McIntosh, who is on our board  
2 of directors. Steve Calabresi, who is the Chairman  
3 of our board of directors, is here, as on our board  
4 of visitors is Bob Levy, Ed Meese, Boyden Gray, whom  
5 you heard from earlier tonight, Andy Redleaf, Lillian  
6 BeVier, Jerry Walpin. Could they please stand and be  
7 recognized?

8           With all of our gratitude to our  
9 volunteers and supporters, it obviously also takes  
10 staff to put together a conference like this and to  
11 run the organization. They're scattered around the  
12 room. I'm going to take the risk of specifically  
13 singling out several of them, which is always a risk  
14 in these things. But first of all, I want to thank  
15 the person who's been our point person for putting  
16 together this program, Juli Walker, who unfortunately  
17 the last couple of days got really sick, but she set  
18 things up so well that even though she got sick,  
19 everything has been running smoothly.

20           Somewhere out there, Juli, thank you  
21 very much. I also want to thank specifically Lisa  
22 Budzynski, who in the last couple of days picked up

1 and pinch hit for Juli and did everything that needed  
2 to be done.

3 All of you know Leonard Leo. I'm not  
4 going to add anything to that except to say thank  
5 you, Leonard, for all that you do.

6 I want to do one other thing tonight in  
7 terms of thank yous. For all organizations to  
8 succeed, there usually are several people who provide  
9 stability and wisdom over the years. But they are  
10 usually some of those people who are rarely  
11 recognized. These are often people who do absolutely  
12 critical work. I want to recognize one of those here  
13 tonight who for over 10 years has basically kept our  
14 finances in order. Many of you know of him, usually  
15 either because you may have seen his signature on  
16 checks you received, or because on rare occasions you  
17 may have called to find out where a reimbursement  
18 was. That doesn't happen very often because he has  
19 been so efficient and so effective. Indeed, I think  
20 the majority of time we've had complaints like that,  
21 it's either turned out generally to be the U.S. mail  
22 or the person asking for the reimbursement has said,

1 "actually I never sent that in," or "I have the check  
2 already." Or Doug calls him back and says he cashed  
3 it.

4 The person I want to thank for keeping  
5 our finances in order and for all he's done for the  
6 organization over the last decade is Doug Ubben.  
7 Doug, could you stand?

8 Finally, I'd just like all of our staff  
9 to stand. I apologize for not specifically  
10 recognizing them individually, and I apologize for  
11 not recognizing all the volunteers individually, but  
12 obviously there are limits. Would our staff please  
13 stand and be recognized for the great work they've  
14 done?

15 Now in closing, I wanted to give a very  
16 quick test. I'm going to give you four things. The  
17 question is which one of these things didn't actually  
18 happen. Or maybe more than one of them didn't  
19 actually happen.

20 One is a quote from Eric Holder who  
21 talks about, talking to the American Constitution  
22 Society in my hypothetical, says, "This is an

1 organization that allows for different voices to be  
2 heard and the issues to be debated in a lot of ways  
3 without the political correctness you see in the  
4 Federalist Society.”

5           The second one is a quote from the  
6 executive director of the American Constitution  
7 Society. “Conservatism now dominates the law from  
8 courtroom to classroom.”

9           The third one I like a lot better, I  
10 admit, from the *Boston Globe* in my theory, “The  
11 Federalist Society missed no opportunity to assert  
12 that the Constitution has been stretched way beyond  
13 the founding fathers’ intentions. They taught,  
14 studied, and spoke out so diligently that even many  
15 liberals came to accept their view.”

16           The fourth one is not a quote but it’s a  
17 report from something that happened today. The Ninth  
18 Circuit declared that the Constitution itself is  
19 actually unconstitutional.

20           Okay, I won’t make you guess. I did  
21 make up the last one; the others are actually true.

22           Thank you all for coming. We look

1 forward to seeing you tomorrow morning and at the  
2 rest of the conference. We really appreciate all the  
3 help you do, because you are what make the Federalist  
4 Society work.

5 MR. MCINTOSH: That concludes our events  
6 for this evening. God bless everyone and good night.

7 [END OF TAPE]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22