



Department of Justice

"FEDERALISM AND LAW ENFORCEMENT"

REMARKS

BY

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TO

THE SECOND ANNUAL LAWYERS' CONVENTION
OF THE FEDERALIST SOCIETY
FOR LAW AND PUBLIC POLICY STUDIES

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THE MAYFLOWER HOTEL
WASHINGTON, D.C.

I'm very glad to have this opportunity to meet with the Federalist Society. This is my first meeting with you. It also happens to be one of my first major public appearances as Attorney General.

This group wasn't around the last time I worked in Washington; and in Pennsylvania, it hasn't yet picked up a full head of steam. No doubt it will: you are, after all, a young organization. Yet you are already making an impact on law school campuses around the nation, and now among Washington lawyers as well. Now that I'm here, I'm glad to make your acquaintance.

For your National Lawyers' Convention this year, you've chosen the subject of "The Constitution and Federal Criminal Law." If you had planned this convention expressly to welcome me to Washington, you couldn't have planned it any better as law enforcement has occupied a major portion of my career.

I know you've now had a full day of heavy-hitting academic contributions to the debate on crime and constitutional issues, and you have a similar day ahead of you tomorrow. Although I have been at Harvard the past year as a kind of one man affirmative action program -- a conservative Yale Republican in the Harvard Yard -- I don't plan to subject you to an academic address. Instead, I would like to talk to you about three matters -- federalism in the 1980s and some about what we accomplished in Pennsylvania; about law enforcement within the

structure of our constitutional system; and to say a few words in closing about my number one priority as Attorney General, the problem of drugs.

I.

One of the reasons that I have proudly affiliated myself with the Republican Party throughout my political career is that our party believes in strong state and local government. I'm proud of my past and present service at the federal level, but I do not and never have believed that all problems have federal solutions.

I admire tremendously the wisdom of the members of the Constitutional Convention who met -- in Pennsylvania, of course -- to try to pull a workable government out of the chaos of the Articles of Confederation. Two basic systems were in contention: the national, in which there would be one central government, and the federal, in which the United States would remain a loose fraternity of independent mini-nations.

Let the cynics say, if they will, that the result was due more to accident and compromise than to wisdom. Be that as it may, it was a stroke of genius. The Framers came up with a system in which the states would remain sovereign, but would

delegate to a national government such powers as were necessary to preserve the internal peace and to deal with the outside world as one nation.

It was an unprecedented hybrid of the national and federal principles, so novel that we cannot blame those who thought it would be unworkable. Indeed at times it has seemed it might fail, especially in the tragic armed conflict that culminated at Gettysburg -- once again in Pennsylvania.

But on the whole, it has worked and is working even better today as states and localities reassert their role as "laboratories of democracy." At those levels of government, legislatures and town councils can try solutions that might or might not work at the national level.

Fundamental changes in this decade have contributed to the rebirth of the vitality of this system.

These 1980s have seen a marked reversal of the 50-year trend toward more and bigger centralized government. The era of bigger and more intrusive federal bureaucracies that began in the 1930s and the more recent tendency of federal judges to become "super governors" and "super mayors" in cases where they sought to

impose their own views and philosophy upon state and local governments is rapidly coming to an end.

During this decade the pendulum has begun to swing back toward the concept of limited government at levels closest to the people -- the concept which the founding fathers embodied in our constitution in 1787 -- a federal system, not just a federal government.

And not by chance has this occurred. For in 1981 there came to office an administration committed to reducing the role of the federal government and enhancing the power of the states. President Reagan, a former governor himself, committed his administration to a "new federalism" agenda, and, more important, undertook the specific steps necessary to move in that direction.

And these steps predictably struck a responsive chord with an American citizenry that had seen its ability to control its own destiny drift gradually, but at an accelerating pace, to the puzzle palaces of this capital city. We all longed for a greater sense of responsiveness than was forthcoming from a bureaucracy addicted to simply stamping out one federal program after another with a "cookie cutter". It had become apparent that "one size fits all" is no way to meet the special and particular needs of the diverse communities that make up this unique republic.

And states and local governments responded. In community after community, as we speak, imaginative new programs dealing with economic development, community conservation, education, law enforcement and the environment, among others, are being fashioned by a new generation of forward-looking leaders. Their badge is no longer the outstretched hand toward Washington, D.C., but is instead the shoulder to the wheel in an effort to find local solutions to local problems -- and at a lower cost as well, in most cases.

Today's challenge is to continue this movement. The swing of the pendulum in this positive and constructive direction must not be reversed. Your help in enhancing our return to federalism is needed, and I invite your study and your continued active support for it.

II.

As you know, I came to the governorship of Pennsylvania following service as United States Attorney for Western Pennsylvania, and as Assistant Attorney General for the Criminal Division of the Department of Justice here in Washington. While becoming Governor clearly meant an expanded range of priorities for me, nonetheless, fighting crime remained high on the list.

And in fact, we achieved a 17 percent reduction in serious crimes over the eight-year period that coincided with my two terms as Governor. Pennsylvania's serious crime rate, as measured by the Department of Justice, is the lowest of any of the large states, a fact of which I am particularly proud.

A number of measures that we took contributed to this. We tightened standards for pardons, commutations and parole, reinstated the death penalty, imposed mandatory 5-year sentences for crimes in which firearms were used and for repeat violent offenders and put a special emphasis on concern for victims of crime. We built 3,000 new prison cells -- a 30% increase -- and upgraded the state's existing prison facilities. I created a cabinet-level Department of Corrections, and empaneled Pennsylvania's first-ever state-wide investigating grand juries to look into racketeering, white-collar crime and official corruption.

Pursuing an aggressive campaign against crime was not just the prosecutor in me asserting itself in the Governor's office. It was an integral part of our campaign to make Pennsylvania once again an attractive place to live and work. During my two terms as Governor, we turned Pennsylvania around from a high-tax, high-unemployment, high-crime "rustbelt" state into a state that today combines the best of advanced technology and traditional

industry; a state that went from having one of the ten highest unemployment rates in the nation, whom I was elected, to one of the ten lowest when I left office -- thanks in no small part, of course, to the "American Miracle" of overall economic recovery under the Reagan administration policies.

But fighting crime is more than just creating a better "quality of life" to help attract more investors and employers, while that is important. It represents a commitment to defending what I consider to be the first civil right of every citizen: the right to be free from fear in our homes, on our streets, and in our communities. That ideal has been a dominant force in my career. And it will continue to be my lodestar as Attorney General.

III.

Thus I'd like to reflect for just a moment on the title topic of this conference, "The Constitution and Federal Criminal Law."

The lion's share of criminal law enforcement remains at the state and local levels, and this Attorney General has no intention of tampering with that, and for very good reasons. One is that the genius of the common law, with its combination of

stability and adaptability, continues to hold sway in varying degrees at the state level -- not at the federal, as we all learned in the first year of law school. Notwithstanding the efforts of clever codifiers trying to improve on the accumulated wisdom of centuries of English and American law, the common law remains as the common citizen's protection against the criminals he or she fears most.

Another reason most criminal law is state law is the spirit of experimentation to which I have earlier alluded, a spirit which allows state legislatures and governors to try law-enforcement measures that might not be feasible or suitable at the federal level.

Yet, notwithstanding the preeminent role of the states and localities, there are aspects of criminal law that are fundamentally federal. An increasing number of crimes today cross state lines, and national boundaries as well.

The one I want to dwell on for a moment before closing is drugs.

Drug trafficking and drug abuse link all levels of law enforcement in a single chain. The user, and the street dealer who sells to the user, both violate federal, state, and many

local laws. The big trafficker who sells to the street dealer violates federal law. And that big trafficker and his contacts in producing and trans-shipment countries all violate the laws of the United States and of those other countries as well. Every level of law enforcement, from international cooperation forces such as the 30-nation International Drug Enforcement Conference, which announced the results of its first major effort in Central and South America last week, right down to the police officer on the beat, are involved.

My own state has recently been as ravaged as any by the scourge of drugs. Just in the past few months in Philadelphia there has been one small child killed, and another paralyzed from the waist down, in a cross-fire between drug dealers. Two other children were killed execution-style by Jamaican drug dealers, supposedly for stealing some crack. Their ages were 13 and 14.

Putting an end to this destructive insanity will be one of my top priorities as Attorney General and Chairman of the President's Drug Policy Board the enforcement of federal drug laws; I intend to set and meet new goals in international cooperation against drugs; and I intend to improve still further the caliber of federal-state-local cooperation.

At a more basic level, I would suggest to you that what a society tolerates, permits and forbids says a lot about its fundamental character and values, and this, in turn, reflects on all the members of that society. If we move drugs into the column of permissible things -- even if we do so out of the motive of efficient resource allocation -- we will have thrown in the towel on one of the crucial moral battles of our time, one on which there happens -- fortunately -- to be a consensus among the American people.

And role models in the athletic, entertainment and political worlds, in particular, who adhere to a contrary lifestyle had better be reminded of their lonely status in our society. Our level of tolerance for the drug abuser must diminish if we are to truly mount a "war" on drugs.

Furthermore -- since the topic of this conference is crime and the Constitution -- let me add this. I know that a learned debate will take place here tomorrow on the constitutionality of the death penalty. I'd just like to put my two cents' worth in. My copy of the Constitution doesn't say anything about the death penalty being unconstitutional, and I don't think yours does either. I happen to think that the death penalty does serve a deterrent capability within a narrow constitutionally-defined

class of cases and is, incidentally, an appropriate punishment for certain drug-related homicides.

Simple logic compels the conclusion that those bent upon willful, premeditated, cold-blooded murder, for example, will pause in their pursuit if they realize that carrying it to fruition may cause them to forfeit their own lives. Those who lament the paucity of "evidence" to the contrary seem to hold to the illusory view that out of nowhere will somehow materialize a cohort of criminals testifying that they "would not have committed a homicide" if a death penalty had been on the books! As a former prosecutor, I can only say "Nonsense!" But you will hear more on this question tomorrow.

I am pleased to note, by the way, that we had some good news yesterday regarding the anti-drug bill now being debated on the Hill. By a vote of 299 to 111, the House approved an amendment by my former congressman, Representative George Gekas, to provide for a federal death penalty for persons who commit murder in the course of a drug-related felony.

The Washington Post's story on this development was instructive. It began as follows: "The House, in what some opponents characterized as an ill-considered election year rush to take a tough stand against drug trafficking...." How

convenient to be told the liberal party line before we're even told what happened.

But there was more good news: the House also adopted, by 259 to 134, an amendment by Congressman Dan Lungren of California to enact into statute the "good faith" exception to the exclusionary rule in drug cases. This would greatly reduce the number of otherwise solid drug prosecutions that are lost -- or that never come to trial -- because of minor procedural flaws in a search warrant.

Both of these amendments, if they make it into the final bill -- and we'll be working to achieve that -- will prove to be very effective weapons for our society in its continuing battle against drug traffickers.

I want to thank the organizers of the conference for inviting me here this evening, and also everyone here at this banquet for your kind attention to my remarks. As I said at the beginning, this is a first for me. And, as Bogey so eloquently put it, "this may be the beginning of a beautiful friendship."

Thank you very much.

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