

THE FEDERALIST SOCIETY  
21st ANNIVERSARY  
NATIONAL LAWYERS CONVENTION

+ + + + +

2003 ANNUAL DINNER  
HONORABLE ANDREW H. CARD, JR.  
WHITE HOUSE CHIEF OF STAFF

Thursday, November 13, 2003

PRESENT:

HON. DAVID M. McINTOSH, Mayer, Brown Rowe & Maw  
HON. C. BOYDEN GRAY, Wilmer, Cutler & Pickering  
HON. ANDREW H. CARD, JR., White House Chief of Staff

MR. MCINTOSH: My duty now is to introduce a gentleman who is known to everyone, but I want to make a few remarks about how important he is to the Society. Then he's going to introduce our featured speaker.

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

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

Now most recently, Boyden's been an outspoken advocate for the confirmation of judges appointed by this President Bush by the United States Senate.

Those of you have traveled here from out of town, you see one of the unfortunate things that from time to time happens in Washington where the opposing party is filibustering the President's choices. But this leadership, on behalf of that cause, has led to more press.

Those of you who don't bother to read the *New Republic*, which I don't read, because it's too predictable in its liberal diatribes, may not have seen this. Recently Boyden was on the cover of the *New Republic* as an icon of the Republican establishment. They don't have the most flattering picture of him there. Their thesis is that Boyden may be fading away. Well I'm here to tell you tonight Boyden is very much a firm part of the institutions in this town, and an institution who has always been there to stand for truth and willing to stand up and speak it.

Without further ado, let me give you C. Boyden Gray.

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

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

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

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

Now people wonder what explains this success. How could this guy from Massachusetts of all places end up in these two administrations as a supporter of Republican causes? Some people attribute it to his extraordinary disposition, which is extraordinary. His even-handed disposition, his level head -- I think that accounts for some of it. But the real reason, I'm sure, is because in order to balance the growing up

in Massachusetts, he went south to the Carolinas for college. I think that's what explains it. The trouble is Andy went to the wrong Carolina, but that's all right.

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

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

He was very, very good in the transition at the very, very end when we lost the election and people's moods were not very good, as you can probably well imagine. There's one anecdote. There were laws about what we could release to an incoming set of transition teams. The laws were such that the other side, not having been in power for a while, thought that we were gaming them. Andy, you may remember this, but there was a very tense meeting in the Roosevelt Room which involved Mike Berman, who had been Walter Mondale's last counsel, Vice Presidential counsel, and he was going to do a Dutch-uncle thing on me and say, "Boy come on, you know you're playing games."

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

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

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

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

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

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

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

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

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

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

I had the pleasure of working with David McIntosh in the White House. I had the privilege of supporting David McIntosh when he first ran for Congress and then when he chose to run for Governor of Indiana. He is one of your founding members and someone who has worked tirelessly for the causes that you believe in. He's also a really nice guy. So I'm pleased to be with you and him. I note that the founding members of the Federalist Society are all pretty terrific people, but one of them happened to have served as an intern with me when I was a member of the Massachusetts Great and General Court. That was Spence Abraham. I don't know if Spence is here tonight, but he doesn't admit to too many people that he was actually an intern for the Republican Party in Massachusetts.

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

I love watching the Senate and the House. I really love collecting the ingredients that will go into the sausage machine, and I don't mind watching the sausage as it is being made, but last night I did catch some of the debate on the floor of the Senate. You should take great pride in the fact that you are talked about in that Senate. So that Lexis/Nexis searches in the future will include the names of some other people, and my prayers are with them, I would like to say hello to Dick Durbin, the Federalist Society; Chuck Schumer, the Federalist Society; Ted Kennedy, the Federalist Society; and Tom Harkin, the Federalist Society.

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

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

I would be remiss if I didn't remember Barbara Olson and how she worked hard to make sure that the Federalist Society could go on with the programs that it feels are so important. She did make extraordinary contributions to the Federalist Society, and we do miss her.

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

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

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

Obviously I bring you warm greetings from two people who not only care about what you care about, but live what you care about, and that's the President and the Vice President of the United States.

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

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

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

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

That oath gives one responsibility to the President. It's the paramount responsibility. There are many others who take an oath and in that oath they say more words. The oath that I took, the oath that Ted Olson took, the oath that Ed Meese took, or Justice Scalia, we are required to support and defend the Constitution of the United States as well. But we also promise to perform the duties that we are expected to perform in the positions that we are about to enter.

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

I'm not sure many people paid attention to the oath the President took that day. They focused a lot on that speech. Some great debates took place around education and tax policy and faith-based initiatives. Those debates produced results. But then in September of 2001, on a day that we should never forget, that oath meant most of all.

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

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

Then the challenge of how to tell the President became the burden of the moment. He was with students in front of a press corps. So I chose to state two facts and then make one editorial comment. I walked into the classroom, went up to the President's right ear, and bent down and said, "A second plane hit the second tower. America is under attack."

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

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

Now, yes, America had been attacked before. In 1812 this city burned. On December 7, 1941, Pear Harbor was attacked. But those attacks were not as sinister as the attack on September 11, because the attack on September 11 was truly an attack on our organization of society, which comes through the document that you respect most.

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

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

By acting quickly, he did help to mobilize our bureaucracies in directions that Congress had never anticipated and which were able later on to get Congress to embrace when they created the Department of Homeland Security. The President did that which was obvious. He mobilized our forces and our troops. He got our intelligence communities to work together as never before. In his capacity as commander-in-chief he anticipated how to deal with those who had done wrong to us by creating military tribunals and authorizing them to take action for those who were on the battlefield and might be party to doing us harm.

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

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

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

Now it would be wrong if we didn't recognize those in our society who make the extraordinary effort to meet the obligations of protecting our Constitution. They wear the uniforms of our armed services, and they're called to unusual duty today. They serve in distant places and are making tremendous sacrifices, and their families are making sacrifices. So what I would ask, as you defend the Constitution, is that you praise those who fight to defend the Constitution.

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

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

See, it's the executive branch of government that has the duty to stand up and do the work of defending our Constitution. Congress has to make sure that we have the tools to be able to do it in the executive branch, but it's the executive branch that has to meet the challenge. It's the President's command that sends the troops into harm's way, or invites the CIA to meet a responsibility, frequently untold, or motivates a bureaucrat to do the work above and beyond the normal call to duty.

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

I would like to talk about Congress and their equal role in our Constitution to that of the executive or the judiciary. Congress want to eat away at what we call the Presidency. There are great dangers of immediate gratification as they choose to devour us. When a communication official in the White House says, let them nibble at the finger of the President, it's okay, or when someone in the Legislative Affairs Office says, let them chew on your foot for a while, Mr. President, that's the attack on the Presidency that is a cancer that we have to protect our Constitution from being consumed by.

The Presidency is so important. Our democracy is a little bit different than many others around the world because of our President and the executive authority that Article II ascribes. There aren't many people who pay attention to just how important that executive responsibility under Article II is. Congress does not. Judge



González does. Ed Meese did. Ted Olson does. Boyden Gray did. And a Chief of Staff should.

I do come to work every day not wanting to be pinched in case it really is just a dream. But I come to work recognizing that that dream is so special because of our Constitution. I do think a responsibility that I have is to make sure that immediate gratification or political expediency or communications opportunities should not diminish the role of the President of the United States. That's not an easy thing to do, because the role of the President of the United States is not the role that an individual has as President, it's the role that our Constitution gives to the individual who is serving as President.

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

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

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

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

Nominees who have the support of a majority in the Senate should be able to take their constitutionally eligible place on the bench.

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

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

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

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

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

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

I see that President come into the Oval Office every day the same way he entered the Oval Office on January 20, 2001, with the respect for the Constitution and a respect for the Office of the Presidency, and with respect for you because you're helping to defend it.

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

Thank you.

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

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

MR. CARD: Thank you.