

IN REMEMBRANCE OF BARBARA K. OLSON

THEODORE B. OLSON*

It is a great, great privilege to be a part of The Federalist Society and to be participating in the Barbara Olson Memorial Lecture.

On a clear and sunny September 11, twenty years ago, the world we had been living in crumbled and time seemed to come to a stop. Unlike December 7, 1941, when the full force of Japan's Air Force launched a surprise attack on a faraway Navy base, this time a mere nineteen individual zealots armed with hate, and with little more than box cutters, executed a massive, coordinated, and crippling attack on our people, our government, and our institutions.¹ They exploded hijacked commercial airliners packed with civilian passengers into America's commercial base in New York City and the nerve center of our defense establishment at the Pentagon a few miles from here. Had it not been for the towering heroics of a few brave passengers, one of their hijacked planes would likely have hit the Capitol and killed hundreds of members of Congress.² Thou-

* Theodore B. Olson was the husband of Barbara K. Olson. Barbara Olson was killed on September 11, 2001 as the airplane on which she flew was crashed into the Pentagon by terrorists. Mr. Olson served as Solicitor General of the United States. Mr. Olson delivered these remarks in remembrance of his wife on November 12, 2021 at the 2021 Federalist Society National Lawyers Convention. They have been adapted for publication in JLPP.

1. See NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., 9/11 COMMISSION REPORT 4-9 (2004) [hereinafter 9/11 COMMISSION REPORT], available at <http://www.9-11commission.gov/report/911Report.pdf> [<https://perma.cc/DPN8-9MS5>].

2. See *id.* at 45.

sands of individuals on those flights and occupying those structures were murdered, maimed, and horribly burned that day.³ New York's commercial center and the command-center of our national defense were reduced in a single morning to smoking rubble. Wrenched abruptly from our complacent, comfortable bubbles, we came face-to-face that day with a vulnerable, fragile, and defenseless future, not from an attack by a warring nation, but from a tiny collection of determined fanatics. The gut-punch reality was hard to accept, but we had to: the world was populated by thousands more like them, similarly motivated and equally capable of horrible devastations, with nothing to lose.⁴

One of our own, Federalist Barbara Bracher Olson, was one of the victims that day as she headed for Los Angeles on American Airlines Flight 77.⁵ The terrorists could not have selected a more quintessential American victim. She was a Texan Catholic who had put herself through a predominantly Jewish law school in the heart of New York City. She declined a lucrative job at a prominent New York law firm to come to Washington in order to fulfill her long-standing ambition to be at the center of the nation's political world.

The Federalist Society was a dream come true for Barbara. She loved the rough and tumble of robust debate. Bursting with ideas, energy, passion, and enthusiasm, she persuaded the Dean of her pervasively liberal law school to allow her to form the first Federalist Society chapter at Cardozo Law School. And immediately after law school, she thrust herself into Washington life becoming—in rapid succession—a lawyer in private practice, an Assistant United States Attorney, a top congressional investigator, Deputy Solicitor of the House of Representatives, general counsel for the Senate

3. *September 11 Terror Attacks Fast Facts*, CNN (Sept. 3, 2021, 10:40 AM), <https://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/> [<https://perma.cc/YZY9-J7D4>].

4. *See* 9/11 COMMISSION REPORT at 67.

5. *See id.* at 9.

Whip, author of two best-selling books about the Clintons (not favorable, I must say), and a regular and remarkably successful political and legal commentator on national television.⁶

Barbara saw, in the Federalist Society, a reflection of herself. She was a passionate believer in individual liberty, private enterprise, and limited government. She had an insatiable appetite for ideas, debate, and intellectual jousting. Barbara enjoyed mixing it up on virtually any subject, and she was very, very good at it. She was outspoken, articulate, and—it must be said—brash. She could and would take on anyone, in any venue, on any issue, with little or no advanced notice. She was quick and had a rapier-like wit. I told her once that some people thought she was opinionated. She thought that was a great compliment. Of course she had opinions; she had very little time for anyone who didn't have opinions. But she debated with passion, not anger—never mean-spirited or unkind. She delivered her thrust with a flip of her long blonde hair and a mischievous and contagiously radiant smile. Her adversaries liked and respected her, but feared her at the same time.

Barbara was a fighter until the very moment when the terrorists extinguished her life. She somehow managed to reach out to me by phone from her doomed flight as it was being hijacked. Knowing, because I told her—I had to—that two other hijacked planes had been flown into the World Trade Center Towers in New York, she sought in those last moments advice as to how she could save herself and her fellow passengers. Had she been on that plane in Pennsylvania, I believe with all my heart that she would have joined those brave souls who gave their lives to take that plane down rather than letting it continue to fly into the heart of Washington.

6. Neil A. Lewis, *Barbara Olson, 45, Advocate and Conservative Commentator*, N.Y. TIMES (Sept. 13, 2001), <https://www.nytimes.com/2001/09/13/us/barbara-olson-45-advocate-and-conservative-commentator.html> [<https://perma.cc/JU9Q-RMPE>].

Barbara loved being a part of the Federalist Society, the debates, the people, your energy, your principles, and, of course, your convictions. You populated and enlivened the world of ideas, and placed your opinions, arguments, and contentions on the line.

As Gene said, Barbara co-hosted with me summer gatherings of student Federalists in our backyard every year. Indeed, the concept was originally her idea. We started in 1990 or '91 with a few summer students, Washington lawyers, and a few judges. She sought to create networks and mentorships for young Federalists. I think our first event involved something like thirty people. By the time Barbara was murdered, the crowds had come to exceed 500 in our backyard, and it kept growing and growing until Gene finally put a stop to that and moved the event to a more convenient and inexpensive venue: the Supreme Court. Those backyard events for these young students included lawyers and judges and people from Washington, luminaries such as Robert Bork, Clarence Thomas, Nino Scalia, David Sentelle, Larry Silberman, Dick Leon, Steve Williams, Doug Ginsburg, Danny Boggs, Spence Abraham, Sam Alito, Chuck Cooper, Paul Clement, Boyden Gray, Lee Liberman Otis, Ray Randolph, Lillian BeVier—the list goes on and on. I cannot forget the thrill in your young faces when you came face-to-face with Bob Bork or Clarence Thomas or Nino Scalia. To this day, I encounter lawyers from all over the country, including members of Congress, members of the Cabinet, high-level public officials, and prominent lawyers who attended those summer parties as young students. They can't wait to tell me what an inspiration that afternoon was for them. Many of you are here tonight. This is just a part of Barbara's legacy.

This speech is called the Barbara K. Olson Memorial Lecture. Although I never really cared for the term "lecture." It sounds too much like a colonoscopy or any recent speech by President Biden. So I prefer to think of this as a remembrance.

In preparing for this evening, I thought I might try to channel Barbara and what she might think and say about the state of politics

and society in America today had her life not been so brutally ended on September 11. I have no doubt that she would have had a lot to say to us, so I will try to limit these imaginary insights to just four subjects.

First, America's stature and standing in the world and in the hearts of its people. Barbara, like her fellow Texans, loved this country and was proud to be an American. She believed in an America that stood tall; was respected by its citizens, allies, and other nations; feared by its enemies; abided by its commitments; and protected the lives and rights of its people—the America that gave birth to the individuals about whom Tom Brokaw coined the term “the greatest generation.”

After 9/11, America came together and demonstrated its unity, resolve and resilience. We proved to one another, and to the world, that we could not be defeated by terrorism, however horrific and devastating the attack might be. President Bush and Vice President Cheney joined in inspiring the American people to rebuild our transportation industry, our economy, our defenses, and our united spirit. We mobilized our forces to attack Al-Qaeda and the Taliban.⁷ We vowed never to forget and never to forgive the brutal savages that sheltered terrorists, spawned terrorism, enslaved and debased their own people—particularly women—and wantonly took the lives and futures of thousands of Americans.

Barbara would have been proud of what we as a country accomplished, particularly in Afghanistan, in isolating and punishing the Taliban.⁸ She was a fierce advocate for the rights of the oppressed and disadvantaged, helping to form, among other things,

7. See *Hearing on Operation Enduring Freedom: Hearing Before the S. Comm. on Armed Services*, 107th Cong. 5 (2002).

8. See, e.g., KENNETH KATZMAN & CLAYTON THOMAS, CONG. RSCH. SERV., RL30588, *AFGHANISTAN: POST-TALIBAN GOVERNANCE, SECURITY, AND U.S. POLICY* 7 (2017) (“The Taliban regime unraveled after it lost Mazar-e-Sharif on November 9, 2001, to forces led by Dostam. Northern Alliance forces—despite promises to the United States that

the Independent Women's Forum, to assist and advance the voices of conservative women in this country, so that in future controversies, there would be a conservative voice when liberal women came forward to claim to speak for all the women in America.⁹ And, even as a fledgling attorney, when lawyers of the State Department and the Justice Department were reluctant to do it, she volunteered to go to New York and, by herself, serve papers on the Palestinian Liberation Organization, to expel that terrorist organization from the United States. She was thrilled to do that. Everybody said, "Are you okay? Is it going to be alright? Aren't you afraid?" No.

So I could only imagine what Barbara would have thought if she had been here to witness the reckless, precipitous, and panicked withdrawal of our troops and personnel from Afghanistan this summer, abandoning its people, particularly its women, to the oppression of the Taliban, deserting the people in that country who had helped us hold the Taliban at bay for twenty years and skulking away from hundreds of American citizens and many thousands of American supporters and friends.¹⁰ She can't speak for herself tonight, but I believe I know what she would have felt when America turned its back on its own citizens, our allies, and those who had fought side-by-side with us—leaving tens of thousands of people in the hands of the very murderous fanatics who had facilitated her murder.

they would not enter Kabul—did so on November 12, 2001, to popular jubilation. The Taliban subsequently lost the south and east to U.S.-supported Pashtun leaders, including Hamid Karzai. The Taliban regime ended completely on December 9, 2001, when the Taliban and Mullah Umar fled Qandahar, leaving it under tribal law. Subsequently, U.S. and Afghan forces conducted 'Operation Anaconda' in Paktia Province in March 2002. On May 1, 2003, U.S. officials declared an end to 'major combat.'").

9. See R. Gaull Silberman, *Remembering IWF Founder Barbara Olson*, INDEP. WOMEN'S F. (Dec. 1, 2001), <https://www.iwf.org/2001/12/01/remembering-iwf-founder-barbara-olson/> [<https://perma.cc/9CW3-RFXV>].

10. See, e.g., George Packer, *The Betrayal*, THE ATLANTIC (Jan. 31, 2022), <https://www.theatlantic.com/magazine/archive/2022/03/biden-afghanistan-exit-american-allies-abandoned/621307/> [<https://perma.cc/RMN5-94ZZ>].

We have learned that our Marines were given a mere thirty minutes to pluck a few people out of thousands of Afghans “who had been coming by bus, car, and foot for 10 straight days assembling near” the gates of that airport, “standing knee-deep” in sewage, attempting to flee from the terror of the Taliban to whom we had abandoned control of their country.¹¹ Twelve minutes into that desperate half hour, a suicide bomber detonated a device that killed 170 of them and thirteen of our own servicemen and women.¹² Thousands of helpless people were deserted and, for the most part, forgotten.¹³

What kind of nation does that? Certainly not the America of Douglas MacArthur, George Patton, Dwight Eisenhower, or Ronald Reagan: the America that took on Nazi Germany and Imperial Japan; an America that fought for its people and the Bill of Rights; that kept its promises; sent its military after the terrorists; respected and encouraged women and girls to be educated; and stood up to bullies, murderers, thugs, hijackers, and kidnapers. Barbara would have been outraged, incredulous and inconsolable that our nation had expended billions of dollars, sent hundreds of our soldiers to their death, and invested twenty years to defeat groups like Al-Qaeda and the Taliban and ISIS¹⁴—only to quit, lay down our arms, retreat in panic and turn Afghanistan over to those very same people, who have consistently proclaimed their hatred

11. Helene Cooper & Eric Schmitt, *Witnesses to the End*, N.Y. TIMES (Nov. 7, 2021), <https://www.nytimes.com/2021/11/07/us/politics/afghanistan-war-marines.html> [https://perma.cc/5QS3-Y3R5].

12. *See id.*

13. *See id.*

14. *See, e.g.,* Deirdre Shesgreen, ‘War Rarely Goes as Planned’: New Report Tallies Trillions US Spent in Afghanistan, Iraq, USA TODAY (Sept. 1, 2021, 3:16 PM), <https://www.usatoday.com/story/news/politics/2021/09/01/how-much-did-war-afghanistan-cost-how-many-people-died/5669656001/> [https://perma.cc/69MT-DWUM].

for America and Israel, and who repeatedly vow to destroy us.¹⁵ And she would have been astonished when we proclaimed to the world that our forthcoming surrender would be completed in time for September 11, dishonoring the memory of that national tragedy by capitulating to the same people who had engineered it.¹⁶ What a cruel mockery of the people murdered and crippled on September 11. Phrases like “we will never forget” meant something in Barbara’s America. She would have seethed at hearing these words uttered in the same breath as speeches bragging about the amazing success of our evacuation—the “retrograde,” they called it¹⁷—of our troops, diplomats, and those very few lucky enough not to be left behind.

We were told when we announced that we would wash our hands of Afghanistan that this would not be another Saigon.¹⁸ The Afghan government and its armies would hold off the Taliban for months or more.¹⁹ And when the eminently predictable and sudden collapse did occur—putting the lie to these predictions—we were

15. See, e.g., Brahma Chellaney, *Biden Surrenders Afghanistan to Terrorists*, THE HILL (Aug. 18, 2021), <https://thehill.com/opinion/international/568348-biden-surrenders-afghanistan-to-terrorists/> [<https://perma.cc/UBG3-NY74>].

16. See Helene Cooper et al., *Biden to Withdraw All Combat Troops from Afghanistan by Sept. 11*, N.Y. TIMES (July 24, 2021), <https://www.nytimes.com/2021/04/13/us/politics/biden-afghanistan-withdrawal.html> [<https://perma.cc/C47U-TB7N>].

17. See *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan*, THE WHITE HOUSE (July 8, 2021, 2:09 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/> [<https://perma.cc/ZG5P-EN6C>].

18. *Biden Says Kabul Is No Saigon*, WALL ST. J. (July 8, 2021, 6:48 PM), <https://www.wsj.com/articles/biden-says-kabul-is-no-saigon-11625784536> [<https://perma.cc/R4N6-7EYX>].

19. See *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan*, *supra* note 17.

told that all Americans would be safely evacuated as well as our supporters.²⁰

And then, of course, we stampeded out of our airbase in a panic, in the dead of night, without notice to our allies, leaving behind massive amounts of aircraft, vehicles, weapons, uniforms, and ammunition.²¹ And we were so rushed to escape from the only remaining, barely functioning airport, that we left thousands of humans standing in wastewater while issuing talking points about our great success in evacuating the people we did not forget.²² Again, you heard, “We will not forget. We will not forgive.”²³ How much accountability has there been for that public, humiliating defeat? None that I have seen. How much are we doing to affect the removal of the remaining abandoned Americans and tens of thousands of terrified Afghans? I haven’t heard much about that, either. How much longer before the reenergized, re-armed, and diplomatically legitimized Taliban, and the other Jihadists grouping in Afghanistan, attack America or Israel, or Paris, or Madrid, or churches, synagogues, restaurants, playgrounds, or nightclubs? We

20. See *Remarks by President Biden on Evacuations in Afghanistan*, THE WHITE HOUSE (Aug. 20, 2021, 1:49 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/20/remarks-by-president-biden-on-evacuations-in-afghanistan/> [https://perma.cc/493G-D9YC].

21. See Kathy Gannon, *US Left Afghan Airfield at Night, Didn’t Tell New Commander*, AP NEWS (July 6, 2021), <https://apnews.com/article/bagram-afghanistan-airfield-us-troops-f3614828364f567593251aaaa167e623> [https://perma.cc/WPJ5-2DGR].

22. See Poppy Wood, *Desperate Afghans Wade Through Knee Deep Sewage Trying to Get into Kabul Airport*, INEWS (Aug. 25, 2021, 11:48 AM), <https://inews.co.uk/news/world/afghanistan-evacuation-news-afghan-civilians-sewage-reach-kabul-airport-1166945> [https://perma.cc/4Q33-QC6H]; see *Remarks by President Biden on Evacuations in Afghanistan*, *supra* note 20.

23. *Remarks by President Biden on the Terror Attack at Hamid Karzai International Airport*, THE WHITE HOUSE (Aug. 26, 2021, 5:24 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/26/remarks-by-president-biden-on-the-terror-attack-at-hamid-karzai-international-airport/> [https://perma.cc/SQN4-RDB8].

hear about our over-the-horizon capacity to stop such terrorism.²⁴ Does anyone believe that?

Second, Barbara would be astonished by our government's unlawful, unilateral relinquishment of our southern border to armies of migrants from all over the world. A central tenet of a nation's sovereignty is the establishment, sanctity, and protection of its borders and its citizens. Ensuring domestic tranquility and providing for the common defense are a nation's obligations so plain that they are asserted in the preamble to the Constitution and central to our existence as a nation.²⁵ We seem to have rescinded that cornerstone of sovereignty. Tens, indeed hundreds, of thousands of individuals are pouring into the United States, completely undeterred by our national government, in violation of our laws, overriding our ability to make reasoned decisions as to who can come into this country and threatening the safety and security of all Americans.²⁶ The invaders include, of course, decent, desperate, sympathetic people seeking asylum and freedom from poverty and corrupt and tyrannical regimes, but also human traffickers, smugglers of addictive poisons such as heroin and fentanyl, fugitives, and unvaccinated carriers of COVID-19 and other afflictions.²⁷ We don't even seem to be trying to distinguish among them. What other conclusion to draw than that the federal government has intentionally abrogated the principles of American borders and territorial integrity, without the consent of the people and our elected representatives? We are being forced to accept and absorb millions of persons of all ages,

24. See *Remarks by President Biden on the End of the War in Afghanistan*, THE WHITE HOUSE (Aug. 31, 2021, 3:28 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/> [https://perma.cc/892J-FMQB].

25. U.S. CONST. pmb1.

26. U.S. CUSTOMS & BORDER PROT., *SOUTHWEST LAND BORDER ENCOUNTERS* (2022).

27. Press Release, U.S. Customs and Border Protection, *Over 400 Pounds of Meth, Cocaine and Heroin Were Discovered in Toolboxes* (Apr. 15, 2022, 12:00 PM), <https://www.cbp.gov/newsroom/local-media-release/over-400-pounds-meth-cocaine-and-heroin-were-discovered-toolboxes> [https://perma.cc/NMH3-AW6B].

backgrounds, and motivations without any systematic effort or ability to provide them with a humane integration, education, or opportunity.²⁸ Our government is now said to be negotiating the size of the bounty we will be paying to some of them.²⁹ Naturally, they are met with resentment and hostility in many segments of the country because they have flouted our immigration laws with the complicity of our executive.

We cannot begin to handle the burdens this massive invasion creates for our local communities and neighborhoods, so our government either ignores or papers them over with public relations smokescreens and dishonest, evasive pretenses that this is not happening. If the United States cannot or will not control who enters this country, what does this do to our ability to enforce other laws? Indeed, what does that mean for the rule of law in any traditional sense? How can American citizens be expected to respect and obey the law if our federal government sanctions, indeed embraces, even rewards, non-citizens who've entered this country in violation of our laws of entry and who acknowledge no responsibility to abide by any or all of our laws?

This sounds fairly bleak, doesn't it? But I was trying to figure out what Barbara would say. That leads me to the third dreadful trend that we are witnessing throughout this country that Barbara would have abhorred: the lawlessness permeating and overwhelming our cities. Funding for law enforcement is being "reallocated." That is to say, reduced dramatically; and law enforcement officers

28. MIGRATION POL'Y INST., *IMMIGRANTS IN THE UNITED STATES: HOW WELL ARE THEY INTEGRATING INTO SOCIETY?* (2011).

29. Michelle Hackman et al., *U.S. in Talks to Pay Hundreds of Millions to Families Separated at Border*, WALL ST. J., Oct. 28, 2021.

are retiring or quitting in droves.³⁰ Increasingly, few sentient individuals are willing to enter a profession offering little beyond personal risks, meager compensation, and daily heapings of disrespect and humiliation.³¹ Recently, district attorneys in all parts of the country, including particularly San Francisco, Los Angeles, New York, and Chicago, are refusing to enforce laws or prosecute violators. Arrests are not being made.³² The criminals who are unlucky enough to be arrested are promptly being released—in New York, for example—to offend again, which they routinely, regularly, and frequently do.³³

Shoplifters, vagrants, and drug addicts (although you can't call them that) swarm streets and harass and intimidate businesses and vulnerable citizens. Stores are closing in the centers of our major cities, especially our poorest neighborhoods, because businesses cannot stop hordes of thieves from walking brazenly and arrogantly in and out with trash bags or suitcases full of merchandise.³⁴ Homeless encampments (whose occupants we are now told to refer to as the “unhoused”) have sprung up everywhere—in our streets,

30. Eric Westervelt, *Cops Say Low Morale and Department Scrutiny Are Driving Them Away from the Job*, NPR (June 24, 2021, 2:53 PM), <https://www.npr.org/2021/06/24/1009578809/cops-say-low-morale-and-department-scrutiny-are-driving-them-away-from-the-job> [https://perma.cc/2FQH-KHAT].

31. William Barr, *Rising Disrespect for Cops Not Only Wrong, It Puts Us in Danger*, N.Y. POST (Dec. 16, 2019, 8:41 PM), <https://nypost.com/2019/12/16/barr-rising-disrespect-for-cops-not-only-wrong-it-puts-us-in-danger/> [https://perma.cc/VGD5-JEA2].

32. See, e.g., Emily Bazelon & Jennifer Medina, *He's Remaking Criminal Justice in L.A. But How Far Is Too Far?*, N.Y. TIMES, (Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/magazine/george-gascon-los-angeles.html> [https://perma.cc/U5FC-J878].

33. William J. Bratton & Rafael A. Mangual, *'Bail Reform' Is Killing New Yorkers as Eric Adams Pushes for Change*, WALL ST. J., (Feb. 16, 2022, 12:04 PM), <https://www.wsj.com/articles/bail-reform-killing-new-yorkers-violence-convictions-criminals-judges-court-order-release-murder-stabbing-assault-violent-crime-11645029571> [https://perma.cc/KN46-6SXY].

34. Neil Vigdor, *Walgreens to Close 5 Stores in San Francisco, Citing 'Organized' Shoplifting*, N.Y. TIMES, Oct. 13, 2021, <https://www.nytimes.com/2021/10/13/us/walgreens-store-closures-san-francisco.html> [https://perma.cc/38S4-4LRT].

sidewalks, parks, underpasses, and subways, bus and railroad terminals, near schools, and even in airports.³⁵ The streets of San Francisco and other once-livable-and-beautiful cities are littered with needles, garbage, human waste, debris, and open air drug markets.³⁶ People are being assaulted, panhandled, badgered, or attacked on the streets, coffee shops, sidewalk restaurants, on buses, and in subways.³⁷ Bicycles are being stolen. Car thefts and carjackings are becoming epidemic.³⁸ Rates of burglaries, assaults, street crimes, shootings, rapes, and homicides are steadily increasing.³⁹

We once used the term “third-world country” to refer to some big city neighborhoods. That has become an insult to the impoverished nations that do not have a fraction of the resources we do. Today, substantial segments of Philadelphia, Baltimore, Seattle, Portland, San Francisco, Chicago, New York, and Washington, D.C. merit that description, only worse. How many of you can identify areas in your communities where you would not dare to go after

35. See Michelle Conlin, *In Pandemic America's Tent Cities, a Grim Future Grows Darker*, REUTERS, (Dec. 23, 2020, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-homelessness-i/in-pandemic-americas-tent-cities-a-grim-future-grows-darker-idUSKBN28X19Y> [<https://perma.cc/Q537-4FDH>].

36. See Betty Yu, *Poll: San Francisco Residents Consider Relocating as Crime Worsens, Quality of Life in a Decline*, CBS SF BAY AREA, (June 30, 2021, 5:36 AM), <https://sanfrancisco.cbslocal.com/2021/06/30/poll-san-francisco-residents-consider-relocating-as-crime-worsen-quality-of-life-in-a-decline/> [<https://perma.cc/NKP5-LRW9>].

37. See Aaron Chalfin & John MacDonald, *We Don't Know Why Violent Crime Is Up. But We Know There's More Than One Cause.*, WASH. POST, (July 9, 2021, 3:17 PM), https://www.washingtonpost.com/outlook/we-dont-know-why-violent-crime-is-up-but-we-know-theres-more-than-one-cause/2021/07/09/467dd25c-df9a-11eb-ae31-6b7c5c34f0d6_story.html [<https://perma.cc/L22X-933B>].

38. See *Facts + Statistics: Auto Theft*, INSURANCE INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-auto-theft> [<https://perma.cc/2L7E-94QY>] (last visited Apr. 14, 2022).

39. See James Alan Fox, *COVID Pandemic and Isolation Likely Pushed Spike in 2020 Homicides and Assaults*, USA TODAY, (Oct. 4, 2021, 1:59 PM), <https://www.usatoday.com/story/opinion/policing/2021/10/04/violent-crime-covid-isolation-pushed-spike/5903199001> [<https://perma.cc/CQ23-QSYR>].

dark—or even in the daylight? And don't answer that question. I know the truth of it. The same local officials who have allowed this to happen with failed, mindless, feel-good policies are endlessly reelected to pursue the same policies.⁴⁰

Barbara spent much of her life in Houston, San Francisco, Los Angeles, New York, and Washington, D.C. She would today be profoundly depressed to see the decay and disintegration taking hold and strangling these and other cities because of “progressive” policies of apathy, virtue-signaling, and disinterest by elected (for life, it seems) political officials. They say they are simply not enforcing small crimes. But when did an offense against our laws, or our people, become too trivial to enforce? These public figures seemingly don't care about the victims of those crimes, which often can turn out to be very serious. How suddenly civility disappears when civil order disintegrates.

Fourth, Barbara was a passionate believer in robust, even fierce, debate. She would have been shocked at the cultural, societal shift that has occurred so rapidly in America, not only silencing but oppressing ideas, terms, names, phrases, even holidays, in the name of extinguishing triggers, microaggressions, sensitivities, and imaginary acts of discrimination.⁴¹ Not only must we watch what we say, but how and when we say it, and to whom we are speaking. I'm disregarding my own admonition, of course. Failure to carefully, cautiously calibrate your speech, can and will, as they say in the *Miranda* warning, be used against you. And the banter or silly, immature jokes you exchanged in high school can and surely will be deployed to condemn you twenty years later or forty years later.

40. See Astead W. Herndon, *They Wanted to Roll Back Tough-on-Crime Policies. Then Violent Crime Surged*, N.Y. TIMES (Feb. 18, 2022), <https://www.nytimes.com/2022/02/18/us/politics/prosecutors-midterms-crime.html> [https://perma.cc/4P8X-VHUC].

41. See *America Has a Free Speech Problem*, N.Y. TIMES, (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/opinion/cancel-culture-free-speech-poll.html> [https://perma.cc/K3PX-9B27].

I recall Barbara's response to a study and report critical of judges and lawyers at a D.C. Circuit conference a few years ago, castigating acts and words deemed demeaning to women, such as interruptions and insufficiently sensitive questions directed towards women lawyers.⁴² Barbara rejected the notion that women couldn't and shouldn't be interrupted during oral arguments or subjected to hostile or otherwise "mean" questions in court. She did not want, nor did she think, that women should be treated like fragile flowers or delicate china who couldn't take it. Not only did she feel that women, just like men, could handle and prevail in a rough and tumble legal and social environment, but that believing and acting otherwise towards women was demeaning, discriminatory, and led to the view that women, especially women lawyers, were inferior, not tough enough. She hated that.

Barbara Olson would have been shocked to see that the "woke" movement had come so far that even a statue of Thomas Jefferson would be removed from city government in New York, that holidays like Columbus Day and traditional Halloween costumes were either banned or attacked as cultural appropriations.⁴³ I read just four days ago that the Newport News, Virginia School Board had designated the John Marshall Early Learning Center to be given a less odious name in response to a decree from Virginia Governor Ralph Northam, otherwise known only for admitting and denying that the picture of a person in blackface in his college yearbook was

42. See Sandra Torry, *Female Lawyers Face Sexism, Study Finds*, WASH. POST (May 28, 1994), <https://www.washingtonpost.com/archive/local/1994/05/28/female-lawyers-face-sexism-study-finds/249d3773-1e03-4265-a273-6f04e0381074/> [https://perma.cc/6AE6-L29H].

43. See Marsha Mercer, *More States Say Goodbye to Columbus Day*, PEW RSCH. (Oct. 11, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2019/10/11/more-states-say-goodbye-to-columbus-day> [https://perma.cc/96P6-TH89]; Leila Fadel, *Cultural Appropriation, A Perennial Issue on Halloween*, NPR (Oct. 29, 2019, 5:00 AM), <https://www.npr.org/2019/10/29/773615928/cultural-appropriation-a-perennial-issue-on-halloween> [https://perma.cc/PX94-J7PR].

him.⁴⁴ John Marshall, our longest-serving and most acclaimed Chief Justice—too toxic for his name to be on a public school.

When a speaker may be banned because his or her views are unpopular; when street gangs are allowed to intimidate—or shoot—young children on the way to school;⁴⁵ when a person harboring a dog may not be considered an “owner” but only a custodian; when a “mother” has to be referred to as a “birthing parent”;⁴⁶ when the new “James Webb” Telescope faces calls for a new name because NASA Administrator Webb had been Under Secretary of State seventy years ago in the Truman administration during a congressionally instigated purge on gay persons;⁴⁷ when pronouns such as “he” or “she” become not only offensive but prohibited if uttered without consent;⁴⁸ when those pronouns must become

44. See Jessica Nolte, *Newport News Adds John Marshall Early Learning Center to List of Schools to be Renamed*, DAILY PRESS (Oct. 20, 2021, 5:11 PM), <https://www.dailypress.com/news/education/dp-nw-newport-news-school-renaming-20211020-qrsgdaggu65fghmnu7c3sf2kk4u-story.html> [https://perma.cc/8E6E-9NXF]; Alan Blinder, *Was That Ralph Northam in Blackface? An Inquiry Ends Without Answers*, N.Y. TIMES (May 22, 2019), <https://www.nytimes.com/2019/05/22/us/ralph-northam-black-face-photo.html> [https://perma.cc/X37J-9D29].

45. See, e.g., Rick Rojas & Rebecca White, *Bronx Boy, 14, Killed in ‘Point Blank’ Shooting Caught on Surveillance Video*, N.Y. TIMES (May 22, 2015), <https://www.nytimes.com/2015/05/23/nyregion/14-year-old-boy-is-fatally-shot-in-the-bronx.html> [https://perma.cc/7MXV-4KBL].

46. See, e.g., Benjamin Fearnow, *Biden Admin Replaces ‘Mothers’ with ‘Birthing People’ in Maternal Health Guidance*, NEWSWEEK (June 7, 2021, 4:28 PM), <https://www.newsweek.com/biden-admin-replaces-mothers-birthing-people-maternal-health-guidance-1598343> [https://perma.cc/2PJR-WQ8B].

47. See Chanda Prescod-Weinstein et al., *The James Webb Space Telescope Needs to Be Renamed*, SCIENTIFIC AM. (Mar. 1, 2021), <https://www.scientificamerican.com/article/nasa-needs-to-rename-the-james-webb-space-telescope/> [https://perma.cc/A3YY-CXWU]; Adam Mann, *New Revelations Raise Pressure on NASA to Rename the James Webb Space Telescope*, SCIENTIFIC AMERICAN (Apr. 4, 2022), <https://www.scientificamerican.com/article/new-revelations-raise-pressure-on-nasa-to-rename-the-james-webb-space-telescope/> [https://perma.cc/68K9-S8KE]. But see Alexandra Witze, *NASA Won’t Rename James Webb Telescope—and Astronomers Are Angry*, NATURE: NEWS (Oct. 1, 2021), <https://www.nature.com/articles/d41586-021-02678-1> [https://perma.cc/X3TS-KTD3].

48. See, e.g., N.Y.C. COMM’N ON HUMAN RIGHTS, LEGAL ENFORCEMENT GUIDANCE ON DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR EXPRESSION: LOCAL LAW NO. 3

“they” or “them”;⁴⁹ or when the leader of a decades-old Feast of Lanterns celebrating the first Chinese woman to be born on the Monterey Peninsula must apologize for the parade and issue these words: “*The harm I have caused as an unconscious white woman, filled with white fragility and my own perfectionism*”;⁵⁰ and when the Federalist Society, itself, could be castigated because of less-than-popular views of some of its members,⁵¹ what have we become?

Barbara would have seen this as an assault on freedom, the stifling of dissent and unfavored views, and the constitutionalization of conformity. A step on the way to mind-control, uniformity, and tyranny against individual liberty—everything that this organization stands against. She would have seen the systemic categorization of decisions, benefits, rights, promotions, and appointments based on race or gender as fundamentally un-American. She bristled when she was told that Texas females should refer to themselves as “women,” not think of themselves as “girls.” The more

(2002); N.Y.C. ADMIN. CODE § 8-102(23), at 4 (2019), <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf> [<https://perma.cc/E86B-4HWZ>].

49. See *id.* at 5.

50. *Kaye Coleman Feast of Lanterns Apology*, MONTEREY COUNTY WEEKLY (Oct. 10, 2021), https://www.montereycountyweekly.com/kaye-coleman-feast-of-lanterns-apology/pdf_3ea4ab3a-29f2-11ec-ac33-bfb1f5b0e5c5.html [<https://perma.cc/8DGL-PVEZ>]. See also Pam Marino, *Former Feast of Lanterns Queen and Board President Issues Public Apology for Cultural Appropriation*, MONTEREY COUNTY WEEKLY (Oct. 11, 2021), https://www.montereycountyweekly.com/blogs/news_blog/former-feast-of-lanterns-queen-and-board-president-issues-public-apology-for-cultural-appropriation/article_6f2d33aa-29f0-11ec-8127-ff5a0c819bce.html [<https://perma.cc/22KA-R9WY>].

51. See, e.g., Mark Joseph Stern, *A Federalist Society Star Helped Foment the Capitol Riot: The Federalist Society Has No Comment*, SLATE (Jan. 13, 2021), <https://slate.com/news-and-politics/2021/01/john-eastman-federalist-society-capitol-insurrection.html> [<https://perma.cc/C3G7-4JA2>]; Brian Schwartz, *Progressive Group Urges Corporations to Halt Donations to Conservative Federalist Society After Riot*, CNBC: POLITICS (Jan. 15, 2021, 1:29 PM), <https://www.cnbc.com/2021/01/15/federalist-society-under-fire-after-leader-spoke-at-pro-trump-rally-before-riot.html> [<https://perma.cc/4V5F-6AGJ>].

someone tried to intimidate Barbara because of what we now call “un-woke” speech, the more she would have used it.

But I want to leave you on a little lighter note. I inform you—I must inform you, and I am happy to inform you—that the *New York Times* is coming to your rescue. In last Sunday’s paper, apparently shocked by the November 2 elections, the *Times* published a collection of pieces—maybe some of you saw this—with suggestions of how America, as they put it, can “snap out of it” and “revitalize and renew the American spirit.”⁵² Among their suggestions—and I’m not making this up—you would have been gratified to see were proposals to eliminate citizenship⁵³ and all age limits on eligibility to vote (parents can vote for their newborns);⁵⁴ to erase all student, medical, and rental debt;⁵⁵ make international law part of the American law;⁵⁶ replace the stars and stripes with a monochromal (they have a picture of this) gray flag;⁵⁷ and, this is the best part, create multiple new states from California, Texas, and Florida.⁵⁸ There you

52. Ezekiel Kweku, Opinion, *Snap Out of It, America!*, N.Y. TIMES (Nov. 7, 2021), at TW2. See also Astra Taylor, *Make Americans’ Crushing Debt Disappear*, N.Y. TIMES at TW8 (Nov. 7, 2021); Jonathan Holloway, *To Unite a Divided Country, Enlist the Young*, N.Y. TIMES (Nov. 7, 2021), at TW6.

53. Atossa Araxia Abrahamian, *There Is No Good Reason You Should Have to Be a Citizen to Vote*, N.Y. TIMES (July 28, 2021), <https://www.nytimes.com/2021/07/28/opinion/noncitizen-voting-us-elections.html> [<https://perma.cc/GTF3-VXG7>].

54. Lyman Stone, *The Minimum Voting Age Should Be Zero*, N.Y. TIMES (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/opinion/politics/kids-right-to-vote.html> [<https://perma.cc/B8F6-7S7S>].

55. Astra Taylor, *Make Americans’ Crushing Debt Disappear*, N.Y. TIMES (July 2, 2021), <https://www.nytimes.com/2021/07/02/opinion/student-loan-medical-debt-forgiveness.html> [<https://perma.cc/2TCX-TL6Y>].

56. Samuel Moyn, *International Law Shall Be Part of American Law*, N.Y. TIMES (Aug. 4, 2021), <https://www.nytimes.com/interactive/2021/08/04/opinion/us-constitution-amendments.html> [<https://perma.cc/78PD-ZKJK>].

57. Na Kim, *Redesigning America’s Flag*, N.Y. TIMES (Sept. 28, 2021), <https://www.nytimes.com/interactive/2021/09/28/opinion/america-flag-design.html> [<https://perma.cc/X7EK-92EZ>].

58. Noah Millman, *America Needs to Break Up Its Biggest States*, N.Y. TIMES (July 7, 2021), <https://www.nytimes.com/2021/07/07/opinion/us-states.html> [<https://perma.cc/QC2E-KD5H>].

have it—the simple answer to all of our problems: expand the franchise to include infants and anyone else who wants to vote, abolish debt, gray wash the American flag, and give California twelve Senators!

If Barbara were speaking to you this evening, she would have lamented at what we have done to our citizens here and abroad, lawlessness in our communities, and the widespread surrender of our national respect and integrity. She would weep, but also rage. She would not be silent—I am certain of that. She would be engaged, fighting, speaking out, organizing, demanding a return of our national integrity and domestic order and safety, and goading those who remain silent in the face of these developments.

Of course, she would be encouraged by the involvement of Federalists and like-minded Americans to stand up against these weaknesses, these trends, this disintegration. She would not let us give into apathy, malaise, helplessness, and cravenness, which we are now seeing all around us.

So thank you for honoring Barbara with this lecture series and for showing up in such robust numbers for the event every year. Barbara cannot be here physically to participate, but her spirit lurks in the conference rooms and hallways of every Federalist Society meeting. Thank you.

