

**OPENING STATEMENT OF CHAIRMAN FRED THOMPSON
HEARING ON FEDERALISM AND CRIME CONTROL
SENATE GOVERNMENTAL AFFAIRS COMMITTEE (MAY 6, 1999)**

Today, in our second hearing on federalism, the Committee will consider the increasing federalization of criminal law. It is a deeply rooted constitutional principle that the general police power belongs to the states, not to the federal government. This was clearly articulated in the Founding Fathers' careful constitutional design. As Alexander Hamilton said, "There is one transcendent advantage belonging to the province of the state governments, . . . the ordinary administration of criminal and civil justice." For most of America's history, federal criminal law was limited to national offenses, such as treason, bribery of federal officials, counterfeiting, and perjury in federal courts.

Yet in this age of mass media and saturation coverage, Congress and the White House are ever eager to pass federal criminal laws, in order, as Chief Justice Rehnquist put it, "to appear responsive to every highly publicized societal ill or sensational crime." In recent years, there has been an explosive growth in federal criminal law. A recent ABA Task Force entitled *The Federalization of Criminal Law* found that of all the criminal provisions enacted since the Civil War, over 40% were enacted since 1970. No one really knows how many federal crimes exist, but recent estimates of 3,000 have been surpassed by the surge in federal criminalization.

In 1995, the Supreme Court sent a clear message to the Congress in the *Lopez* case that it needs to carefully consider whether federalizing certain crimes is consistent with the Constitution. But only the following year, Congress, over my

objection, reenacted the Gun-Free School Zones Act. And there is no slowing in the growing number of proposed federal criminal offenses, many of which do not even attempt to make the case that such crimes "substantially affect interstate commerce," as the Supreme Court requires. Although a more vigilant Court could help preserve federalism, it may be difficult indeed to increase Congress' respect for constitutional and prudential limits to passing crime legislation.

There is a growing consensus across the criminal justice system that the increasing tendency to federalize crime is not only unnecessary and unwise, but also has harmful implications for crime control. Those concerned include prosecutors, judges, law enforcement officers, defense lawyers, state and local officials, and scholars. The ABA Task Force report cites many damaging consequences of federalization, as we will hear today.

There will be times when enacting federal criminal laws or placing conditions on receipt of federal criminal justice funds will be appropriate. But in all too many instances, increased federal

involvement in the criminal law will pose more possible harm than benefit. Many leaders in the criminal justice system are counseling restraint when Congress and the White House consider federal crime legislation.

We are fortunate to have a distinguished group of witnesses today. I look forward to hearing their views.