

**REMARKS BY  
U.S. ATTORNEY GENERAL JANET RENO  
TO AMERICAN BOARD OF TRIAL ADVOCATES  
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Good to see old friends who are members of ABOTA.

ABOTA is a very impressive organization. It stands for much of what is the best about being a lawyer. Your members are counted among the very finest trial advocates in the country. You represent excellence in both competence and dedication to improvement of the profession and the administration of justice. This is what I would like to talk with you about this evening - our responsibility as lawyers to serve our communities and to ensure that our civil justice system is capable of meeting the needs of all our citizens.

## ACCESS TO JUSTICE

I love the law. I think it is a wonderful profession. I love lawyers, and I am so proud of most of the lawyers in this country. My legal career has provided me with extraordinary challenges, and so many wonderful returns for those challenges. But one thing I don't like is a greedy or an indifferent or a callous lawyer. There are not many of them, but there are enough of them to cause concern in this nation.

I believe that we as lawyers - and as citizens - have a three-fold obligation: to conduct ourselves according to the highest ethical standards; to contribute personally to the well-being of our communities; and to examine and reinvigorate our legal institutions so they are responsive to the needs of all our people.

There are some wonderful statements on the walls of the Department of Justice building in Washington. One I like especially is on the Ninth Street side. It says: "The common law is derived from the will of mankind, issuing from the people, framed by mutual confidence, and sanctioned by the light of reason."

If the law indeed is derived from the people, we as lawyers have some extraordinary challenges in fulfilling our obligations in the remainder of this century. There are too many Americans who do not have access to the law, who do not feel that the law is real, who think of it as remote and irrelevant in their lives. Distrust of our justice institutions has prompted many to lose faith in one of the guiding principles of our democracy, the rule of law, and to feel disenfranchised from the legal system itself.

The American Bar Association recently sponsored a study which sheds considerable light on the needs of ordinary Americans for legal advice and assistance. Researchers surveyed over 3,000 low and moderate-income households. They found that about half of those households have at least one legal need, the most common of which are personal finances, consumer issues, housing and real property, personal and economic injury, wills and estates, and family law. The sad conclusion of that survey is that 71 percent of low income and 61 percent of moderate income legal needs are not addressed by the civil justice system.

I was struck by the reasons found for this. Most low and moderate-income people do not go to lawyers because they believe that legal assistance will not help solve their

problems. Low-income people additionally think that they cannot afford lawyers. Moderate-income people may be able to afford some legal assistance, but many believe they can handle the problems on their own. The researchers found, however, that both groups were more likely to be satisfied with the resolution of their problems when they did have access to the justice system, rather than doing nothing or trying to handle them on their own. One way we as individuals can improve access to justice is by working to increase the availability of legal assistance for all Americans.

Providing pro bono legal representation for those Americans who cannot afford a lawyer is one of the finest contributions we as a profession can make. It would be particularly fitting and inspiring for you - the most

accomplished lawyers in the country--to set the standard for us all.

Two years ago I participated in the announcement of the ABA Law Firm Pro Bono Challenge. This program calls upon each of the nation's largest law firms to commit to contribute annually to pro bono work an amount of time equal to at least 5% of the firm's total billable hours. To date, 165 major firms have participated. I am very proud of these firms. They are exactly the opposite of the greedy or indifferent or callous lawyers I mentioned earlier. This is exactly the kind of activity by which we can fulfill our public service obligations as lawyers and help address the unmet legal needs of America.

But I don't expect only lawyers in private practice to give of their time and energy to improve access to justice.

It is the obligation of public sector attorneys as well. In the next few months I will be announcing a major new policy at the Justice Department encouraging all our attorneys to participate in pro bono legal assistance or other community volunteer programs.

One of the other most important means of ensuring that even the poorest Americans have access to lawyers and the legal system is the Legal Services Corporation. It has provided representation to countless numbers of indigent persons over the past 20 years. I strongly support the continued federal funding of the Legal Services Corporation. Shutting people out of the legal system--our primary means of resolving so many personal, family and community problems--only alienates people. We should be about the business of including, not excluding people. We

should constantly strive to make the rule of law and access to the legal system part of the fabric that binds our society together, rather than separates us into the haves and have-nots. The challenge to improve access to justice is broader today, however, than providing traditional legal representation.

Time and again I am reminded that our legal system does not meet the complex and diverse needs of today's society. We are not keeping pace with the legitimate expectations of our citizens for fair, expeditious and cost effective justice that is responsive to the problems they face in their daily lives: the person who struggles with Social Security to work out an elderly relative's estate; the parent who is forced to go on welfare because she or he cannot collect child support; the battered woman who needs a civil



protective order; the injured car driver who can't settle his claim; the businessperson who can't collect her outstanding accounts.

All of us - whether we're in public service, the corporate world, or private practice - have an obligation to ensure that the legal rights of ordinary Americans are more than empty promises. If our people feel disenfranchised from the law, they will feel disenfranchised from our government. Many lawyers are rising to meet this challenge, and there is much that we can do.

Many people in our country and around the world are talking about new ideas about how to make the law and the civil justice system, in particular, the institutions they are supposed to be: forums for protecting our rights, for

correcting wrongs, and for resolving disputes efficiently and economically.

I recently had the opportunity to meet with the Canadian Minister of Justice and learned that the Canadian Bar Association has just established a task force to reform the Canadian civil justice system. They will be looking at how best to resolve disputes, both in the courtroom and in other forums, and how to ensure an accessible, fair justice system that is sensitive to community needs.

Halfway around the world, Australia, another common law nation, has engaged in a similar process, seeking to make its justice system more responsive to the average person. The Australians looked at such things as having trained non-lawyers provide routine legal services. They

explored establishing neighborhood ombudsmen and consumer complaint offices.

Closer to home, many states have put together Court Futures Commissions. Their purposes are to examine the current state of the judicial system and to recommend improvements needed through the year 2020 in order to make our state courts truly accessible to all. Lawyers - perhaps many of you - judges, professors, business leaders, and other private citizens from all walks of life have contributed to these endeavors. There are many other things to be done - both large and small.

One of the first things lawyers must do is speak in simple, clear language that people will understand; and to write in simple, clear sentences that make our rights seem human and not a bunch of legal gobbledygook. This is a

relatively small but very important thing lawyers can do.

We must also do more.

Many needed reforms can only be done on an institutional basis. We should think more about removing certain kinds of proceedings from the legal system altogether. The traditional adversarial model may be inadequate or unnecessary for dealing with them. Some states, for instance, have made uncontested divorces essentially administrative proceedings with no requirement for going to court. Similarly, more and more states have adopted laws greatly simplifying or even eliminating formal probate proceedings for small estates.

Lawyers in small and medium firms all over the country are striving to find more satisfactory ways of delivering legal services to moderate-income people--those

people, you will recall from the ABA study, who think a lawyer cannot help or who would rather do it themselves. So, for instance, document preparation centers are springing up where people with uncontested needs, such as simple wills, divorces, and powers of attorney, can get assistance. Another approach is what is known as "unbundled legal services" where lawyers provide only the specific legal service requested by the client and the client does the rest. A variation on this theme is where the attorney maintains overall responsibility for the case, but delegates some particular tasks to the client. To assist persons who are representing themselves, some lawyers offer legal advice and guidance exclusively over the telephone. Yet another innovative delivery system is the prepaid legal services plan. Our profession must continue

to develop imaginative methods for ensuring that all Americans have access to the legal system in ways that are affordable and satisfactory to both client and attorney.

Many people do prefer to do it themselves. We must make it easier for them to navigate the legal system. In Phoenix, for instance, the courts have made available an interactive computer kiosk to give people information about family law court proceedings and to assist them in preparing court pleadings. Many state courts have automated telephone systems in place to answer questions from the public. Some courts even have video tapes available to explain such proceedings as landlord-tenant cases and small claims.

We must expand our ways of thinking about not only how legal services can be delivered, but by whom as well.

Because of the particular nature of the problem or need, non-lawyers may better address certain problems than lawyers. In New Jersey, for instance, there is a wonderful program that trains parents to represent themselves and other parents in administrative proceedings to secure the assistance they need for their disabled children. And in Seattle, the courts are now employing community advocates to assist victims of family violence in dealing with police, prosecutors and judges.

We must also pay attention to those parts of the civil justice system that touch the lives of most of our citizens. In order to do this, we must make a real effort to base our reforms on accurate, reliable facts, and not first conventional wisdom. Two recent studies - one by the National Center for State Courts and one by the

Department of Justice Bureau of Justice Statistics - have provided us with some very important information about our justice system. These studies show that domestic relations cases constituted 41% of all civil filings in state courts in 1993, compared to tort cases which accounted for only 10% of all such filings. During a one-year period in 45 of the nation's largest counties, 60% of these tort cases arose from automobile accidents and 17% were predicated on premises liability. Only 10% of all tort cases related to product liability, toxic substance, and medical malpractice.

I share this with you because I am concerned that we are not thinking and talking enough about issues in the civil justice system that speak to the majority of consumers



of the legal system--the people who come to us seeking help for the problems of our families and children.

Some states are beginning to pay attention to these problems. One avenue that may be useful to pursue is the unified family court system in which a single court and preferably a single judge hears all the problems associated with the same family, whether they involve domestic abuse, child neglect, divorce, custody, child support, or juvenile delinquency.

Looking at the facts about who comes to state court gives us important guidance on where we should be focusing our efforts. Because I think it is so important that our legal reform policies be based on the best, most comprehensive empirical evidence possible, I have recently

authorized the establishment of a civil justice research unit within the Department of Justice.

We are doing a number of other things at the Department of Justice that we hope will increase access to our civil justice system. In order to conserve judicial and public as well as private legal resources, and more effectively resolve disputes involving the government, I have recently signed an order establishing an ADR program in the Department. This is particularly significant since the United States government is the largest user of the federal courts.

ADR is not suitable to every type of case; but when appropriate, using ADR methods has proven effective in reducing litigation delay and cost.

Under this order each litigation component in the Department will identify the kinds of cases that could best be resolved using ADR and will train their attorneys in the use of appropriate techniques. I will appoint as senior counsel to the Department someone experienced in dispute resolution who will make the new system work. We are committed to it.

I have also raised the settlement authority of U.S. Attorneys to \$1 million in order to speed settlement of those cases which should be settled, and to avoid delay occasioned by unnecessary consultation with Washington during settlement negotiations.

## **TORT REFORM**

It is hard to end a discussion about civil justice reform without saying just a few words about the action on this

front in the United States Congress. As I know you know, the Senate on Wednesday passed a product liability bill. That bill is a major improvement on the extreme legal reform measures passed by the House. However, it does not yet fully address the concerns the Administration has previously expressed, and does not go far enough toward balancing the interests of consumers with those of manufacturers and sellers. The Administration is concerned about the imposition of an artificial ceiling on the amount of punitive damages that may be awarded in a product liability action. The Senate approach, which allows judges to ensure that punitive damages are sufficient to deter and punish, is clearly preferable to earlier proposals to establish an absolute cap on punitive damages. Of course, the Senate provision needs further refinement. The

Administration has also consistently made clear its opposition to a joint and several liability provision which would make it harder for injured consumers to recover their full damages in some cases.

Some of the House provisions will severely restrict the ability of consumers and middle class Americans to bring perfectly valid lawsuits that no one could reasonably classify as frivolous. The House version provides for the shifting of attorney's fees. It is obvious that this provision will close the courts to consumers and others who can't bear the risk of having to pay an opponent's legal fees. The President has indicated he will veto any bill that includes a "loser pay" requirement such as that which is in the House bill.

The Administration supports **balanced** legal reform

and will work with the House-Senate conference to address concerns like the ones I have outlined.

## CONCLUSION

As you can see, there is a tremendous amount of thought and ferment about the civil justice system in our nation. All of us are trying to do our part. The guiding principle must be the realization that our primary responsibility is to make the justice system accessible to all people for the resolution of all kinds of problems. We must continually use our imagination to find new solutions, critically examine existing institutions, and carefully preserve the essence of our American system of justice.

In order to do this, we must ask the right questions and frame the right issues about the civil justice system.

We need to focus on real problems that are amenable to workable, fair solutions. We must ask whether everyone who needs a lawyer has one, whether people who so desire can effectively represent themselves, whether people have a choice in the kind of legal problem-solving resource on which they choose to depend. We must also ask if the justice system is solving the real problems faced by ordinary Americans.

We can do so much if we work together in thoughtful, collegial discussions to address these critical issues.