



UNITED STATES DEPARTMENT OF JUSTICE  
REMARKS OF  
HONORABLE JANET RENO, ATTORNEY GENERAL  
TO THE  
DEPARTMENT OF THE NAVY  
OFFICE OF GENERAL COUNSEL CONFERENCE

Thursday, May 6, 1999

11:25 a.m.

Commonwealth Ballroom  
Sheraton National Hotel  
Arlington, Virginia

P R O C E E D I N G S

(11:25 a.m.)

ATTORNEY GENERAL RENO: Thank you very much, Steve. The Navy is very lucky to have you, and we miss you a great deal.

Today, I would like to offer some thoughts about lawyers in today's society. I happen to love lawyers.

(Laughter.)

ATTORNEY GENERAL RENO: There are committed, concerned lawyers, and I love the law. And it has been an extraordinary opportunity to try to use the law the right way, to help people of this country and to protect this country. I do not like greedy and indifferent lawyers, but I haven't met too many of those in Washington.

We as a society and as a profession are faced with great challenges. Individuals are isolated, one from another. They're distrustful of public officials and institutions. We lament the loss of community in our society. Yet we often appear eager to confront, to seek vindication and to prioritize winning above all else.

All too often, we are presented with difficult problems of disputes. Our immediate inclination is to sue. I believe that we as lawyers for the Federal Government and members of the legal profession can do so much, both in our professional and our pro bono practice, in bringing people together. We can take steps to restore a sense of community in our society. And there are many ways to do it.

On the east wall of the Justice Building along 9th Street is an inscription that says: The common law is derived from the will of mankind, issuing from the people, frame by mutual confidence, and sanctioned by the light of reason.

If you watch the process of law unfold, you realize that we must ground the law more firmly in the footing from which it came. I think lawyers fulfill four roles. One is the advocate. The other is the defender. The other is the peacemaker. And the most important probably of all is the problem-solver.

Today I want to talk about our role as problem-solvers. Because if we vigorously embrace problem-solving concepts, we will leave a lasting legacy for our profession and for our communities. I went to a doctor once who thought the world was falling in. He checked everything, sat me down and said: Here's the way we solve it. Gave me a bill -- a reasonable bill. I walked out feeling five feet off the

ground. He had made me feel so at ease. He had solved my problem. He had done it with dispatch. And it was complicated.

I've had friends say that they've been able to go to lawyers and have the same experience, where you sit down, let's understand the problem, here's how we work it out, here's what it's going to cost, here's what's involved, we can work it out. Just a great load lifted off your shoulders. That is what great lawyers can do.

I'm not offering novel concepts. There are old truths we must revitalize today. About 150 years ago, Abraham Lincoln said: Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses and wasted time.

As a peacemaker, the lawyer has a superior opportunity of being a good man or woman. There will still be business enough. The way I put it to people -- and many of you may have heard this, but I am amazed the number that haven't and how they kind of open their eyes -- if two people are arguing about an orange and both want the same orange and there is only one orange, we might settle the dispute by saying, Okay, you had an orange yesterday, you get the orange today. But if we look into it, we'll find that one wanted the orange for the juice and the other wanted it for the peel to put in the cake. And if we analyze the problem and understand what it is and then solve the problem, we got so far in terms of giving people the sense that the law works for them.

Even earlier than Lincoln, the Indians of the Navajo Nation created a peacemaking system to dispense justice, using a simple form of dispute resolution that focused also on problem-solving rather than winning and losing. I agree wholeheartedly with the commentator who said, the Navajo goal in dispute resolution of preserving the community and seeking peace is one our own system of justice must embrace. We as lawyers must embrace our role as peacemakers as vigorously as our role of advocates.

Look at the modern-day criminal justice system. The prosecutor thinks they won the case when they get the person sentenced to five years in jail for an armed robbery, ignoring the fact that there are not enough jails to house them for the length of time the courts are sentencing, and he's going to be out in two and a half years. And then, if he has a drug problem, he's going to be out in two and a half years without drug treatment.

The public defender thinks he's won the case and solved the problem by getting his client off on a motion to dismiss, ignoring the fact that he is in a more serious addiction than he would ever be if he were sent to prison. If prosecutors and public defenders come together and start talking about how we keep that person away from drugs for the rest of their life, without just who is to blame, then we can make a difference. The question then is how we can, as lawyers in a complex, modern society, in a profession so rife with competition and specialization, can achieve such goals.

I have a few suggestions. First, Winston Churchill said it best: We need to talk in small, old words. Everyone can do this when you advise a client, prepare a contract or provide other legal services.

My grandfather started practicing law in Miami in 1925. The common law pleadings go on and on for pages. He was a man of few words. And he reduced the 10 pages to a page and a half. All the lawyers thought that he must be missing something, so they climbed into the clerk's office with the clerk one night, pulled out his pleadings, looked at his pleadings, and concluded he was right. And he said it without a lot of legalese. I still have one of those complaints.

Secondly, we must have the courage and creativity to stop short of litigation and try more effective and low-key methods of resolving disputes and solving problems. Let me make some very specific suggestions in that regard.

So often lawyers or other personnel who are deciding to

refer a matter to the Litigation Division or to the Department of Justice in a lawsuit are not very good at evaluating the issues. They just want it off their desks. It's a lawsuit; get it out of here.

The Department of Justice or the Litigation Division may not be familiar with the details of your particular substantive issue. It is so important that we analyze the case, to know whether we want the peel or the juice. But the value of the case is what the implications are for the agency, what the implications are for the personnel in the section where the lawsuit arose.

I think that one of the things that lawyers need to do far better than we have if we are to solve problems is to analyze and develop analytical skills. We don't do it until we're really pushed into finally negotiating a case, after we've spent an awful lot of money.

Secondly, we've got to learn how to value the claim. A law school professor told me once that the single most complex issue that I would face was the issue of valuation. And every now and again I think he's right. As I come to grips with that issue at the Department of Justice, we don't give enough time to understanding what is the value of that claim, either on behalf of the government or against the government -- the claim in dollar values, the claim in time value for the agency, the worn nerves and fractured morale. If the agency is suing a contractor or a contractor is suing an agency where there has been a good relationship, we need to analyze all of the impacts and then figure out how to solve the problem.

One of the problems that we as lawyers have is that we go off to law school, we forget all the chemistry we ever learned. Me being a history major, I can't remember any of that. And we become so specialized in what we do that we don't draw on the experience of other people in trying to figure out how to solve the problem until it is far too late and we have four or five lawsuits brought against us and we have not really addressed the issue.

The more we can reach out and identify people who might have a role to play in solving the problem, the more effective we will be. To give you an example in the litigation context, I came to the Department of Justice and found that I had U.S. Attorneys out in the field, the Criminal Division, Environment and Natural Resources Division, Civil Rights Division, the Office of Justice Programs, and they really never talked to each other. And if we were going to solve the problems of American communities, we had to bring those agencies together within the Department of Justice, to get the benefit of so many different aspects of community building.

But if we develop the analytic skills, if we develop the ability to value a claim correctly, if we try to figure out how to solve the problem, then we have also got to recognize that there are processes for learning how to resolve the dispute. When I went to law school, there was no course work in negotiation. Nobody talked about appropriate or alternative dispute resolution.

Roger Fisher was my civil procedures professor, and he never once mentioned those words. And now Roger Fisher has taught a nation of lawyers how to use these tools. At the Department of Justice, I took steps almost four years ago to make the concept of dispute resolution a reality. I ran into some objections. I'm a trial lawyer; that's a sign of weakness. Don't want to get involved.

It's been an exciting project. Every Department of Justice attorney in civil practice is being trained to be a better negotiator. And even the oldest curmudgeons now say it's okay as long as you keep on acknowledging that you can never really satisfactorily resolve disputes unless you have good trial lawyers there ready to take the case to trial. And I acknowledge that on every occasion.

(Laughter.)

ATTORNEY GENERAL RENO: We are evaluating our attorneys not only on their skills in legal research and writing, but also on their ability to negotiate and use mediation and

other forms of dispute resolution. And I've told our managers, when they make decisions such as promotions, they are to give the same considerations to attorneys who have settled cases on terms favorable to the government as we have to those who have litigated cases to a final decision.

Our Office of Dispute Resolution works with assisting United States Attorneys across the country and our lawyers in Washington, helping them to find qualified neutrals, advising them in what I call advocacy, advising them to make sure that we are joint partners in these efforts. As a result of these and other efforts, we're making good progress in promoting problem-solving at the Justice Department.

Our use of appropriate dispute resolution in Federal litigation has almost quadrupled in these four years. Mediators have helped to settle court claims, environmental disputes, work place disputes, Department of Civil Rights cases, civil claims cases, administrative law, and disputes among Indian tribes.

Why does it work? Why have the curmudgeons come to accept it, at least in part?

Let's consider the alternative. Litigation looks to the events of the past. In asking a judge to decide who is right and wrong, the job of the judge is to decide who wins on the facts. In legal issues presented in the dispute, the judge is not appointed to be a problem-solver. In contrast, the mediator asks the parties what they need to do to resolve the dispute.

In that sense, the mediator looks to the future, to the problem that underlies the legal issues advanced by the litigator. The mediator can truly help you be a better problem-solver for your client. And then you will find something interesting. After you've been through a mediation once or twice, you will find suddenly that you're standing outside yourself, looking at yourself, and saying, Wait a minute, I can do that by myself, in terms of negotiation. And you find yourself becoming a better

negotiator.

When disputes arise in the context of a continuing relationship, the role of the mediator is especially important. The mediator can encourage the parties to negotiate creative solutions that preserve working relationships, while settling the dispute.

After all, when parties try to settle cases on their own, they often resort to the familiar arguments. They're likely to say, My case is stronger than yours, so your concessions must be greater than mine if we're going to settle. In contrast, the mediator finds common ground and works with each party in confidentiality, in private sessions, to aid them in identifying real interest and creative options for settlement.

When these processes are used properly, disputes between supervisors and employees can be resolved in ways that allow the parties to continue to work together. Similarly, healthy relationships between buyers and sellers are not destroyed when the contentiousness of litigation is avoided. By settling cases through dispute resolution, we are gaining better settlements and freeing our resources to litigate more effectively those matters that cannot or should not be settled. Such settlements also enhance the public access to justice by freeing judicial resources for those who truly need a litigated resolution.

Now, the Department of the Navy has recognized the benefits of ADR. I talked to the Pentagon about two years ago, and I committed to the Secretary of the Navy. In a splendid policy statement he put everyone on notice that the Navy was committed to resolving disputes without the maximum amount of fuss and with solving the problem.

I also know that since then, the Navy has continued to make progress. And I just want to salute you and thank you and ask you for your suggestions as to what we can do to be a better partner in this effort. We are very grateful for the efforts of Carol Houk in the General Counsel's Office, for her dedication and hard work in promoting ADR at naval



installations around the world, as Chair of the President's Interagency Working Group to Promote Dispute Resolution through the executive branch. I was especially thankful for Carol's many contributions.

There is a lot more work that needs to be done. The principal reason we have so much work to do is that we as lawyers were not trained to be problem-solvers. We have not been trained really throughout all our educational experience -- at least in the public schools. We learned principles, but we don't learn how to solve problems. Kids face that every day. We face this in college, as we learn principles, but we don't learn how to solve problems. We learn from the case books. We learn from the great books. But we do not learn life itself and how we work together in this complex society.

I have a challenge for you all. Government lawyers can do so much. I have a dream that this country can learn an awful lot from lawyers, in terms of what we are doing to resolve disputes and to solve problems. I envision that every teacher in America will shortly be taught how to teach young people to resolve conflicts and to settle disputes, to solve problems, and taught at the grade level that they anticipate being a teacher in.

I anticipate that every police officer who attends basic law enforcement training will be taught how to teach young people to resolve conflicts in the street. I think it will be taught in business school. I think it will be taught in so many different venues across this Nation. And I think this Nation can go a long way towards rebuilding the fabric of community around people who work together to resolve disputes, and to solve problems rather than putting them into the arena of the court.

But, to do that, there are a couple of basic skills that I think we need to concentrate on. In addition to using the small, old words and getting away from legalese and making everyone understand what the law can and can't do, I think we must also learn to listen and to listen with a listening ear. My mother used to take my telephone calls at home when the press would call me:

Can I speak to Janet Reno?

She's not here.

When do you expect her?

My mother said: Young man, you're not listening with a listening ear.

(Laughter.)

ATTORNEY GENERAL RENO: And you're not talking with a voice that is inclined to solicit helpful responses.

(Laughter.)

ATTORNEY GENERAL RENO: That reporter never forgot it. And he's been a success on many occasions in later years. But he remembered that lesson.

America has gotten so it talks past each other. As we talk to each other, we look past the shoulder to see what's coming down the road. We talk, but we don't listen.

Lawyers can do so much in their communities, in rebuilding the fabric of the communities for children of families at risk. If you look at what people have to deal with today -- this morning, at my press availability, I had a young person in who has been a major contributor to service in her community, in Baltimore. I had her in because I had heard too many people talk about what's wrong with the youth of America. Not enough people talk about how great they are. And they are pretty wonderful. They want so to contribute and to make a difference. They want to be heard. They've got a lot of good ideas.

Yes, they can be obstreperous. They can be creative. They can be witty. But they are, for the most part, perfectly wonderful. And it was so incredibly encouraging to hear her talk about what could be done when people come together in a community to make a difference.

We as lawyers lead the way here in Washington and around the world. And I just salute all of you for all you do for this Nation.

I close with one final comment. When you're out in the field, if you've ever worked for the Federal Government, you hear the word "bureaucrat." "He's a bureaucrat."

I have a special mission while I'm Attorney General, and when I leave this job -- to let the people of the United States know how many dedicated men and women work with them and for them throughout the United States Government. When I look at the hours that are spent in service, when I look at the hours that are spent through so many Justice Department and other department offices, I am just very, very proud to work with so many dedicated people who serve this country with such distinction. And I salute you all.

(Standing ovation.)

(Whereupon, at 11:25 p.m., the Attorney General concluded her remarks.)