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Department of Justice

ADDRESS

BY

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BEFORE

THE AMERICAN COLLEGE OF TRIAL LAWYERS
PANEL DISCUSSION ON "POUND REVISITED"

9:30 A.M.
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HOTEL DEL CORONADO
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The general public is keenly aware of the shortcomings of the justice system. There is far too much crime. In the civil area, many are denied meaningful access to justice by outmoded procedures and a court structure no longer adequate. Rising costs of litigation have a grave impact. To allow suits to be filed which will be long delayed, or to offer appeals which will not be finalized within a reasonable time, is to deny the promise of justice.

Although all these concerns are serious, none is new. In his speech in 1906, Roscoe Pound defined the issue very well: "Our administration of justice is not decadent. It is simply behind the times."

We know the dimensions of the problems. The emphasis now must be on practical solutions. The nation can no longer afford drift in the administration of justice.

I have been privileged to be involved in two major efforts stemming from the Pound Conference, a conference held in St. Paul last spring at the instance of the Chief Justice, the Conference of State Chief Justices, and the President of the American Bar Association. I attended that conference.

Later, the ABA created a task force to propose ways to resolve the major concerns which surfaced at the Pound Conference. I was Chairman of that task force. Now as Attorney General, I have the chance to work on many of the programs which the task force urged on others.

I am determined to help develop a national policy for the delivery of justice at all levels. I have been in the Department of Justice only a short time, but it is apparent that we have much to do. In many ways, the Department is also behind the times.

Steps are under way to correct that. I want to mention some of the matters under consideration and others which must be developed. Many coincide with the efforts of your own Pound Conference Committee -- to be described by others this morning.

The catalyst for many important programs will be the Department's new Office for Improvements in the Administration of Justice, which I created last month. It is headed by Professor Daniel Meador, a nationally recognized expert on court and procedural reform.

Professor Meador has taken a two-year leave of absence from the University of Virginia Law School. We have a short time to get a lot of work out of him, but I know his contributions will be impressive.

We already have developed a new program for commission-type selection of judges for the circuit courts of appeal. Senators have agreed on similar selection procedures for district judges in eight states and there is hope in some others.

It is possible that within two years we will have merit selection of district judges in a substantial number of states.

This new office will also closely examine the discovery process, with the goal of proposing legislation and rule changes. Discovery is in many ways out of control, and remedies must be fashioned.

Views on the discovery problems vary, but let me just cite one, from the ABA task force report: "It is alleged that abuse is widespread, serving to escalate the cost of litigation, to delay adjudication unduly and to coerce unfair settlements." We went on to note the view of one critic who said that "Ordeal by pretrial procedures . . . awaits the parties to a civil law suit."

When I left the practice in 1961 to go on the bench, the familiar statement of a trial lawyer was that "I am on trial" or "I will be on trial." Upon returning last year, it had changed to "I am on discovery" or "I will be on discovery."

Class actions will also be studied. Substantial problems exist. Many believe that the process is being abused. There are obvious ways to remedy the problem of abuse as well as problems of managability. The result of modification of the class action rule will be to restore the class actions as a viable procedure. It is not at this time, except in injunctive matters.

In the past few weeks, I have asked governors, state attorneys general, as well as state and federal prosecutors, to form special committees to work closely with me. I make the same request now of the American College of Trial Lawyers. We want your best counsel. We need it. So does the country. I hope you will appoint a small committee to work with me.

We want your help on a variety of matters. For instance, we need the best thinking possible to help model a Magistrate's Division in the Federal district courts. Although the present magistrate system assists judges, a new structure, as a separate court, could relieve in large measure the overload that exists in many district courts.

Magistrates could assume a larger criminal jurisdiction, as well as having substantial civil jurisdiction in many matters where problems tend to be factual, repetitive, or where there have been prior administrative appeals. The Justice Department is now developing a proposal for a Magistrate's Division.

Another effort of great interest is a proposal of the Pound Conference task force -- the development of Neighborhood Justice Centers.

The Centers would provide an alternative to courts for the settlement of many disputes through a variety of techniques -- mediation, conciliation, and mere fact-finding. The law and its remedies would be closer to the people. Costs would decline. Delays and time-consuming procedures would be alleviated. Court caseloads would be reduced.

At one time, when we were more of a rural nation, justices of the peace provided a legal forum close to the people and readily available. When populations shifted, the people did not bring their courts with them. I hope the Justice Centers might now fill that longstanding need.

The Justice Department is drawing up plans to create the centers in a few cities on a pilot basis, under the administration of state courts, possibly with financial support from LEAA. We hope the pilot projects will lead to wide adoption of such centers in the event they prove successful.

Next, we must adopt something on the order of the Ohio system of arbitration in the Federal courts; indeed, in all courts, state and Federal. In Ohio certain types of cases are assigned to three lawyers selected at random, for arbitration in the offices of the lawyers. They are, in effect, auxiliary courts. Once heard, the litigants may accept the decision of the arbiters or return to their place on the docket for a traditional court proceeding. Despite this latter option, the finality rate of the ruling of the arbiter in Ohio is 95 per cent. How can anyone dispute this procedure? It is all gain and no loss. It affords part-time judges for the public at a minimal expense and is an obvious contribution to the delivery of justice.

Let me mention briefly two or three other moves we are undertaking in our effort to improve the delivery of justice. First, the Department will be reorganized, where indicated, to make it more efficient.

In our line divisions, we will strive to increase trial capacity. It is now lacking. One essential component will be a sharp growth in prosecutions of fraud against the government, including Medicare and Medicaid cases and other government contract matters. At a time when government is seeking to find money to pay its debts and for additional programs, one answer is to save the vast sums now lost through fraud. We are going to push in this area and push hard. Other white collar crimes, including antitrust violations, also will receive major attention.

An allied effort will involve the FBI. To uncover intricate financial crimes, we need skilled investigative personnel. We need more accountants. We need more expertise in computer systems and data retrieval. We may have to train our own specialists, but in any event, the FBI will be deeply involved in efforts to combat white collar crime. We will continue to pursue the other responsibilities of the FBI against crime with vigor and dispatch.

We recognize that the largest criminal justice burden rests with state and local government. In our national policy on the delivery of justice, the Justice Department will take the lead in establishing and maintaining cooperation with state and local governments in allocating responsibilities and resources.

Finally, we intend to make certain that Justice Department personnel will adhere to strict ethical standards in all litigation. Among other things, this means we will not tolerate anyone in the Department attempting to try cases in the newspapers. We will not tolerate leaks of information that prejudice the rights

of anyone. We will move to stop leaks of information from Federal grand juries. Nothing so harms justice as the transgressions of those who are sworn to uphold the law.

There is one common objective for the things I have mentioned today and our other work at the Department. I borrow from the Pound task force report: "The ultimate goal is to make it possible for our system to provide justice for all."

Thank you.