

Attorney General Janet Reno's Remarks
at the Annual Luncheon of the ABA
Section of Criminal Justice
August 7, 1993
New York Hilton
Sutton Center
12:30 to 2:00 p.m.

Moderator: Now, there is one person left at the head table, to be introduced, and I wrestled with how to do that introduction for some time. I had a long resume. Because I am from Miami, I am not unfamiliar with the Attorney General. I have known her for many years. I thought about talking about her accomplishments as State Attorney in Dade County, her assistance to this section over the years as a member of the Dash Committee, criminal justice and a free society, and as a member of other committees that have contributed significantly to the work of the American Bar Association. And I realized you all knew that. And I realized that there are few people in this nation who do not need an introduction, and Janet Reno is one of those people.

I will make one observation, however, before I call upon her to address this group, and that is that all of us who believe in the administration of justice, who believe that the justice system is on a fast track to collapse and needs desperately to be improved, who believe in fairness and the Bill of Rights and constitutional liberties, in effective but fair law enforcement and prosecution, are as happy as any human beings could be that she serves us as the Attorney General of the United States. And those of us in the Criminal Justice Section who have worked for many years to foster and continue a dialogue with the Department of Justice can find no way to express our level of excitement, our level of anticipation, about what the coming years are going to bring in the Department of Justice and for our American system of justice. We are all truly honored to have Janet Reno with us, and the nation is truly honored to have her serve in this critical position.

Ladies and gentlemen I give you the Attorney General of the United States, the honorable Janet Reno.

[applause]

Attorney General Janet Reno: Thank you so much, Neil. And the days and minutes following that event in the Rose Garden on February 11, 1993, people asked me, "What do you know about federal law and federal prosecution?" and I see a number of people in this room, Neil included, who have taught me an awful lot and prepared me for whatever success I can have in this job.

Up until 1972, I swore I would never be a prosecutor because I thought they were more interested in securing convictions than

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seeking justice. My predecessor Richard Girstein said, "Come work for me. You can have an opportunity to do something about that perception." And since then I have come to realize that a prosecutor can be one of the greatest protectors of the Constitution and of innocence of any institution.

But at the same time, trying to work together to achieve what's right, to achieve justice, is one of the most complex issues we face in America today. In the Department of Justice, I have advised that there is one overriding question to everything that we do, and that is, "What is the right thing to do?"

Harry Truman said that doing the right thing is easy, and I agree with him, but trying to figure out what's right is terribly difficult. We are going to be discussing and working together to develop the answers to that question. Knowing that we may disagree, but it is my fervent hope that we can work together and understand when we reach the point of principle disagreement, rather than confused and ignorant antagonism.

I am looking forward to getting the Department of Justice staffed. Ben Civiletti confirmed last night that Griffin Bell had all his Assistant Attorneys General confirmed by March 21, 1978 or '76, and I'm green with envy, but I look forward to Jo Ann Harris being confirmed very shortly, and I have been terribly impressed and proud of the U.S. Attorney candidates that I have met with. I am trying to meet with every candidate for U.S. Attorney because I want to build a team of excellent and dedicated professionals. I don't want there to be a question of the U.S. Attorney doing his or her own thing, or of the Department of Justice "controlling U.S. Attorneys." I want to develop a spirit of team work, where we consult together and work together to come up with the right answers.

I want to do everything I can to make sure that the ethical standards of the Department are the highest possible. I want fair, effective procedures for reviewing complaints against lawyers in the Department of Justice. I want those complaints to be handled in a prompt and expeditious manner. I want us to be accountable for what we do with those complaints. I want to develop training programs that address the issues that are mirrored in some of these complaints. But as lawyers who have worked with me for fifteen years in Dade County will tell you, you start messing with my lawyers in an unaccountable game playing way, and I am going to be standing up for them every step of the way.

I am distressed over time at the gulf that has developed between prosecution and defense. It is alien to anything that I'd learned in law school, anything that I ever believed about lawyers.

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Lawyers were supposed to be valiant and gallant adversaries. They were supposed to be principled adversaries, each trying to reach that ultimate goal of justice. There was not supposed to be trivial, mean-spirited antagonism, and I want to do everything I can to protect innocent people, to protect the Constitution, and to forge ahead together in a spirit of spirited advocacy, in a spirit of courteous advocacy, in a spirit of civil advocacy, to try to reach the truth in justice.

To do that will require dialogue, but I want more than regular dialogue in a formal setting. I want you to feel free to pick up the phone and call and get answers and discuss problems and try to work out issues that are paramount. Now, some people in the past have taken that as an invitation to call and go over the heads of the people that they're dealing with. That's not the way to do it. But working together, reviewing matters, going one step at a time. I think we, if we talk together, can reach some understanding on issues that have troubled us.

I am delighted to see my Southern District prosecutor and public defender representing what I think--and they have been now for many months--representing what I think is best in the spirit that I want to approach that problem.

But I firmly believe that if we talk together, we can go further. This whole issue of contact with represented parties has caused great angst, I think, on the part of representatives of the Department of Justice as they think, "Oh my goodness, what's Janet going to do now?" And the defense lawyers have gotten upset because I circulated the memo again, and everybody wonders what I'm going to do. I want to make sure that everybody sits down and talks about it, because I am convinced as we go over particular problems, as we talk in spirit of good faith, most of us are going to be able to reach a resolution of how we deal with this, protecting the lawyers in the Department from game playing, but holding ourselves accountable to the bars of this nation.

I think we can do the same thing in asset forfeiture. We will not reach total agreement, but we can work together to talk out the problems. For too long we've glared at each other, without talking to each other, and I think we can work out the problem so that innocent people are protected and that we do it right.

In the spirit of dialogue, one of the most encouraging moments of these last several months occurred in the conference room in the Department of Justice. That conference room gives me some ambivalent feelings because as you walk in, there is a magnificent mural with Harlin Fisk Stone as the model for the judge insuring justice for the people, and that's what you see as you go into the

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Attorney General's office. Coming out is one of the bleakest murals I have ever seen in all my life, and that's justice denied. I am thinking about turning my office around so that we can make sure that we achieve justice.

But in that conference room, Bill Eig came with representatives of some twenty-nine national organizations including the National Sheriffs Association, representatives from the mayors and the county commissioners and what I thought was one of the most diverse groups of people coming together to discuss issues and to pledge their support to a critical, thoughtful, common sense approach to the problems of crime in America.

We are going to disagree. You're going to believe that your client should be acquitted, and you prosecutors are going to believe that they should be convicted once we get into that adversary process. But as we work up to it, I think all Americans--whether they be Democrats or Republicans, defense attorneys or prosecutors, sheriffs or citizens--all of us can come together and develop a far better approach to addressing the problems of crime in America.

The first thing I think we've got to do is recognize that we have two systems, but those two systems--state and federal criminal justice systems--have got to work together as prosecutors. It is so frustrating to me to find people in federal prisons serving ten and fifteen year minimum-mandatory as first offenders when I turn around and look and three- and four-time offenders in the state system who have committed terrible and violent crimes, who are getting out in vastly reduced sentences because we don't have enough prison cells to house them for the length of time the judges are validly sentencing them. Now, it is clear that there is a constitutional--as there should be--a constitutional difference between state and federal court, but I have found no constitutional difference between a state and a federal prison. They are both resources that can be used together and should be used together.

But what I would like to do is work with the National Association of Attorneys General, the National District Attorneys Association, the U.S. Attorneys Advisory Committee to the Attorney General, and to all concerned and involved--the National Association of Criminal Defense Lawyers--to develop a principled approach to charging. I am going to look unkindly on that member of my team that grabs a car-jacking and charges it just to gain headlines. But if that car-jacking is part of a multi-district or multi-state problem, and it is obviously far better investigated by federal authorities and handled in federal court, I am going to support them every step of the way.

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I want to try to figure out what should be charged in state court and what should be charged in federal court consistent with proper principles of federalism, and I think working together we can do that.

[applause]

The declination practices of U.S. Attorneys puzzles me no end. I think it has something more to do with the local prosecutor than the U.S. Attorney, and how gullible the local prosecutor is. But, I also realize that local prosecutors in many instances, can handle volume better than U.S. Attorneys, and U.S. Attorneys can handle complex cases sometimes better than local prosecutors. Whatever the case, I want to make sure that as we proceed in this discussion and this dialogue, that we develop a principled approach to declination policies as well.

Part of the feature that I think we have to work to in this-- and I want to put everybody on notice--there has been a tendency to think of violence as a state problem--violent crime as a state problem. But in the limited time I have been in office, I have been back and forth across this nation, and it is clear to me that violence in the form of drug-generated violence, gang-generated violence, is something that is crossing state lines, that has patterns to it, that necessitate and would be vastly assisted with federal assistance and support in the investigation and, in some instances, in the appropriate prosecution of these violent criminals. I am absolutely dedicated to doing whatever I can to using federal law enforcement in the U.S. Attorneys in the best and most principled way possible to support state and local law enforcement in every way we can to get these people put away, and kept away for the length of time that judges are properly sentencing them.

At the same time I want to look at sentencing practices to understand who's getting sentenced. The press gets testy with me and says, "You haven't done anything. You've lost your window of opportunity. You've caved into politics." But the way I got where I am was not thinking about, "Well, I can't win politically." It was in getting all my facts together, in trying to understand just what the issues were. I've heard so many stories that have turned out to be apocryphal that I want to make sure that I am informed when I approach the issue of sentencing and how we should structure our sentencing practices in the United States.

I want to understand who is in federal prison today. One thing I am clear on is that twenty-six percent of the people in federal prisons today are aliens. That's a subject that's got to be looked at. How many others are nonviolent first offenders? How

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many others were armed? How many others were major traffickers, and how many others are minor boat people? We have got to develop not only a principled approach to sentencing, but an informed approach that focuses again on the priorities. No matter what the American people believe, there's one thing I think they are consistently in agreement on, and that is that mean, bad recidivists should be punished, sentenced for as long as we can get them sentenced, and put away, and kept away if they've been given a chance previously, and we have got to work together with state and local authorities and the federal government to make sure we have enough prison cells to house those people for the length of time the judges are sentencing them.

We have got to make sure there is truth in sentencing. I come from a state that established sentencing guidelines and implemented them five years before the federal government--a state that's had minimum-mandatory sentences for an awful long time--a state that has not put dollars with the sentences or with the laws that propose the sentences. And shortly before I left to come to Washington, I was invited to a conference by the governor of Florida concerned about gridlock because people--dangerous offenders--were getting out while those others, less dangerous, but they're on minimum-mandatories, were being kept in prison. Somehow or another, we've got to have truth in sentencing that incapacitates the truly dangerous, but recognizes that most offenders are coming out sooner rather than later, and that either in the state system or in the federal system, it makes no sense for a drug involved defendant to be sent off to prison for three years, dumped back into the community in fifty percent or twenty percent of the time without drug treatment, without job training, without follow-up, without after-care, to return to the slum in front of the open-air drug market where the problem started in the first place and expect that that person is going to do anything but go back out and start using again. And yet we have done it again and again and again throughout America.

Working together we've got to utilize state, local, and federal resources in the best way possible to understand that we've got to get those people out using our leverage. Far better that we get them out first into drug treatment, get them detoxed and stabilized, get them into residential non-secure facilities which will not be as costly as prisons but can be used for job training and for placement, provide random drug testing to check as we move them out into the community, get them into day treatment, provide after-care, develop alternate housing sites that they pay through work opportunities, and most of all we've got to come to grips with one of the single greatest problems that face America today. There are young men, twenty-five, twenty-six years old, who probably have had a drug problem, but who have had enough will, enough strength

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of purpose to pull themselves out of that problem, out of their criminal activity, and they turn to go get a job and the doors are slammed in their face, and they start doing it again.

Somebody asked me this morning if I was afraid of losing a whole generation of Americans. No, I am not afraid, because I'm going to do everything in my power to see that that doesn't happen.

[applause]

But all lawyers are going to have to help in this. The communities are going to have to help because I have seen too many sons and daughters of lawyers and doctors, who got into trouble, got straightened out, and through their family's strong support, got back into the main stream of the world. There are too many others who do not have advocates, who want as much to get back into the mainstream of the world, and they need us to be those advocates.

Recently I talked to former gang members in Los Angeles--gang members who through their strength were reaching out to help others. We've got to be bold and innovative if we want to pull that generation back.

We have got to understand that one of the principle causes of the problems we face in America is family violence--not just domestic violence, but family violence. Ladies and gentlemen, as I left Florida, we were coming to see ever increasing instances of violence against the elderly, usually in a familial situation, as generations were trying to struggle with increased life expectancies, with other problems which reduced incomes. We owe it to all our family--to the old and the young--to state unequivocally that family violence will not be tolerated.

I challenge the defense lawyers because too often in my experience in Miami, it was the prosecutor that was trying to find the answer. Defense lawyers have got to work with us, not in saying, "Look, all he did was hit his wife," or "Well, he really didn't mean to" and join together in developing programs that can put an end to this cycle.

We have got to understand that the child who watches his father beat his mother is going to come to accept violence as a way of life. We've got to understand that a society that has gotten so frazzled that it reaches out to smack its elderly loved ones has gotten too frazzled, and we can work together to do something about it.

But if we are to understand, we must go beyond our limited focus. The prosecutor thinks we've done a great job when we get

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somebody into a domestic intervention program, or get somebody put away who's really been bad, and the defense lawyer, depending on who she or he is thinks they've done their job when they work out a good deal or get the client off. Both of us haven't done our job unless we look to where violence starts--unless we focus on schools, and develop in conjunction with schools across the nation conflict resolution programs that can teach our children to deal with problems other than through violent means. Lawyers see the end result; teachers too often don't.

Just think of what we could do if every bar association in this nation joined with the public school system to truly implement, as a number of bar associations are doing now, conflict resolution programs for all our children in our schools. We've done so much in terms of education and prevention, about drug abuse. We can do the same with violence.

In 1972, I established the juvenile division of the State Attorney's office in Dade County. I put my heart and soul into it. I tried my best to address the critical problems that we faced, and I thought I might be winning the battle. I was then appointed by Field Chester Smith to the Institute of Judicial Administration ABA Juvenile Justice Standards Commission, and it was an extraordinary experience with now Judge Patricia Wald and Judge Justine Wise-Polier who taught me so very much about so many of the things that I care about.

But it didn't take me long after I became State Attorney and saw the neglect that had been imposed upon our children to realize that a juvenile justice system is too late. And I challenge you all to think beyond juvenile justice. I've discovered the buzz words. You've got the child welfare people over here and the juvenile justice people over here, and they compete for money. They don't look at the continuum of the whole--the child as a whole.

We have got to break down arbitrary barriers. And the lawyers who are concerned about juvenile justice have got to understand that if we really want to do something about juvenile justice, we're going to have to focus on truancy prevention. When the child is truant when he's eight years old fifteen times in the first forty-five days of school, and instead of letting the police take the child to the school, and the school call home and the mother not come get the child, and the school puts the child on the bus and send him home without finding out what happened, we've got to form teams composed of community-friendly police officers, public health nurses, and social workers who will go to the home, knock on the door, and find out why that child is truant and drifting.

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We've got to push back further into other areas to understand that nothing we do at eight or nine can make a difference unless we give that child the opportunity to grow as a strong, constructive human being.

Laurie Robinson was one of the first people I met in the ABA that made me feel that the ABA could really do something, that lawyers could fulfill their promise and really address the injustices of the world. I tagged along on the Dash Committee and then let Sandy Dalembert persuade me to get involved in the task force on minorities in the system, dubious about the ABA and what it could do. I'd seen its standards, I'd seen all its valiant efforts in the courts, but this morning, with Judge Higginbottom's report on the unmet needs of children, I have seen the ABA rise to a new level. And Laurie promised me that it could and would, and it did, and thank you for keeping me at it.

[applause]

Lawyers have got to reach out beyond the courtrooms, particularly us who have too often solved our problems in the courtroom, to understand that we have got to touch children and families every step of the way. We've got to help reweave the fabric of society around our children and families because there is no care giver in the world, there is no court, there is no institution, better at getting somebody out of trouble or off on the right foot, or keeping them out of trouble, than a strong and healthy family with children who have a chance to grow as strong, constructive human beings.

[applause]

These last six months have been an extraordinary experience for me. Six months ago I was minding my own business and thinking I would begin a new four year term as State Attorney in Dade County. Never did I dream that this would happen. All the approval and all the gushiness has been kind of unnerving because I know after fifteen years in Dade County what a rollercoaster anybody takes in trying to address the issues that confront America. I know that day after tomorrow I can be the most unpopular Attorney General...

[laughs]

and I think that's comforting in terms of trying to work through it, to keep the pace, to get the Department staffed, to address the issues, to pull together the information to make the principle, thoughtful comments that need to be made. But the one thing I know is, I can't do it without you. It's going to be a great adventure,

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and I look forward to working with every single one of you.

[applause]

Moderator: [off mic] being with us and for sharing your ideas with us. Your commitment to this justice system, I should have mentioned that Janet Reno served on the commission looking into racial bias in the justice system, and as a result of that service, of course, understands civil rights and the need to improve our justice system in all of its aspects very well, not like a predecessor who shall go unnamed who tried to establish his bonifidies on civil rights by telling someone that he had read everything ever written by Malcolm the tenth.

[laughs]