



ADDRESS TO THE LOS ANGELES COUNTY BAR ASSOCIATION

U.S. ATTORNEY GENERAL JANET RENO

UNITED STATES ATTORNEY GENERAL

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## P R O C E E D I N G S

MS. RENO: Thank you so very much for that introduction. I hope I can live up to it. And, Ray, thank you so much for those good words. And, Los Angeles, thank you for Ray Fisher. He's one of the nicest things that's happened to the Justice Department. And, President Pasternak, thank you so much for all you've done, and everybody else, to make this day possible.

I went to Washington loving the law and loving good lawyers. After five years in office I have an even greater respect for the members of the bar of this nation and I love the law even more. I'm very proud to stand with the lawyers of America and with the organized bar. And I come today not as a critic but as an ally. Not to harp about the misdeeds of lawyers but to talk about how we can make the law even better and more responsive to all Americans. How the law can better serve its people.

I see four roles for the lawyer; peacemaker, a problem solver, a sword and a shield. And oftentimes most of us talk about the sword and shield. But I'd like specifically to talk about the role of the problem solver and the peacemaker today.

I'd like to talk about three problems that I think we as lawyers can address better than we've been doing. First of all, I have observed in this nation a loss of sense of community, which has produced on too many occasions disagreement and anger.

The second problem I see is that while technology gives us opportunities that stagger the imagination, that it is necessary that we do more to determine how it can be used to build trust and confidence, how it can be used to enhance the human spirit, how it can be used to promote understanding in what we do to make sure that we master the technology rather than the technology mastering us.

And the final point I'd like to discuss with you today is the fact that our borders are shrinking and sometimes evaporating. The Worldwide Web has brought us together in a new sense of community, and I think it imperative that lawyers focus on how we address this new community of the world in which we live.

Let me turn to the first problem, the loss of the sense of community. In this century America has been on the move. Many people have no roots. They live in isolation unknown to their neighbors or they change jobs because their skill or vocation has become obsolete as technology has changed the landscape, or they move so fast and work so hard that they don't see their family grow up and they have no attachment in some instances to the family because they are working so hard. What are the results? In too many instances there is no foundation for trust because they don't know each other.

Lawyers too often can't make a deal on a handshake because they haven't had a tradition of community. The immediate response is to sue because they don't know anything else to do and in too many cases the suit goes to trial. I think lawyers can be more effective. They can avoid a bad result. But I think too often our tendency to sue produces a bad result.

We have a tendency to run off to the courthouse when we can't afford it. We have a tendency to follow through on litigation without exploring it and understanding the value of our case, only to find that it's cost us too much and it wasn't worth bringing in the first place. And most importantly, we sometimes lose the case. But finally the suit, even if somewhat successful, doesn't solve the problem that caused the lawsuit in the first place.

And the problem continues to fester. An employee situation continues to fester. A contractor working with a supplier continues to have the problems of tension and dissension caused by the fact that the problem that caused the lawsuit that might have been settled wasn't settled in the first place.

And what is the impact? The impact is that people too often don't trust their lawyers and they don't trust the law.

There's a second problem that contributes to the loss of our sense of community. This is a time in our nation of unparalleled prosperity, but unparalleled prosperity for more people while at the same time more people are making less and having less opportunities. And the gap between those who are doing well and those who are struggling to make ends meet, even in the barest sense, is becoming greater and greater. And as that happens, communities begin to feel the tension and even begin to feel the terror.

As a result fewer people have access to the law, and that presents one of the fundamental legal problems for America today. It has always been our inherent problem. But what it means is that for many Americans the law is worth little more than the paper it's written on. And as long as that exists there are going to be people who feel alienated and alone and unrepresented.

And we as lawyers must focus on how we address that problem because what that problem means in the short term is that somebody feels left out. But for the longer term, as long as that feeling, as long as the gap exists, there will be a feeling of anger and frustration and divisiveness, which turns to violence. It will be people who drop out whether it be in high school or of society. It will be jobs unfilled because we do not have Americans with the skills necessary to fill the jobs. It will be medical institutions brought to their knees because we have failed to provide preventative medical care up front. It will be a society that is torn by racial and cultural division.

This nation is too great to even let that begin to think of happening. And all of us as

lawyers have a special responsibility to be the peacemaker, to be the problem solver and to do something about this.

I've had a lot of opportunities to listen to lawyers in these five years. One of the great and wonderful experiences that an Attorney General can have is to sit around with the lawyers around her conference table and hear some of the best lawyering you've ever heard in your life. And to have people come to discuss issues. It's just been very gratifying.

I'll start with a criticism of myself first, though, and forgive me for sharing these things with you but I thought it might be helpful. Lawyers don't listen to their clients very well. They don't trust the people enough. And you find if you start listening to the other lawyer's client, as they sometimes jump into the conversation and then start talking to the lawyer, that you can help interpret a little bit. Trust your client. Trust the people. Believe in the people. That is what our legal system is all about.

Communicate and use the law in a simple eloquent manner. As Winston Churchill said, "Use small old words." Listen not only to your client, listen to the lawyer talking across from you. I must admit, I hear a brilliant legal argument and then suddenly something kicks in about the crisis of the day and then my mind wonders off and I've got to get back to the point.

Listen, because if you listen you will hear the threads of agreement so often running through the conversation. Watch the tone of voice. I do it. I get dismissive of an argument and I miss a great chance for solving the problem.

Most of all, we're cutting down so many trees in America today. With recycling, we could cut down a lot less and make our points a lot more powerfully, if we learn to write. I get so I can't wait to get a brief or a memorandum from certain people I've identified in the Department of Justice because I know I will be able to read it from beginning to end without having to see what phrase modified what word or what point was being made. We're trying to engage in some writing improvement programs in the Department of Justice and I can benefit myself.

If we do some of these things the results will be that the people of America will have a better understanding of the law. They will have greater confidence in the law and they will be better able to use the law themselves to make themselves self sufficient, which is what we're all about.

The third point I would make with respect to community and the dividendus that we have seen, is best made by one of America's most distinguished lawyers who lived over 100 years ago and I would be interested to see who can identify the author. "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 waste of time. As peacemaker the lawyer has a superior opportunity of being a good man or woman. There will still be business enough." Abraham Lincoln.

I know I'm preaching to the choir. I know California has one of the most comprehensive dispute resolution programs in the country. But we must try harder. The Department of Justice, the lawyers in it, the lawyers in America, to stop short of litigation, to quickly resolve disputes, to solve the problem causing the dispute, to solve it permanently, to obtain a good solution at the lowest cost, to use negotiation skills and ADR whenever possible.

I urge every law school in America to have a comprehensive program to train its lawyers in how to negotiate and how to use these tools. I encourage all lawyers in this nation to participate in some continuing legal education programs.

I had Roger Fisher for civil procedure and he never mentioned negotiation in 1962. Roger Fisher and his colleagues have shown us very very clearly that you can teach people to negotiate and it's a skill that can be learned and it's one of the most precious skills a good lawyer can have. But to do it and to use it right you've got to learn the case up front and you've got to make sure your client learns the case up front. You can't negotiate if you don't know what you have.

And that comes down to one of the things we've all got to do, we've got to stop procrastinating. We tell ourselves that all the time. But the case analyzed early on and evaluated early on can save everybody the time and the grief. And I can tell you, the client that has the case hanging around his or her neck like a slow drip drip just wishes it would be over. It's not just the money, it's not just the end result, it's the burden of litigation.

Don't be afraid to go to trial though and retain your trial skills because you'll never get anything negotiated very well if you don't have the threat that you can carry out to take that case to trial. But understand that negotiation and mediation is not a sign of weakness. Recognize that a mediator may assist you in giving you an objective assessment of how to be a better problem solver. And finally, let me know if the Department of Justice isn't doing right by ADR in Los Angeles County. At the Department I took steps three years ago to create an ADR program. I call it "Appropriate Dispute Resolution" because trials are certainly a part of it. Our ADR program is intended to insure that all of our lawyers in civil practice use problem solving and dispute resolution techniques. We want our lawyers to remember that advocacy is not confined to the courtroom. That is why all of our lawyers are being trained to be more effective negotiators and to use forms of dispute resolution such as mediation whenever it is appropriate to do so.

We used to evaluate our attorneys on how well they conducted legal research and how well they argued in court. Now we also evaluate them on their negotiating skills and how well

they use ADR. In the past we promoted and we gave awards to lawyers who were great litigators. Now we also promote and give awards to lawyers who are great negotiators and settlers. We are using mediation and other forms of ADR to resolve tort claims, workplace disputes, environmental litigation, contract actions, false claims cases and civil rights litigation.

In three years the Department of Justice has almost quadrupled the number of cases where some form of ADR has been used. We are working with federal agencies in Washington and throughout the country to make them more effective partners with us when we try to settle litigation involving them as our client. We also hope these agencies will use dispute resolution to settle more disputes before they ripen into litigation.

It is particularly gratifying to have been asked by the Secretary of Defense to come over and talk to 200 of the top civilian and military brass of all the military forces, and suddenly find the Air Force and the Navy issuing memoranda and following up with training on just how they can participate and be a true partner in ADR.

Dispute resolution is being used more and more because it can provide not just a faster and more effective means but also a gentler means of settling the dispute, of settling a dispute without damaging the ongoing relationship that the parties to the dispute may have. A defense contractor, the military, the Department of Defense would like to continue to do business together. If they've had a bruising trial, that's not going to be worth much. This is true in disputes that arise from contracts, in the workplace or anywhere that more traditional scorched-earth litigation could be counterproductive.

We are strongly supporting a bill recently passed by the House of Representatives which requires every federal district court to establish an ADR program if it has not already done so. This bill would also require every litigant to consider at some appropriate point in the case whether ADR should be used. We hope the Senate will act and that the bill will become law.

It is equally important for all of us to recognize that dispute resolution is more than just about our legal practice. I think we should constantly ask in our legal practice, in our pro bono efforts, if we're solving the problem.

Let me give you an example: I see some lawyers in the Department of Justice come back from their pro bono initiatives triumphant because they have won one case against one landlord for one unit in the building and they won the case because the landlord has jury-rigged the situation to get into compliance and there's nothing we can do about it. I challenge you all, just think that the same problem probably exists with the whole apartment house. The landlord has told you that it's just a hopeless situation because the place is being vandalized. The crack dealers down the street are scaring everybody away. He's not getting the rents, and it's all a terrible situation which he has no control over.

Rather than just take the one unit, take on the whole apartment house and rather than go litigate against the landlord for a jury-rigged solution to the problem, why don't you learn a little bit more about what grants are available through various federal agencies or local community development grant agencies. Why don't you figure out what can be done with community policing and go to the police chief and say, "There's a situation down here that needs some community policing initiatives and I think we can organize this apartment and the area around it to be more effective in this."

Let's look at what the problem is and get it solved in the long run. And if we really want to be ambitious let us go beyond one apartment house and let's look at a neighborhood. A neighborhood such as I saw in Jackson, Mississippi where the Habitat for Humanity and others had organized together to effectively start reforming and rehabing an entire neighborhood. Let's solve the problems rather than providing the band-aids.

But sometimes lawyers don't know how to solve problems. They don't know how to get rid of the abandoned car or the vacant lot that is overgrown.

California is doing some very interesting things in community justice. In community justice that requires community advocacy. And I would urge the State of California to start thinking in terms of a degree in community advocacy. Teaching somebody how to know city hall, how to know the ins and outs of just the basic living problems that so many Americans face that they will never be able to afford a lawyer to deal with.

These advocates could work under the supervision of lawyers. Law firms could make them a part of their practice. They could charge based on a sliding scale. They could make problem solving a reality for a large number of Americans who now never have their problems solved.

But you can do more. You've done one wonderful thing today amongst many and that is to invite some wonderful students here, and I'm so delighted to see that you are here, because I have a dream that every student in America will be taught dispute resolution skills, problem solving skills from the beginning, so that they will know better than any of us how to resolve conflicts without knives and guns and fists. How to work together to address community issues and to provide positive solutions rather than angry defiance.

In San Antonio about a year and a half ago I had the pleasure of meeting with young lawyers, young lawyers who had put together a conflict resolution program for a high school. The program was funded by the American Bar Association. Other bar associations are participating in efforts like this across the country. We can make it real for all Americans. And think about resolving conflicts peacefully.

My dream is that the lawyers will lead the way not just with respect to students, but in

helping the teaching profession understand how they can be better mediators, how they can teach conflict resolution to their students. So, having met some wonderful mediators today in terms of the principal and the assistant principals, my dream is that every teacher will be able to teach conflict resolution by the -- five years from now. We ought to be able to do that.

And that every community police officer instead of being the presence that means authority will be the presence that means problem solving and peacemaking, somebody that you trust because they know how to talk to a young person. They know how to walk into a situation and mediate it. They know by tone of voice and the way they carry themselves how to affect a peaceful solution. They, like the trial lawyer, will have to be ready to wield the sword. But they won't have to wield the sword as much if they are trained in these problem solving, peacemaking solutions.

Now I want to add the two other points, which are vital. New technology, our information technology, our information infrastructure, is giving us new opportunities that stagger the imagination. New opportunity to learn, new opportunities of commerce and new opportunities of bringing the world together. But this technology also brings some concerns. Concerns for the privacy of all Americans. Concern for crime from unknown sources.

If a man can sit in his kitchen in St. Petersburg, Russia and steal from a bank in New York, we understand the dimensions of the problems. When the Internet can be used to convey hate, we understand that we're going to have to deal with this issue in order to insure its use as a magnificent tool.

Lawyers have got to learn to talk with the scientists and scientists have got to learn to talk with the lawyers to understand how we use this tool the right way protecting the privacy of Americans, preventing it from being used to divide while at the same time upholding the treasured constitutional protections that we cherish, including freedom of speech.

These are great and wonderful issues, but the reason I raise it is that I've watched the lawyers and the scientists come together like this. Most lawyers don't understand the technology. They don't understand the language and the scientists don't understand the lawyers, and we're going into a new millennium with new challenges.

The Department of Justice has got to do better. We've got to make sure that we understand the language, understand the principles and come together to resolve the sometimes apparent conflicts that don't need to exist if we develop the understanding that is so important.

And finally, because of that technology the world is a different world. Borders are shrinking, or evaporating, our community is expanding. You see it in Los Angeles. I see it in Miami. We see fragile emerging democracies around the world.



There is nothing quite so beautiful as an emerging democracy trying, taking its first step, sometimes a baby step. A minister of justice comes, marvels at the democratic processes, talks about what they want to achieve in this nation that has not seen democracy for years and years, and then the next thing you hear there's been three steps back after two steps forward and you wonder how they're doing.

We have an obligation to do everything we can to reach across space through the web to build new communities of opportunity because if we don't, the crime committed in another country that impacts us will again divide our community. Commerce, all our relationships are going to depend on how we move into this next century understanding the community is not just Los Angeles, it's not just a piece of Los Angeles, it is the world and how we live in it.

I have spoken to you about problem solving and peacemaking, but as the lawyer I am I go back with one final comment about the sword and the shield.

One of the most remarkable moments I've ever had was to reinvestigate the case of a man who had been prosecuted, convicted and sentenced to death 21 years before for the poisoning death of his seven children. He had stoutly maintained his innocence. The Supreme Court had lifted the death penalty from him, but he had remained in prison. I determined that the evidence was insufficient to charge him originally, that he should go free. And I will never forget for as long as I live looking over my shoulder as I left that courthouse and watching that man go free for the first time in 21 years.

We see too many instances where DNA has proved that somebody who was convicted was innocent and that they should go free. All of us as lawyers have the eternal duty to make sure that we use the law as a sword and shield to protect the innocent. And to insure to all Americans, regardless of whether they can afford it, proper legal representation to make sure that injustice is never done.

Thank you very much.

(Proceedings concluded.)