

REMARKS OF
ATTORNEY GENERAL JANET RENO
ACCESS TO JUSTICE FORUM: ENSURING AN AMERICAN IDEAL

Tuesday, March 19, 1996
4:20 p.m.

Baltimore, Maryland

P R O C E E D I N G S

(4:20 p.m.)

ATTORNEY GENERAL RENO: It is a pleasure for me to be here this afternoon.

I particularly want to thank the organizations that have made this forum possible. The Maryland State Bar Association, celebrating its 100th anniversary this year, stands as a national model for striving to provide legal services to both low- and moderate-income persons.

The People's Pro Bono Action Center has done an extraordinary job in the recruitment of attorneys to do pro bono work. As a result, the Maryland State Bar Association has received the American Bar Association's highest public service award for its achievement in this area. The University of Maryland School of Law is exemplary in its efforts to train law students in public service work and serve as laboratory for improvements in the legal profession.

I thank each of you for the marvelous work that you are doing.

I also want to acknowledge our fine United States Attorney Lynne Battaglia. I know the United States Attorneys Office in Maryland has long supported community service by its attorneys.

As you may know, I was in Baltimore last week to speak to the General Assembly's Summit on Youth Crime. It was so exciting to experience the bipartisan energy focused on seeking solutions to this deep and troubling problem in our society. The same commitment to justice that makes all of us probe for more effective solutions to youth violence is the same commitment that brings all of us together to wrestle with the question of how we can realize the American ideal of ensuring access to justice for all our citizens.

We, as lawyers, face extraordinary challenges as we deal with this problem. There are too many Americans who do not have access to the law, who do not feel that they have any voice, who think of it as remote and totally irrelevant in their lives, and has no impact. 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.

As the Bar Association marks its centennial, and as we together approach the 21st century, no task is more important to the lawyers of Maryland or for this Nation than ensuring access to justice for each person. Our challenge is twofold: first, to increase access to legal counsel; and secondly, to change the nature of our legal institutions and the processes that run them, so that people can solve their problems without having to resort exclusively to the courts and lawyers.

Unfortunately, we find ourselves in a greater crisis than ever in terms of delivering legal services. The American Bar Association's 1994 Comprehensive Legal Needs Study surveyed 3,000 low- and moderate-income households nationwide. It found that 71 percent of low-income and 61 percent of moderate-income legal needs are not addressed by the civil justice system.

This, of course, is not new to most of you. Your legal needs study in the late 1980's found that less than 20 percent of Maryland's low-income population has access to necessary civil legal services.

The even more recent Mason-Dixon Legal Needs Study also confirms the findings of the ABA study: the working poor and the lower middle class in Maryland have significant areas of unmet legal needs. The failure to meet the legal needs of our low- and moderate-income citizens is being

exacerbated by the funding cuts and the restrictions being imposed on the Legal Services Corporation which funds most Legal Services programs.

I strongly support the continued funding of the Legal Services Corporation, and I oppose the proposals to reduce funding for the further restrictions on block grant legal services. I have seen firsthand, both in my hometown of Miami and in the city that I have come to love, the District of Columbia, the tremendous dedication and commitment of legal services lawyers. I started my legal career serving on the board of the Greater Miami Legal Services Program. I have watched people I have worked with give their whole professional life and commitment to Legal Services.

To me, they are the heroes and the heroines.

They labor in difficult settings, for little compensation, to provide critically needed compensation for the poor. I commend those who have chosen to do this important and oftentimes unrecognized work.

Just a small thing. As a prosecutor in Miami, I picked up a phone. A grandmother would be on the phone. Her daughter was a crack addict. She did not know who her father was. She needed the legal process to be able to represent the child and care for the child. And she did not know where to turn. And to be able to call Legal Services and have that can-do approach -- "Let me see what I can do" -- and then to have the grandmother stop me on the street 6 months later and say that night, the lady you told me to talk to really made a difference, and it is all working out, and my grandchild is doing just wonderfully in school. Thank you.

It was not thank me. It was thank the Legal Services Corporation, the Greater Miami Legal Services. And, in effect, thank all who volunteer.

I have expressed my strong opposition to the dismantling of Legal Services in correspondence to the chairperson of the House Judiciary Committee and the Senate Labor Committee. Deputy Attorney General Jamie Gorelick, representing the Department of Justice, has testified before Congress in support of the Legal Services Corporation.

Only a few months ago, White House Counsel Jack Quinn and I wrote to the chairpersons of the House and Senate Subcommittees on Commerce, Justice, State, and

Judiciary, conveying in the strongest possible terms the administration's view that the Corporation's funding should be sufficient for it to continue to provide vital legal services to the poor and low-income citizens and their families throughout the country.

I have been extremely impressed with the commitment and diligence with which all parts of the legal profession have responded to the crisis threatened by these funding cuts. The District of Columbia is very much in the same situation as Maryland. Even in the past, when financial times were better, the combined efforts of legal service providers, law school clinics and pro bono attorneys have met less than 20 percent of the legal needs of the District's poor.

In the past few months, the D.C. Bar Association and the four chief judges of the Federal and District of Columbia courts convened a meeting of the largest law firms in the city to discuss this crisis. The law firms, large and small, have responded to the call to expand pro bono resources, all in the highest and best tradition of the profession.

I know that Maryland has similarly responded. I understand, Mr. President, that you have convened the Maryland Coalition for Civil Justice to assess the potential damage as a result of the funding cuts, and to develop strategies to deal with it. I applaud you for the broad-based nature of this coalition, including not only legal services providers, attorneys, judges, and law school officials, but business, labor and other community leaders as well.

Ensuring access to justice is a particular responsibility for us in the legal profession, but it is the obligation of the entire society to protect and nurture this foundation of our democracy. In order for there to be a society based on law, there must be an abiding respect for law and legal institutions. Without access to those institutions, there can be no response -- only disenchantment and alienation. Local and State governments, as well as the private bar, must step in to fill the gaps left by Federal funding cuts.

But what you have done in Maryland, in terms of reaching out to other disciplines, to the private sector, to the other professions, I think is a model for the rest

of the Nation and for other bar associations. The lawyer is not going to be able to deal with the problem of domestic violence or with the clients experiencing problems associated with domestic violence nearly as effectively as the lawyer and the doctor who, working together, both from a public health point of view and from a criminal justice point of view.

And so to see these alliances develop between professions to begin to meet the needs of all Americans, regardless of their ability to afford services, is extraordinary.

Pro bono activity by the private bar in Maryland, just in and of itself, has been impressive. The founding of your Center by this association and its extensive recruitment campaign to connect lawyers with pro bono opportunities constitutes the largest statewide pro bono effort in the country. Between 1989 and 1993, there was more than a threefold increase in cases handled by pro bono attorneys through pro bono programs. Individual voluntary attorney participation that could be documented increased by approximately 100 percent.

You have so very, very much to be proud of. The Action Center is a true model for the entire country, providing training, mentors, litigation funds, service of process, court reporters, investigators, computer research, and paralegal assistance -- not to mention an extraordinarily diverse array of pro bono projects and programs around the State.

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 is also one of our most important responsibilities. But I do not 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.

Being a lawyer is not merely a vocation. It is a public trust. And each of us has an obligation to give back to our communities. That includes public service lawyers.

In Dade County, they used to come in and tell me, I have got 200 cases. I am working 16 hours a day. I am not getting paid near what those lawyers are doing in private practice. But I did volunteer to do guardian ad

litem in another county. I was so proud of the willingness, particularly of young people coming into the profession, to recognize their responsibilities, regardless of the fact that they were in public service.

When I was in Baltimore last month to address the ABA House of Delegates, I announced the President's new executive order on civil justice reform. In that order, he mandated that all Federal agencies develop appropriate programs to encourage and facilitate pro bono legal and other volunteer services by government employees, including attorneys, to be performed on their own time, as permitted by law.

In this noblest spirit of our profession, in response to the President's mandate and in order to join with the private bars all across the country, which has so generously responded to the call for more pro bono services, I was pleased earlier this month to announce the Department of Justice's pro bono policy.

Given the significant unmet need for legal and other community services across the country, it is the policy of the Department to encourage and support efforts by Department employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable Federal statutes and regulations governing conflict of interest and off-site activities. While service in the Department is one of the highest forms of public service, the Department further strives to increase access to justice for all and to strengthen our communities.

To this end, we are encouraging all Department employees, based on the ABA Model Rules of Professional Responsibility, to set a personal, voluntary goal of at least 50 hours per year of pro bono legal and volunteer services. This policy extends to all Department employees in Washington and all across the country, and encourages all kinds of volunteer work, legal and nonlegal.

As I indicated earlier, there is a second part of our challenge: There will never be sufficient government funding for legal services or pro bono programs to meet the legal needs of all Americans. We must be willing to explore changes in the very nature of our legal institutions so that people can solve more problems without having to go to lawyers.

The ABA Legal Needs Study gave us information not only about the extent and nature of unmet legal needs, but also about why people do not utilize the legal system. Part of the problem is cost. But there are other problems as well. Many low-income persons do not think going to the justice system will help. One of the reasons is that there are very few people in the justice system that understand the problems that some of the low-income people face day in and day out, which cry out for common sense solutions, which cry out for an understanding of arcane rules and regulations.

Many low-income people just stay home because they think it will not do any good. Many moderate income persons either do not think the problem is serious enough to warrant the attention of a lawyer or do not think the problem has a legal solution, or they prefer to handle the problem themselves -- try to handle the problem themselves -- and only make it worse. Those income groups share the view that legal help may very well not make a difference.

We must pay attention to these findings and increase the options available to people for solving their legal problems. How many people have you known who have had to work out a complicated social security problem for a parent or a loved one, and made three or four trips down to the social security office, trying to get it all worked out, and come home as mad as a hatter, furious and livid because they have not been able to do it?

I have seen another experience, somebody applying to be a naturalized citizen, frustrated because no one can respond and clear up problems that we should, in the Immigration and Naturalization Service, address without difficulty. We need to make the law simpler so that people can grapple with the problems themselves without feeling frustrated, upset and as if it was not worth it.

As suggested in the ABA's final report on the implications of the Comprehensive Legal Needs Study, we must move away from the "courthouse" model of the practice of law, which assumes an adversarial situation, calls for legal representation at every stage in the process, and anticipates a remedy that is exclusively legal. We, as lawyers, must act more as problem-solvers and facilitators.

Have you ever had to go to an accountant or to a doctor, fearing that what you were going to hear is that you

were going to have to go through an extensive audit or have major surgery, and then have a wonderful, clear-thinking, articulate professional say, "Sit down, let's talk about this; this is the way I think we can work it out without much difficulty"? And you go home feeling so vastly relieved.

We, as lawyers, have an obligation to do everything we can, in terms of giving people access to justice, to solve their problems in the same dignified, respectful, effective manner. We must seek solutions to problems, not just resolution of legal issues. As lawyers, we must work proactively to solve problems before litigation is necessary or unavoidable. Law schools and the organized bar must train and encourage lawyers to see beyond the immediate lawsuit and practice holistic and preventative law.

We must have the courage to stop short of litigation and use a more low-key method to resolve disputes, particularly in the context of ongoing relationships. As critical counselors, we have a critical role to play in advising clients to mediate outside of court rather than rushing into high-profile litigation. We must remember that litigation is the means to an end, and not an end unto itself. Prevailing in legal arguments and obtaining judgments are sufficient only in very limited circumstances. We must always keep our eyes on the ball of solving the problem that created the legal claim in the first place.

And the example I always use -- I used to watch the prosecutors get somebody convicted. They would be put on probation. The probation officers had caseloads that were so huge the person would not get the treatment that was necessary to interrupt the cycle of crime and violence that was causing the situation in the first place. The prosecutors thought they had won a victory, but they did not look at the ultimate problem.

Or, in another case, a public defender would be cheerful because he had gotten his client off on a motion to dismiss, while at the same time recognizing that his client was in the grip of a terrible crack addiction, which was a worse prison than he was ever, ever threatened with if he had been convicted. As lawyers, we have got to look to the problems. We have got to realize what litigation can

do, and that it is not the ultimate end.

One of the most extraordinary ladies I ever met was a lady by the name of Kate Townsend. She was a lawyer early on in Florida. And she represented Zelma Cayson in a case against Marjorie Rollins. That was one of the first cases defining the right of privacy. Miss Kate, as she was called, I had the chance to meet her many, many years later, and I told her how impressed I was with what she had done on privacy issues in that case. And she turned to me and she looked at me and she said, "That's the dumbest thing I ever did." I put that woman through such misery and all that litigation and all the parts that attended to it. I would never do that again.

We have got to understand, by the passage of years, what we do as lawyers and how we affect our clients.

Prevailing in legal arguments and obtaining judgments only solves the problem in very limited circumstances.

We must find new ways to work with community institutions, allowing neighbors to join together and neighborhoods to unite. I had the pleasure last week of meeting with the members of the National Service Legal Corps, a project of the Corporation for National Service. Teams of lawyers, social workers and community educators work in eight legal offices across the Nation to develop community-building strategies. They told me about wonderful community education projects to prevent hopelessness, job development strategies to help at-risk youth and counseling and education programs to assist the victims of domestic violence. Problem-solving and community-building, not litigation, were their primary vehicles for assistance.

The President's executive order on civil justice reform emphasizes the importance of alternative dispute resolution and settlement of claims as early as possible in the litigation, and even in advance of litigation and administrative adjudication. The Justice Department is now in the process of training all its litigators in dispute resolution techniques, and encourages resolution of problems, not just the winning of the litigation.

An increasing number of Americans are representing themselves, either by choice or by economic necessity. We must recognize this reality and facilitate self-representation. You in Maryland have made many strides

in this area with your Pro Se Litigant Form Pleadings in family law and the Women's Law Center Pro Se hot-line to assist persons in using these forms. This is a remarkable step forward in making our courts more user-friendly.

I would like to join with all lawyers in Maryland and across this land in seeing what we can do in a concentrated effort to simplify the language of the law, and put it in terms that all Americans can understand. We still, despite all the jokes about legalese, continue to talk in arcane and ancient terms. When, if we looked at the law as the servant of the people and spoke in terms that all people could understand, we could make the law so much more accessible to many.

I have been very interested in your family law assisted pro se clinic which, I understand, is a joint venture of your judiciary and the law schools of the University of Maryland and the University of Baltimore. Students, under the supervision of law faculty, help people represent themselves in divorce cases. This is an exciting example of how different segments of the legal profession can collaborate to address previously unmet legal needs, providing public service, and invaluable educational experience for students. You have made a remarkable difference in the lives of the thousands of pro se litigants assisted since 1995, when the program first started.

Another area I think is so important is the expanded use of nonlawyers to provide additional problem-solving resources for Americans. Once again, you have been a pioneer in this area with your legislation in 1990, allowing trained and supervised lay advocates to represent tenants in landlord-tenant court. The Tenant Advocacy Project of the Public Justice Center provides trained volunteer advocates and supervising attorneys who counsel and represent tenants facing eviction.

The University of Maryland School of Law has a very innovative clinical program, one aspect of which will train law students to work productively with nonlawyers. In conjunction with a Park Heights community group in Baltimore, the Law School plans to open a law office that will experiment with various components of an innovative system to deliver legal services to low- and moderate-income persons.

These will include computer technology,

paralegals, self-help education programs to assist persons representing themselves, and alternative dispute resolution. The substantive law specialties of the law office will be consumer law, domestic law, and community development law, focused on routine business transactions. These law specialties correspond to three of the four highest areas of unmet legal needs in Maryland.

The foundation for the paralegal component is already being laid. Eight high school students are being trained in basic paralegal skills needed to identify absentee owners of vacant houses, which are the drug centers in Baltimore, and to file actions in which the Park Heights community group will ask the court to take title to vacant houses and give them to a receiver. The receiver, in turn, will contract with a developer to develop the houses for low-income homeowners. This is community-building at its very, very best.

Let me say that what I have just described are what I consider to be the hallmarks of the very best in legal education. First, the guiding principle is to develop clinical programs based on unmet legal needs in the community.

Second, the clinical program is viewed as a laboratory for developing new ways to deliver legal services to the public. It is part of the law school's contribution to improving the legal profession as a whole.

And, third, clinical experience and public service are seen as essential to the law student's education. As a result, the law school as a whole supports the clinical program.

The entire Nation admires what you have done in Maryland to show what law schools can really be about, so too, in preparing our lawyers for the future and addressing the unmet legal needs of Americans.

As we speak of public service, I would like to make one comment. In these past months, public service has been backed, upon occasion. And people have come to me and said, at the Department of Justice, Why, why, why do we do this when we could be making more money outside and we would not be faced with shutdowns and we would not be told that we were not serving the people?

My response is there is nothing more rewarding than public service and trying to help others. And public

service is most important when political debate is shrill, when the very institutions that we prize are being criticized, and that now, public service is more important than ever.

I would encourage all lawyers who are graduating from law school today or think that this is the time for public service -- it is one of the most rewarding things that any lawyer can do. We have so much to do as we prepare for the 21st century, in order to ensure access to justice for all Americans. The obligation rests squarely on the shoulders of all of us.

We must look to the future and join together with all parts of the community in order to accomplish this task. Large law firms and small, private attorneys and government lawyers, neighborhood groups and downtown businesses, everyone has a stake in this.

But one of the special focuses in this effort is to focus on the group of Americans who probably have least access to justice, and that is our children. Our children, who, for too long, in too many instances, have been the forgotten and neglected people in this Nation. Our children, who, in too many instances, their voices are never heard. Or, if it is heard, it is heard in a way that cannot let the pain be known. If it is heard, it is heard in a way that deals with it in summary fashion rather than solving the problem of our children.

And all of us, in whatever role we undertake to provide access, must remember that we have a special obligation to the future of this Nation, in terms of letting our children be heard and, most of all, solving the problems our children face in a system that gives them few opportunities, in some instances, to grow in a strong and positive way.

I am very proud of the legal profession. I love the law, and I love lawyers. I do not like greedy and indifferent lawyers. We need more lawyers who will follow your example, lawyers who are willing to contribute their time and talents to the public good, lawyers like your own Congressman Ben Cardin, who has done so much to support Legal Services, to develop State-supported programs to address the unmet legal needs of Maryland's citizens and to fund law school clinic programs to train and encourage students to do public service.

To the Congressman, to all of you who care so much about others and want to put the law to work to truly solve the problems that people face in this country and to help them grow in a strong and positive way, I salute you and thank you from the bottom of my heart.

(Standing ovation.)

(Whereupon, at 4:50 p.m., the remarks concluded.)