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SPEECH  
OF  
JANET RENO

San Antonio, Texas

Thursday, January 30, 1997

Speech of Janet Reno at the Marriott Hotel, 711 East Riverwalk, San Antonio, Texas, at 1:30 p.m., January 30, 1997, and the proceedings being taken down by Stenotype by Marsha N. Yarberry and transcribed under her direction.

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P R O C E E D I N G S

MS. RENO: Thank you, Justice. You've always been there in some of the more difficult moments in my life and some of the more challenging moments, and I'm so proud to be here with you today. I thank you all for inviting me. I am delighted to be here with Bill Black, the justice attorney for the Western District of Texas. And I appreciate your efforts.

But you honor me by asking me to be here because this is a subject very dear to my heart, and it is one of the highest priorities of the Department of Justice. Why, may you ask? Well, in 1962 I took

15 federal civil procedure from Roger Fisher. I don't  
16 think I heard anything about negotiation. I heard  
17 about litigation.

18 And I came home to Miami and became involved  
19 in this practice representing landowners, in a small  
20 condemnation practice, and I would look at these  
21 people hold out for a higher settlement, go to trial,  
22 and get less, and I thought, "There is a better way to  
23 work it out."

24 I went off on my own in a small practice,  
25 and I handled custody matters, and I watched the

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1 bruised way that people came out of litigating custody  
2 matters. I saw the scars, emotional and otherwise,  
3 and I said, "There's got to be a better way to do  
4 it." I litigated personal injury cases and saw them  
5 come back, not really resolved, costs eating up a lot  
6 of the verdict.

7 And then, as Ben points out, in 1978 I  
8 became a prosecutor, and I know that we were  
9 negotiating over 90 percent of the cases, and I know  
10 that the people negotiating them were trial lawyers  
11 who had no training in negotiation, didn't understand  
12 how to do it, and it all seemed wrong to me.

13 At the time I reached out to see if there  
14 were people who could train my young lawyers, and  
15 there weren't too many around. We tried. But during  
16 all of this I realized that advocacy and pliability  
17 are extraordinarily important. There were people that  
18 would try to run over me, and I litigated, and I won,  
19 and they stopped running over me. But still I kept  
20 looking for ways to resolve and solve the problem  
21 rather than just win or lose.

22 As I went through these years Roger Fisher  
23 stopped talking about the Federal Rules of Civil  
24 Procedure and started talking about negotiation. I  
25 don't think he would remember me, but that man has

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1 been an influence on me because I kept thinking,  
2 "There has got to be a better way to do it." Sandy  
3 Dalenburg from the house judiciary committee started

4 talking about dispute settlement programs that would  
5 get cases out of the courts and resolve the problem  
6 rather than provide for a win or a loss.

7           And then about ten years ago I started  
8 hearing about your work and what you have done, and  
9 all I can say is, you, as far as I am concerned, are  
10 the leaders of the bar. I cannot thank you enough for  
11 what you have done in these ten years, because what  
12 you have done by leading the way is to show others  
13 that dispute resolution programs can work, that we can  
14 solve problems rather than just win or lose.

15           You have shown so many people that there are  
16 alternatives to litigation, that they can be  
17 successful. You have spread the word. You have made  
18 people believers. You have made lawyers problem  
19 solvers. You have made lawyers peacemakers. And I  
20 think that you are a little lower than the angel.

21           And because of you I came to Washington  
22 committed to negotiation and to mediation. I realized  
23 that there would be other appropriate dispute  
24 resolution programs, and I wanted the department to  
25 explore every one, and I wanted attention paid to

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1 problem solving. I didn't want our components coming  
2 into town and suing without sitting down first and  
3 saying, "This is what the law requires. This is the  
4 reason it requires it. This is how we can comply and  
5 we'll help you comply. If you have questions, let us  
6 work with you. But if you thumb your nose at us we're  
7 going to litigate with you until you reach the  
8 understanding that we're here to try to solve a  
9 problem and work it out, whether it be environmental  
10 hazard, a civil rights violation, some  
11 discrimination." And it just is marvelous to watch  
12 people respond, because at first he said it is the  
13 Department of Justice's account.

14           Now bankers, instead of grinning to people  
15 when we talk about lending discrimination, say, "How  
16 can we work with you," to let people understand that  
17 there may be inadvertent discrimination and if we work  
18 together we can bear it out and ensure that for all  
19 Americans they can have equal opportunity to own their

20 own home.

21 It is wonderful when we go to a state to  
22 enforce the Civil Rights Institutionalized Persons Act  
23 and the governor and the attorney general, instead of  
24 saying, "Oh, my goodness. Here comes the Civil Rights  
25 Division," welcomes us and says instead, "How can we

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1 sit down and work out this problem together?" It's  
2 problem solving. And you have made it possible as  
3 more of an accepted function than ever before in  
4 litigation in this country.

5 But at the same time I want the lawyers with  
6 the Department of Justice to be prepared to litigate.  
7 But what have we done? The first thing I said is I  
8 want to make sure that our lawyers are trained to be  
9 negotiators. We are training our attorneys to be  
10 better negotiators by recognizing that we must address  
11 the interest of the parties that lie behind the  
12 positions they take.

13 We are teaching our litigators to be problem  
14 solvers by asking them to step into the shoes of the  
15 other party in order to better understand why they  
16 take positions against us. We are asking our lawyers  
17 to be more creative in finding solutions to disputes  
18 that may not be apparent to any party unless and until  
19 all the parties engage in candid bargaining over their  
20 real interests and their real needs.

21 In addition, we are asking our attorneys to  
22 be candid with themselves and with their client  
23 agencies by evaluating that case carefully to  
24 determine its true value. And through their general  
25 counsels we are asking our client agencies, the

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1 various agencies in the federal government, to look at  
2 a case before they bring it to us, to evaluate it  
3 carefully, to understand that if they take steps to  
4 resolve it there and negotiate it at that point,  
5 monies can be saved down the road, and it is exciting  
6 to see how that effort is catching hold. At first  
7 people are somewhat dubious.

8 But we're also exploring how we might

9 provide incentives. I came to Washington to discover  
10 that a client agency oftentimes has a judgement paid  
11 out of a judgment fund rather than its regular  
12 appropriation. It doesn't hurt. So there's not that  
13 much of an incentive. Let the Justice Department  
14 worry about it. How can we work together to develop  
15 incentives for people to focus on the issue early on,  
16 resolve it early on, and resolve the problem that  
17 created the issue in the first place?

18 Unless we have made realistic assessments of  
19 what really is the best alternative of the negotiated  
20 agreement, we should not go to trial. But unless we  
21 make realistic assessments, we are not going to be  
22 able to negotiate through an informed procedure.  
23 Smart, tough, interspace negotiation is more likely to  
24 produce lasting results.

25 When we focus on a solution to the dispute

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1 instead of engaging in fault finding or blaming,  
2 someone else is creating the problem in the first  
3 place, we have taken a very major step in becoming  
4 better problem solvers. When we engage in active  
5 listening instead of reflexively responding to the  
6 other side, we create a much better environment for  
7 reaching understanding.

8 When our opponent makes an angry statement  
9 and we refrain these hard words into a positive  
10 excursion, we then have started to look at their  
11 thoughts to understand and work together for a  
12 solution that all can support and that everyone  
13 benefits from. And from personal experience I can  
14 assure you that these skills work just as effectively  
15 in your own workplace as they do when you engage an  
16 opposing party in settlement negotiations.

17 I hope that you all will someday be able  
18 each to visit the conference room of the attorney  
19 general. It is a very imposing room with beautiful  
20 murals, nice at the head of the table. The Civil  
21 Rights Division will be on one side, the Civil  
22 Division on the other, the Solicitor General's Office  
23 down at the end. There may be three different views  
24 or five different views, all strongly held by

25 splendid, wonderful lawyers.

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1 It is so fascinating if we take the time to  
2 hear them out. And then when I discover that one side  
3 isn't listening, make sure that they're listening.  
4 And if I've got the time and they talk it out, we  
5 reach such a much better position representing the  
6 federal government. And, again, it is you and your  
7 colleagues and others who have taught me the skills of  
8 listening, of mediating, of negotiating, of solving a  
9 problem rather than winning a war.

10 At the same time we must recognize that  
11 regardless of how skillful we may be as negotiators,  
12 there will be times when negotiating one on one with  
13 the other side will not work. There may be too much  
14 hostility or distrust, anger or suspicion between the  
15 parties. The disputes may have lasted so long or been  
16 so costly that negotiating one on one with the other  
17 side is a guarantee for gridlock.

18 That's when mediation has become extremely  
19 valuable to the department as a technique for avoiding  
20 the tribulations of trials. Mediation is valuable  
21 because it directly involves the parties to a dispute  
22 as well as their attorneys, and it creates an attitude  
23 of cooperation in an otherwise adversarial  
24 environment.

25 To some here it's like preaching to the

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1 choir. I don't have to tell you why what you do is so  
2 important. To others who are here today thinking  
3 about pursuing dispute resolution more far into the  
4 future, all I can tell you is that it has made such a  
5 wonderful difference in the very brief time in the  
6 Department of Justice. If you talk to the young  
7 people who I had a chance to hear from earlier today,  
8 they are learning what a difference they can make in  
9 their school in terms of conflict resolution.

10 So we have focused on alternative dispute  
11 resolutions, particularly mediation. Peter  
12 Steenland is my senior counsel for alternative dispute  
13 resolution, and I have raised it up to that level.

14 Peter is a very experienced advocate with the  
15 Department of Justice, but he has been through so many  
16 cases that he knows how important ADR is.

17 And I've asked Peter to make sure that the  
18 lawyers for the Department of Justice are trained in  
19 ADR techniques. We are taking it area by area across  
20 the country so the assistant United States attorneys  
21 will all be trained. Peter has taken the extra step  
22 of bringing the client agency in on occasion to be  
23 trained with the lawyers, improving our opportunity to  
24 resolve disputes even short of filing lawsuits.

25 At the department we have spent almost

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1 \$400,000 during the past year to retain the services  
2 of mediators and other dispute resolution providers.  
3 We are working closely with the courts, both at the  
4 trial and appellate levels, to take advantage of their  
5 case settlement programs.

6 I meet on a quarterly basis with the  
7 executive committee of the judicial conference, and  
8 this is one of the areas that we regularly address.  
9 We strongly support these court case settlement  
10 programs. In one year, using both court sponsored  
11 mediation and private providers, we have tripled the  
12 number of cases in dispute resolution from less than  
13 400 to more than 1,200. Preliminary reports indicate  
14 that more than half of these cases have resulted in  
15 settlement, and even when the case has not been fully  
16 settled some benefits have been paying in terms of  
17 reducing discovery, dismissing issues, and simplifying  
18 the litigation. We are making progress, for it's  
19 changing the culture at the Department of Justice at  
20 the federal government level.

21 In many cases mediation is cheaper and  
22 faster than litigation; it produces better results  
23 than the litigation. Let me give you an example where  
24 the federal government has used mediation to obtain a  
25 settlement of a dispute that truly involves problem

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1 solving. Recently the Air Force had a contract  
2 dispute with a corporation performing maintenance at a

3 certain Air Force base. There was one year to go on  
4 the contract and the question of renewal unresolved.  
5 The maintenance firm filed ten claims for additional  
6 payments totaling more than a half a million dollars  
7 that they asserted were due under the contract. All  
8 claims were denied by the contracting officer, and the  
9 matter proceeded to an administrative tribunal.

10 Before the tribunal ruled, the courts agreed  
11 to mediation. After several hours of hard work, the  
12 claims were settled for 45 cents on the dollar,  
13 including interest and attorneys' fees, and the  
14 parties agreed to modify the contract by revising the  
15 ambiguous provision that had provoked the dispute in  
16 the first place. Mediation and a skillful third party  
17 helped the parties turn a nasty dispute into a sound,  
18 working relationship for the future.

19 Other similar stories could be told in the  
20 context of disputes over employment and workplace  
21 issues, tax disputes, and environmental claims. We  
22 use mediation when the United States is a plaintiff in  
23 enforcement cases and when we are the defendant. We  
24 use mediation both to settle cases and to avoid filing  
25 them in the first place.

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1 When parties remain adversarial to each  
2 other, we miss the opportunity to resolve disputes  
3 that could benefit both parties, and the Justice  
4 Department does not want to be in that position. Of  
5 course, the Department of Justice sees only a small  
6 percentage of all the disputes involving the federal  
7 government.

8 Last year Congress went a step further and  
9 enacted the Administrative Dispute Resolution Act to  
10 promote greater use of ADR throughout the federal  
11 government. This law now permanently authorizes  
12 federal agencies to use dispute resolution to resolve  
13 disputes before they reach the courts.

14 I am pleased that the Department of Justice  
15 took the lead in supporting this litigation  
16 legislation on behalf of the administration, and now  
17 we are working very closely with the other federal  
18 agencies, through their general counsel and otherwise,

19 to ensure that they take maximum advantage of these  
20 provisions.

21 I cannot think of a better example of good  
22 government than providing a process so that citizens  
23 who have disputes with their government can sit down  
24 at a table with a responsible official and a  
25 third-party neutral to negotiate a fair resolution of

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1 their disputes. But we have much, much, much to do.  
2 We haven't trained all of our attorneys yet. We have  
3 some real callous attorneys who just like to try  
4 cases.

5 And they tell me something very  
6 interesting. They said, "Ms. Reno, you don't  
7 understand. It's easier to try the case than to go up  
8 through all the levels of the department to get  
9 approval for the settlement." So we're trying to  
10 change that to make sure that people understand that  
11 if we trust them to try the case, we trust them to  
12 settle the case in the best interest of the government  
13 and the people of the United States.

14 But we still have some real callous  
15 attorneys. And so whenever anybody will indicate to  
16 me who the real callous attorney is, I will push them  
17 a little bit. We try to do it gently so that people  
18 will know that we are being supportive, but we want to  
19 do everything we can to make sure that the culture of  
20 dispute resolution is part and parcel of that  
21 magnificent institution, the Department of Justice.  
22 But we have still much to do.

23 I talked to you about those cases, those 90  
24 percent of the cases that we negotiated. Most  
25 cases -- most criminal cases in this country, both at

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1 the state and federal level, have some degree of  
2 negotiation. But plea bargaining is a bad word. Plea  
3 bargaining done only to clear crowded calendars and to  
4 handle overwhelming caseloads is wrong, and all of us  
5 have a special responsibility, even if we do not  
6 practice in the criminal area, to make sure that our  
7 criminal courts of this nation have the wherewithal,

8 the resources, the personnel, the judges, the  
9 prosecutors, and the public defenders to ensure that  
10 everybody has the right to a fair trial.

11 But at the same time it is very, very  
12 frustrating to see a young lawyer prosecute a case,  
13 get a conviction, and think he has won the battle when  
14 he sees the guy go off to prison for five years,  
15 knowing full well that he will only serve 20 percent  
16 of the sentence because we don't have enough prison  
17 cells to house people for the length of time the  
18 courts are sentencing.

19 It is very frustrating to see that person go  
20 off to prison with a drug problem and not get drug  
21 treatment and end up back out on the streets, the same  
22 problem unsolved, but the prosecutor thought he or she  
23 won. It is equally as frustrating to see the public  
24 defender feel that he has won when he prevails on a  
25 motion to dismiss or a motion to suppress and his

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1 client, a crack addict, walks out of the courtroom  
2 allegedly a free man but in worse bondage through  
3 crack than any prison will ever create for him, and  
4 the public defender does nothing to address the crack  
5 problem that caused the problem in the first place.

6 That is why in Dade County and now in the  
7 Department of Justice we are trying to focus on drug  
8 courts which provide a carrot and stick approach and  
9 say to nonviolent first offenders charged with  
10 possession of a small amount of drugs, "We will work  
11 with you in treatment and job training replacement,  
12 and we'll get you off on the right foot. And if you  
13 stay clean, we'll help you and support you along the  
14 way, but you face a certain sanction if you come back  
15 with a positive test for drugs."

16 It is problem solving. It is working out  
17 problems, negotiating problems or mediating problems  
18 to solve the problem rather than to let it perpetuate  
19 itself through the merry-go-round of our criminal  
20 courts that see people come back again and again and  
21 again because the legal system hasn't focused on  
22 solving the problem. It's only focused on guilt or  
23 innocence.

24 We need your help to learn more about how we  
25 use the process of negotiation and mediation in the

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1 criminal justice system. We need your help in making  
2 sure that we do not have to plea bargain because of  
3 crowded calendars but that we can negotiate the right  
4 way to solve the problem in the interest of all the  
5 American people.

6 I think the legal profession and those  
7 involved in dispute resolution can do so much to ease  
8 the tensions in the workplace of America. Employing  
9 assistance professionals will tell you that the  
10 workplace is becoming a more violent place. Tensions  
11 are enhanced between employer and employees. People  
12 are concerned about their jobs. They wonder what  
13 their future is. They see a rapidly changing  
14 technology make their jobs become obsolete, and the  
15 pressures are on everyone. You see the results. You  
16 see tension when somebody tries to discipline an  
17 employee or you see the person say, "Well, it's too  
18 hard to make the discipline stick so I'm just going to  
19 promote them, then I'm not going to worry about it,  
20 and I'm going to give them an excellent evaluation  
21 every time the evaluation comes up."

22 Lawyers as problem solving experts in the  
23 area of employer/employee relations can do so much in  
24 bringing the employer and employee together to solve  
25 the problems, to work them out, to understand each

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1 other, and they can also advise clients on how to  
2 build a better record so that we can promote  
3 excellence and that we can correct failure whenever  
4 appropriate and that we can do it fairly, yet firmly,  
5 with regard to the due process of all concerned.

6 And I'm so pleased to hear from Jack Hannah  
7 that you're doing another -- that you're undertaking  
8 another initiative, because I think one of our great  
9 challenges is how we use the information agent in  
10 resolving disputes. All of you have probably been  
11 involved in dispute resolution, or most of you feel  
12 like I do, that it's much better to be in the same

13 room with the person that you're negotiating with  
14 rather than on the telephone or certainly over a video  
15 screen.

16 But the world of cyberspace will bring us  
17 together as never before, and we've got to learn how  
18 to use this marvelous instrument, this marvelous tool  
19 to resolve conflict. If we don't watch out, that  
20 marvelous instrument that provides such an opportunity  
21 for education, for knowledge, for communication  
22 worldwide can also become a tool for spreading hate  
23 and dissension and conflict. Let us make sure that we  
24 use this marvelous instrument for problem solving and  
25 for peacemaking and not for dissension.

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1 Before I came to Washington, not only did I  
2 focus on the courts, but I focused on the streets of  
3 Miami, a community I love, and beginning in 1984 I saw  
4 a dramatic increase in youth violence. I saw young  
5 people resolving conflicts, not with fists but with  
6 knives and guns, and I saw the results and increased  
7 victimization of our young people.

8 At the same time I began to see awkward  
9 steps being taken, a teacher who developed a peer  
10 mediation program. She didn't know exactly what she  
11 was doing, but she knew she was on the right track. A  
12 key club would come together and develop the peer  
13 mediation program. They didn't know exactly how to do  
14 it, but they were on the right track.

15 There was such hope in what these young  
16 people were doing and what these teachers were doing,  
17 and we were beginning to see the results across the  
18 nation. This afternoon I had a wonderful opportunity  
19 to meet with young students from Churchill High School  
20 and with representatives of the ABA who have helped  
21 spread the word that dispute resolution is not just a  
22 way to avoid the courtroom, that dispute resolution is  
23 not just a tool for lawyers, but dispute resolution,  
24 properly done, is a tool for every single American.

25 And I hope you take some time to talk to

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1 these young people because both their teachers and the

2 people who train them will tell you that young people  
3 are probably better at mediating and resolving  
4 disputes than anybody else because they don't think  
5 they know it all. It was a wonderful opportunity for  
6 me to hear the enthusiasm with which they were  
7 approaching the effort.

8 But I want to tell you how proud I am of the  
9 bar, of the young lawyers section, the section on  
10 dispute resolution, everybody coming together to reach  
11 out and spread the word. This is what lawyering is  
12 all about. It's not just about making money. It's  
13 not just about what firm you're in. It's not just  
14 about what kind of a hobby you're doing. It's how you  
15 help other people solve their problems. And to hear  
16 the young people talk about the skills that they have  
17 developed because of the outreach of the bar  
18 association is a great tribute to all the lawyers  
19 here.

20 I want, though, to look beyond and to think  
21 about what more we can do. I want us to look to the  
22 future of lawyers as problem solvers, as peacemakers,  
23 and as advocates. We can never stop being advocates.  
24 We can never stop being prepared to go to court to  
25 defend the rights that we hold dear, because the

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1 moment we do, they'll try to run over us and we won't  
2 be prepared.

3 But we can all learn from what you have  
4 started in dispute resolution in this country, and we  
5 can make sure, through your efforts, that every lawyer  
6 has the opportunity in law school to know the skill.  
7 Law schools are teaching advocacy. They're teaching  
8 trial practice. Let's make sure that every law school  
9 has course work in negotiation and alternative dispute  
10 resolution. Let us make sure that every teacher in  
11 this country learns the skills of negotiation and  
12 mediation and problem solving in school as they regain  
13 their teacher's certificate and it is enhanced as they  
14 go to their school. Let us make sure that every  
15 community police officer who is working to build trust  
16 in the community understands and is talented in the  
17 skills of conflict resolution.

18           And lawyers can do it. Just think of what  
19 would happen if every lawyer in this room went back to  
20 their community and reached out to make sure that a  
21 neighborhood, a school, was on its way,  
22 trainer/trainee, the trainee training others, the  
23 domino effect, until what you have done for a legal  
24 profession is spread across this land.

25           And let us think about community justice

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1 where the judge may be the arbitrator in terms of  
2 solving the problem as opposed to the person who calls  
3 it one way or the other. Let us think about community  
4 justice where lawyers volunteer their time in  
5 communities of children and family at risk to solve  
6 problems rather than to litigate them.

7           It's going to take the lawyer because in  
8 some schools you will find a situation, as you work  
9 with the young person training them, they will explain  
10 to you that their mother is having a problem with the  
11 landlord. You'll take it upon yourself to inquire,  
12 and she will say, "He won't fix any of the plumbing.  
13 He won't do anything. He just tells me he's going to  
14 kick me out if I don't pay my rent, and I don't know  
15 what to do, and I can't afford a lawyer."

16           You go to the man. He thumbs his nose at  
17 you. You get prepared to sue him or you sue him, and  
18 he understands you mean business, and then he starts  
19 talking to you, and he says, "Look, I inherited this  
20 from my father. I don't have enough money to make an  
21 investment. I don't know what to do."

22           And the good lawyer/problem solver is going  
23 to be the one that works with HUD, with community  
24 development grant monies, with other sources, and say,  
25 "Why don't you go check on this, this, and this.

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1 This may be a source of some investment because what  
2 everybody is trying to do is to ensure affordable  
3 housing."

4           The lawyer who is both the advocate and the  
5 informed problem solver is what we need today, and it  
6 is what is represented in this room. The lawyer who

7 comes to a community and finds an environmental hazard  
8 that might need changed in the town that is more  
9 affluent but no one knows in this particular  
10 neighborhood where to go to get this environmental  
11 hazard corrected, and even if they do, doors are  
12 slammed in their face, that lawyer is, again, the  
13 advocate. But after he catches or she catches  
14 people's attention by their advocacy, then they switch  
15 to the problem solving and to the peacemaking mode,  
16 and they start saying, "Here is the technology. Here  
17 is what we need. These are the experts. This is what  
18 we can do to solve the problem, to reduce the hazard,  
19 to make sure it never happens again, and to benefit  
20 the community as a whole."

21           The young people of America are a tremendous  
22 resource. They want so to participate. They want so  
23 to make a difference. They want to be involved. They  
24 want to be heard. And if you can reach out to them,  
25 as the members of the bar have reached out to these

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1 young people today and in these weeks that have  
2 passed, you can make such an incredible difference.

3           You have the legal profession, and I look  
4 forward to working together with you to make sure we  
5 make a difference for all America, in our communities,  
6 in our neighborhoods, and in our schools. Thank you.

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