



NATIONAL COUNCIL ON INDEPENDENT LIVING

AWARDS LUNCHEON

SPEECH OF

THE HONORABLE JANET RENO, ATTORNEY GENERAL

MAY 15, 1998

P R O C E E D I N G S

MS. RENO: Thank you Gina, and thank you all for that wonderfully warm welcome. But I'm the one that should be thanking you and so many people across this nation for making me understand the tremendous potential and all that can be done.

In my office in Miami, we had some of the most effective people in the office take me literally by the hand some days and say Janet, this is what we can do if you'll give us the tools to do it. You have done the same for me in Washington. And one of the people who's been most instrumental in that has been Justin Dart who greeted me when I --

(Applause)

He was one of the first people I met. He looked at me in that blue-eyed skeptical way that he has. He's nudged me along the way and I am indebted to him, and a very special person at the Department of Justice, Liz Savage who's just --

(Applause)

So, I should be thanking you and saluting you. And I do congratulate and salute the individuals who are receiving awards today because you are helping to lead the way. The independent living movement's struggle to bring down the barriers is part of a broader civil rights movement that includes bringing down the barriers that stand in the way of minorities and women across the country.

It is part of a movement to make sure that everyone has equal opportunity to succeed according to their dreams and their goals. Our struggle has produced some landmark laws, laws that act like tools chipping away at the walls of the barriers.

But as tools they can only be effective if we make it known that we can use them. And using them most effectively requires a true partnership between us. At the Department of Justice we enforce our civil rights laws on behalf of all Americans and it, to me, is one of the most important functions of the Department of Justice. Whether it's a fair housing case, a voting

rights case, or an ADA case, we represent the United States, which means we represent the

people.

We stand up for the rights of every citizen when we conduct an investigation or file a case. That's an important concept. And it's something we take very seriously. It's why we try to focus on cases that will have the broadest impact and change not only the specific situation of one person but the whole culture and the attitude of this nation, cases that can set a standard for

others to follow.

As I'm sure you can imagine, we can not be a law firm for every person who claims the ADA has been violated, though I often wish we could. But we really can if we use our resources wisely. And the partnership with you truly makes a difference by approaching it in a comprehensive way across the country. Take the work we do, the settlements, consent decrees and technical assistance documents, and use them as leverage to secure compliance in your

community.

When you see a new apartment building, or a store, or a restaurant that is not in compliance, tell them about what the courts have said. All of us have a role to play and a

responsibility to ensure that our nation's civil rights laws are enforced.

(Applause)

And you do a wonderful job of educating. One of the first things that happened to me is Liz arranged for a meeting with the hotel and restaurant industry. And they told me how when they first got started they thought the regulations were terrifying. But you all helped to educate them and they no longer thought they were terrifying.

That afternoon Liz arranged for me to go to Takoma Park and to see what one community could do because people had walked up and down the streets showing the store owners of Takoma Park how it could be accessible. You can educate whether it's an attorney general or a store owner.

As you know we're relying on two very important laws that open society's doors to all Americans. One is the Fair Housing Act, the other is the ADA. When Congress amended the Fair Housing Act ten years ago it provided new rights for people with disabilities.

It said that this country would no longer tolerate discrimination against the disability community. Among other things, it required builders and architects to start making housing accessible to everyone.

People with disabilities would have more choices in deciding where to live. No longer would someone be restricted by the whim of a builder. No longer would they be dependent on an architect who might or might not choose to design an accessible dwelling. Instead accessibility would be the law and not the exception.

In the past ten years the Fair Housing Act has made a difference. It is opening doors to people with disabilities. Newly built multi-family housing designed after 1991, must be accessible if it contains four or more units.

There has been a tremendous effort to make sure that builders and architects know this. So, there is little excuse not to know. But still we come across many who just don't build it the right way. Just ask our attorneys who work day in and day out pursuing builders and architects who know the law but don't think they have to comply. Those builders and architects are just plain wrong. They must comply --

(Applause)

Unfortunately, the fact is that while we can all see more accessible housing than we did ten years ago, many new multi-family housing units are still not being built the right way.

Two years ago together with the help of Access Living, Chicago's independent living center, we set out to see how the law was working. We surveyed 49 new housing sites in the Chicago area. We expected some would be in violation of the law, maybe even half. But none of us expected to discover that 48 of the 49 sites had some type of violation.

So, people set out to fix the problems. We focused on 28 of the sites where the problems were most significant. We made it clear that we meant business and changes are now being made.

To date we have reached settlements in several cases and others are pending. And we expect additional settlements to be reached shortly. We also said that an architect who designs an inaccessible building is just as liable as the builder who installs the concrete staircase.

(Applause)

And the court agreed. Beyond Chicago we have investigations underway in several cities. We will continue to file cases across the country where we find new inaccessible units. While lawsuits are one way to show we mean business, we also think that cooperation and settlements are a better way to solve the problems we encounter.

In some cases we have sought creative ways to ensure greater access throughout the community. Due to noncompliance the stock of accessible housing built since 1991 has not kept pace with the demand.

So, in some cases we have demanded that defendants create a fund of money that can be used to improve accessibility in existing homes in the community. But the lesson must be that it is better to build it right from the start than to go back and to fix it later.

(Applause)

Obviously, the ADA has been a priority for me from the start. It is a priority for Bill Lann Lee, the Acting Assistant Attorney General for the Civil Rights Division. When I first met him, we sat down and started to talk about his goals and aspirations if he became the AAG. And this is one of the areas he focused on most intently.

Both of us realize that the success of the ADA requires a partnership, a partnership with disability rights advocates, with governments, with the business community, with the people. So, we've reached out with your help and mounted a really massive outreach campaign to make access a reality.

This is what I try to do. First, I say let's try to educate. Let's try to tell people what this

law is all about; that it's a reasonable law; that it's not trying to put people out of business; that it's trying to give Americans access to your store, to your restaurant, to your hotel, to your rental car so that people can have the opportunity to enjoy all that all Americans enjoy.

And why not. It's not a burdensome law if you use common sense and do it the right way. We've learned that many people in that context want to comply voluntarily, if they understand in simple terms what the law requires.

We launched a public service campaign that featured President Clinton touting the law on hundreds of radio stations across the country. If education is not successful, however, and sometimes it's not successful, witness the Fair Housing Act, then we persuade.

(Applause)

With persuasion we prod a little and push a little and explain. And if that doesn't work, we litigate. And I am not afraid to litigate. We will litigate vigorously. We will litigate based on a solid foundation of preparation. We will use all the tools we have.

This approach is paying dividends. More people know of the ADA today than ever before. More people are complying than ever before. And more people with disabilities are participating in community life, shopping in stores, eating out, and enjoying the opportunities that so many take for granted. And for this we have the ADA to thank.

At the Department of Justice, we don't only make sure the law is working, we make sure it survives any legal challenge. That's why in recent months we have gone to courts across the country to defend the law from constitutional challenges.

In court cases from Ohio to California states are arguing that the ADA's protection goes beyond the equal protection rights guaranteed by the Constitution. And as such the states argue that Congress lacks the authority under the Fourteenth Amendment to let states be sued under the ADA.

These states are wrong because the purpose of the Fourteenth Amendment is to bring discrimination to an end. And all of us know --

(Applause)

All of us know that people with disabilities have experienced a history of pervasive discrimination in our society and we have got to put a stop to it. They have suffered from myths, fears, and stereotypes.

We argue that Congress has the full power of the Constitution to bring this

discrimination to an end. Fortunately, five courts of appeal have agreed with us. None have ruled against us. That's all good news because we know what an important tool the ADA is.

We use it to ensure people with disabilities can live in the most integrated setting appropriate. We use it to make 9-1-1 systems more reliable. And we use it to see that travelers with disabilities can actually go where they want to go. These are just some of the ways we use the law.

We believe that states have an obligation to provide services to people with disabilities in the most integrated setting appropriate to their needs. And we have used the law to fight for this. Many individuals with disabilities are being placed in nursing homes or other institutional settings even when they don't really need to be there.

If the treating professionals conclude that the individual could live in the community with the right mix of support services, that is where they should be.

(Applause)

And I'll let you in on a secret, I have a ghost. Actually not so, I have a memory of my mother who was very old, and frail, and dying. But she loved to go places. And I lived at home with her and took care of her. She died just before I came to Washington.

And she always used to tell me when she was younger, "you're not going to put me in a nursing home." No, I'm not going to put you in a nursing home.

(Applause)

But she went one better for me. I knew she loved to travel so I tried to figure out how I could get her around. So, in the last two years of her life we flew to Toronto, got on the train and went across Canada in this wonderful train where she could get up on top and look at the world go by.

And we stopped in Jasper and spent three days exploring the Canadian Rockies and went on to Vancouver. And then I took her on a cruise in the Caribbean and down around Aruba, and Barbados and St. Lucia. Then I put her on a house boat and I took her up the St. John's River, all the way trying to figure out how she could just look and see.

And then I put her in a recreational vehicle and my sister and I took her all the way to Maine to see her brother and my brother. She had a wonderful time. It wasn't just a matter of staying out of the nursing home. It was if you give somebody half a chance to really access this world, they are going to continue to enjoy it for a long, long time. So, she is there.

(Applause)

When we got to Washington, I said I'm going to take you to see something. She said "I can't see, I'm blind." I said, we're going to see the dinosaurs, they'll be big enough. We went to see the dinosaurs and she loved them. Remembering that she loved Van Gogh, I said, we're going to see Van Gogh. "I can't see, I'm blind."

We went over to the National Gallery, she saw Van Gogh and she just thoroughly enjoyed it. So, every time I look out my window, my window looks down on the National Museum of Natural History and the dinosaurs are right across the street, and I see her zooming along in her wheelchair.

(Applause)

But some states don't understand what I've been talking about and they refuse to make reasonable modifications in their policies that would allow this to happen. They deny people with disabilities from receiving community based services under already existing state programs.

That is why we have argued that the ADA's integration mandate should be applied in these situations.

We say reasonable steps should be taken to provide services in the community where that is the appropriate setting for the individual. I am happy to report that the only two courts of appeal to address this issue have agreed with our reading of the law.

(Applause)

Public safety issues are also at the top of our agenda. Nothing is more important than access to 9-1-1 emergency services because these services can be a matter of life or death. In the past year we have conducted reviews of 500 9-1-1 centers nationwide to see if their services are

accessible to individuals who are deaf or hard-of-hearing or who have speech impairments.

We are working closely with those cities where we identified problems to bring them into compliance. Using the ADA we have obtained agreements from several cities requiring them to get the right equipment and to provide the right training.

If a center refuses to cooperate, we will not hesitate to litigate. Most are cooperating.

But just last year we sued the District of Columbia after they repeatedly failed to abide by the agreement. The court ruled in our favor and ordered them to comply.

We have also used the ADA to protect the right to travel. In one recent case, individuals who used guide dogs found themselves effectively banned from the State of Hawaii. You see, the state required any animal coming into the territory to be quarantined for 120 days.

What that meant was that people looking to visit the state on pleasure or business could not just hop on a plane like the rest of us. They had to leave their guide dog behind, so most never went. Well, thanks to the ADA, that's not the case anymore.

(Applause)

We joined a case challenging this rule which was designed as a rabies prevention measure, arguing that reasonable measures other than a quarantine would do the job. The state agreed and now it takes a reasonable approach of allowing in guide dogs that have proper documentation showing that they are vaccinated.

This is the common sense way to make ADA work. Reasonable changes that allow important public interests such as rabies prevention to be protected, while at the same time giving people with disabilities the same freedom enjoyed by all Americans.

These are just a few of the ways we have used the law to make society more accessible. But to do more we have encouraged our U.S. Attorneys to get involved in ADA enforcement. Now, nearly 60 of our offices are using the law to make society accessible. In the past year many of them have made an enormous difference educating, negotiating, and litigating.

Here's just a sample: just yesterday, the U.S. Attorney in Maine announced a settlement with the State's largest hospital to provide effective communication, including sign language interpreters for patients who are deaf.

In Boston, the U.S. Attorney negotiated a wonderful agreement requiring Friendly's Ice Cream Corporation to make more than 700 restaurants in 15 states accessible. Now, customers with disabilities will not just get a good shake, they will get a fair shake.

(Applause)

Friendly's has also paid \$50,000 in civil penalties. Now, here's where we can form a partnership. The U.S. Attorney had an Assistant U.S. Attorney that was interested. He took a yardstick and he went and measured a door. The door didn't measure up to the ADA. He measured some more doors because he didn't have investigators to go do this.

Friendly's being friendly decided that they would work with him and developed a comprehensive package of compliance. Let us all work together to figuratively measure the doors to bring information that can help us persuade and educate in a comprehensive way across the country.

In Delaware, the U.S. Attorney's office negotiated an agreement with a health care center to remove barriers to access and the center is now paying \$15,000 in penalties and damages.

In Oklahoma, the U.S. Attorney's office intervened in a suit of an individual with quadriplegia. He alleged that a commercial landlord refused to rent space to him because of his disability. They worked out an agreement in which the landlord agreed to pay \$20,000 in compensatory damages to the individual. But they also developed an ADA compliance plan to remove any barriers to access.

Although much of their time must be spent on criminal cases, more and more U.S. Attorneys are becoming involved in ADA cases and I expect more to become involved in the coming months.

Recently I met with a number of Assistant United States Attorneys attending an ADA training program here in Washington. They were one of the most enthusiastic and committed group of prosecutors that I'd seen in a long time. They were encouraged to work with independent living centers in their districts. I encourage you to work with them.

Liz Savage and John Wodatch will give you more information on these offices during their workshop later this afternoon. Together you can make an enormous difference in your communities. Use the rightful authority of the U.S. Attorneys' office. Use your yardsticks, use your observations to make sure that we enforce the ADA in as comprehensive manner as possible.

The last point I would like to make is that litigation should be seen as a last resort. Now, some people will fuss at me and say well, if you're afraid to litigate, I'm not afraid to litigate. But I also see that litigation can be drawn out. It can be expensive and far better that we persuade.

And if we can't persuade then we mediate or negotiate.

I'm getting all the lawyers in the Department of Justice trained in alternative dispute resolution and how to negotiate and how to come to an appropriate solution. I use it this way and everybody laughs at me when I tell the story about the orange. But suppose you and I

were arguing about an orange, you wanted the orange and I wanted the orange. And finally, I just got mad and said, here, take the dumb orange.

Then I discovered you wanted the orange for the juice, I wanted the orange for the peel to make a cake, and we could have both solved the problem if we'd sat down and talked about it reasonably. Working together in mediation, we can often get a better result.

(Applause)

The Disability Rights Section's ADA mediation program is expanding every year. There are now 375 professional mediators participating from 43 states. Over 300 complaints have been referred to mediation under this program.

In 84 percent of the cases the matter ends with success. The cases effect a wide range of covered entities including hotels, stores, restaurants, town halls, and hospitals and involve reasonable modifications in policies, architectural barrier removal, and cases involving effective communication, such as sign language interpreters.

An increasing number of independent living centers are taking advantage of this program to increase ADA compliance in their communities. You know more than anyone that problem solving goes hand in hand with independent living. Problem solving can open many doors.

One independent living center used mediation to resolve a complaint that a restaurant did not comply with the ADA's barrier removal requirements. The restaurant owner brought his facility into compliance. A few months after the mediation, the center decided to hold its fundraiser at the restaurant. The owner responded by providing the facility free of charge.

(Applause)

Some people may need a little coaching from you because they feel intimidated or uncomfortable with the process of mediation but it works, and it works far faster than the courts.

For all that we've done, there's an awful lot more to do. Earlier this year in our budget proposal to Congress, we requested a nearly 14 percent increase in the funds we use to enforce the ADA. Part of that increase would go toward mediation. But like other national priorities, the government alone can not get the job done.

The ADA became law because independent living centers across the country took responsibility. By educating, negotiating, mediating, persuading, suing, you are taking responsibility for making the promise of the law a reality.

I applaud NCIL for establishing the "ADA Watch." Such creative efforts will only enhance our success. All of you are ambassadors, you're advocates, you're teachers, you're problem solvers. You're just plain wonderful and you're just opening so many doors to so many people.

We all know that we get frustrated every now and then. Liz will come to me with

a problem and I'll say but why can't we work it out. Liz will just look at me like, she'll calm down in a minute and we'll get it worked out.

We understand your frustration that eight years after the ADA was passed the barriers to access are still part of your daily lives. These barriers took generations to create, it will take a concentrated effort by us all to remove them.

As we know from our nation's continuing attempts to eradicate race and gender discrimination, our commitment to protecting the rights of people with disabilities demands perseverance. It demands vigilance. It demands vigorous enforcement. It demands that we never ever give up but that we renew our effort.

We are committed to working with you every step of the way. We have a golden opportunity. It is rare, but there are two situations in this country right now that I see if we really increase our efforts, build stronger partnerships, try a little bit harder, we can truly change the culture of America.

What the ADA has done has been so remarkable. But if we keep at it, if we keep using the yardsticks, if we keep educating, persuading, litigating, negotiating, we can make America have a different attitude about disabilities. We can make America understand, and in one other area, domestic violence.

In 1978, I developed a domestic intervention program in our office, the prosecutor's office in Miami. Courts and police just looked at me like I was crazy. I couldn't get any prosecutors to really be involved in the special section.

Now, we have a court dedicated to it. All the judges are sensitive to it. Almost all police agencies of any major size are changing their attitudes. If we keep the pressure on, if we keep trying, domestic violence will not be accepted in our society.

(Applause)

You all have been on the forefront of one of the great changes. Let us leave here today resolved that in these next ten years we will change the face of America.

(Applause)

(Whereupon the PROCEEDINGS were adjourned.)