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COMMENTS OF JANET RENO

50th Judicial Conference
of the
United States Court of Appeals
for the Fifth Circuit

Reported by: Dorothy M. Dickinson, CSR No. 785

COMMENTS OF JANET RENO

taken at the 50th Judicial Conference
of the United States Court of Appeals
for the Fifth Circuit
San Antonio, Texas
June 7, 1994

MS. RENO: Thank you so much,
Judge. It is a very great honor to be here on
the 50th Anniversary of this great circuit. This
whole nation owes a great bit of gratitude to
this Court.

It is perhaps because of Judge Politz
and Judge Brown and Judge Reavley and Judge
Wisdom that I'm standing here, because they
started doing their work and I started hearing
their names and I started thinking what the law
as it should be was becoming. I think I probably
became a lawyer because they made the law seem
like the way it should be. People and lawyers
from Miami that I know spoke their names with
reverence. The Fifth Circuit was something
mystical, even to a child at my school. They
made the law real for me. They made the law an
instrument of right.

1 One of the great honors that I've had
2 in coming to Washington was to have the
3 opportunity to meet Judge Wisdom and be able to
4 tell him how he has influenced me, to see him and
5 perceive, because of him, the level of freedom,
6 and to learn now that the Court of Appeals
7 Courthouse will be named after him. And it
8 confirms to me that if you do what's right and
9 just keep on doing what's right, ultimately,
10 people will understand and you will be
11 recognized. And you are a great triumph to
12 society, Your Honor, and this whole circuit is a
13 shining example, by its tradition in history, as
14 to what lawyers and judges should be about in
15 America.

16 I want to pay special note, if you want
17 to blame somebody after a while, after people
18 stop fussing about me, you can blame Justice
19 White. He got me started on this by swearing me
20 in. And I will always be grateful on that March
21 day, Your Honor.

22 And indeed, I want to reach out to
23 lawyers and judges alike, as well as to defense
24 lawyers. Because when I worked at the staff
25 record house judiciary in Florida, we had a good,

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1 strong working relationship with the parties of
2 the Supreme Court. As we revised the bench mark
3 for the Constitution and the development and
4 implementation of programs, we worked with the
5 Court constantly on matters of administration and
6 procedures, subject matters that were appropriate
7 for mutual discussion. And that has been the
8 hallmark of everything that I tried to do both
9 then and subsequently as a prosecutor.

10 People like Judge Hoover and Judge
11 Atkins have taught me with patience and with good
12 humor and with their magnificent kindness over
13 the years. Judge Fay has been wonderful in terms
14 of standing with me at community events and
15 speaking with the boldness that he can speak with
16 and the strength on what needs to be done in the
17 communities to address the many problems that we
18 face.

19 So I have a problem because now I'm
20 somewhat removed from all these judges. What is
21 the mechanism? How do I work with them? What is
22 appropriate? How do I understand what the
23 practice might be in the Fifth Circuit or in
24 another circuit? These are issues I am learning
25 and I will constantly appreciate your guidance.

1 But one of the first steps that I
2 undertook and the first official action I took
3 after becoming Attorney General was to attend the
4 annual luncheon of the Judicial Conference. The
5 Chief Justice had very graciously invited me, and
6 I had the opportunity to speak with the judges
7 then. I have since then established a regular
8 quarterly meeting schedule with the executive
9 committee of the Judicial Conference to address
10 issues of mutual concerns, such as courthouse
11 security, long-range plans for our courts and
12 their facilities, criminal law subcommittee. And
13 as other areas and issues arise, we want to
14 address those issues as properly and as
15 judiciously as we possibly can.

16 I have had the opportunity to consult
17 with judges who have written to me and called me
18 and met me in conferences and then called up with
19 marvelous suggestions. They have helped me get
20 an understanding for specific issues that are
21 critical to their circuit and their district and
22 have helped me try to develop an approach to the
23 Department of Justice that really does try to
24 build an appropriate working relationship with
25 the judiciary.

1 On March 7th of this year, we held a
2 free range conference recognizing that we might
3 look beyond just the federal system. And we had
4 state supreme court chief justices, the chief
5 justice attending, judges from various circuits
6 and from various district courts attending, with
7 local and state and federal prosecutors, and the
8 local and federal correctional officials and
9 state attorneys general. It was a superb
10 day-long conference and we have much to do in
11 terms of following up.

12 There was general recognition amongst
13 all concerned that we had limited resources, that
14 there was a special role for the Court, that we
15 should not unduly federalize the activities of
16 the state court system. Oftentimes we tend to
17 pursue federal routes because there were more
18 prison cells available, there may be more
19 prosecutors available, there may be better
20 procedures available. And we had to look to
21 resources and process and try to straighten those
22 out and try to conform those so that we can use
23 the federal court for what it was meant to be.

24 But I have to admit to you, and
25 Mr. Mecham I think will confirm, that I sometimes

1 get very frustrated at the snail's pace that we
2 sometimes seem to take to pursue our goals with
3 the Department of Justice. Things don't move
4 fast enough for me. Things don't move the way I
5 would like them to move at times. So you will
6 have to be patient with me. And it may be a year
7 from now when I visit with you and you will say,
8 "Now, what did you get done, Janet?" Just be
9 assured that I will be working just as hard as I
10 can to try to address the critical issues. I
11 can't get it done overnight, but working together
12 I think we can make a big difference.

13 I want to address the critical issues
14 that face the judiciary, that indeed face the
15 entire justice system of the United States and I
16 would like to face them head on.

17 The first critical issue is vacancies.
18 I share your concern that the dockets of this
19 nation's judiciary are growing. The Chief
20 Justice made reference to the case load we had in
21 Dade County. State courts across this nation are
22 beleaguered and federal courts are not far
23 behind. I understand the Chief Justice made very
24 clear today that the workload is particularly
25 heavy in this circuit. Recent statistics

1 indicate that this circuit disposes of more
2 appeals per year than any other; 698 to be exact,
3 and that includes pro se appeals. We are also
4 aware that your needs are very acute in some
5 districts. To use the Chief Justice's words, "We
6 are in good shape in some ways, but we sure need
7 help in Texas." So the vacancies need to be
8 filled as quickly as possible so the judicial
9 process can continue smoothly. And I would like
10 to update you on our efforts.

11 When President Clinton took office, he
12 inherited 113 judicial vacancies in the federal
13 courts, more than any president in modern times.
14 This administration has attacked the problem
15 vigorously, nominating 91 judges so far and
16 getting 60 confirmed. Another 31 candidates are
17 in the process and we are working as hard as we
18 can.

19 With regard to the Fifth Circuit, there
20 were 14 vacancies on the district court and four
21 vacancies on the Court of Appeals when the
22 President took office. Seven judges have been
23 appointed to district courts and one nominee is
24 in the process. Two of the four vacancies on the
25 Court of Appeals have been filled and a third

1 nominee is in the process. Of course vacancies
2 continue to be created. Two district judges have
3 taken senior status in the last few months and we
4 continue to work vigorously to fill them.

5 President Clinton has already nominated
6 far more judges than any modern president in his
7 term, and that's not good enough. We are
8 dedicated to continue to try our level best to
9 eliminate vacancies, to assure our nominations
10 are current, we get the judges nominated and
11 confirmed as fast as possible. We are working
12 with Mr. Meham to identify any judges expected
13 to take senior status so that we will be prepared
14 to move on it. I understand the frustration, but
15 I think we will get better in this coming year as
16 the various appointments in the Department of
17 Justice are confirmed. And as the United States
18 attorneys have been confirmed, I think we will
19 have more time on the judiciary calendar.

20 But as dedicated as we are to filling
21 vacancies, we are also dedicated to excellence.
22 I think you will agree that your new colleagues
23 are excellent choices. The ABA has given over 64
24 percent of this administration's nominees its
25 highest rating of well qualified and we are very

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1 proud of that record. But as much as we are
2 dedicated to doing something about vacancies and
3 excellence, we are also dedicated to making sure
4 that this judiciary represents the diversity of
5 America.

6 We are proud that under President
7 Clinton the federal bench is being open to women
8 and persons of color on a scale unprecedented in
9 our history. This is a story told most moving
10 not in overall percentages but in individual
11 stories. People have been coming back from the
12 judiciary committee hearings where people have
13 been confirmed overwhelmed by the stories that
14 they've heard, overwhelmed by the family support
15 and the experiences that many of your colleagues
16 have experienced as they have come to this
17 position in their life.

18 The second issue that I want to address
19 head on is the whole issue of federalization of
20 crime. I want to do everything I can to make
21 sure the federal courts are used based on
22 principles of federalism and not based on
23 principles of who gets the headlines, who gets
24 the credit. But I think at the same time it's
25 extraordinarily important that the Federal

1 Government do what's right according to
2 principles of federalism to deal with the problem
3 of violence in America. I think when federal
4 courts -- it used to trouble me, quite frankly,
5 when I looked at my case load in Miami and saw
6 the large number of rapes and murders, home
7 invasion robberies absolutely overwhelming the
8 judiciary and then saw the United States
9 attorney's office well staffed at the time
10 prosecuting bank robberies. I was wondering
11 where our priorities were and how they were
12 trying to be established.

13 Early on I announced that we were going
14 to have a true partnership with the state and
15 local enforcement, but the first step in the
16 partnership was to bring the federal agencies
17 together. I didn't want any more turf battles
18 between the DEA, the FBI, between them and other
19 non-justice agencies. I wanted the key members
20 of the Department of Justice working together.
21 And career lawyers of the department now tell me
22 that never have they seen federal agencies with
23 the Department of Justice working with United
24 States attorneys as effectively as they have.
25 But then I want those agencies to form a

1 partnership with state and local law enforcement
2 to find out who does what best, again according
3 to principles of federalism, by identifying the
4 types of violence and developing strategies that
5 are appropriate to that violence.

6 Clearly there are some dangerous career
7 criminals that need to be focused on with every
8 means at our disposal. There are violent
9 traffickers that cut across district and state
10 lines, where the federal presence and the federal
11 investigator's and the federal prosecutor's
12 efforts would be far more effective. There are
13 organized gangs cutting across state lines, but
14 then there is an aimless carjacking right in the
15 middle of district that doesn't belong in federal
16 court.

17 There is youth violence that is
18 probably the greatest single crime problem in
19 America today, that is an aimless random
20 violence, that is terrifying in terms of the
21 neglect which reflects on the part of America as
22 to its children. Domestic violence is probably
23 the single most frequent crime in America,
24 occurring every 15 seconds, according to the
25 FBI. People for too long took domestic violence

1 to be a domestic problem. Unless we begin to
2 eliminate violence in the home, we will never
3 begin to eliminate it in the streets and schools
4 in your community around America.

5 It is not just an urban problem. As I
6 traveled to Iowa and was linked by fiber optic
7 systems with 15 counties and cities, large
8 cities, some just towns, large and small, the
9 common theme that reporters from those
10 communities reported to me in seven out of the 15
11 communities was that domestic violence was one of
12 the single greatest problems they faced. These
13 issues of youth violence, this random youth
14 violence, unorganized, this domestic violence,
15 this drug-induced violence does not involve and
16 belong in federal court, but the Department of
17 Justice needs to work with local agencies as much
18 as possible to begin to address these issues in
19 an appropriate manner.

20 Because some U.S. attorneys will tell
21 me, "What am I going to tell my judge if I come
22 in with this violence initiative? What is my
23 judge going to say?" I hope that we can say, if
24 this was a member of the judge's family, the
25 judge would be happy with the way it was being

1 handled and it was being handled the right way,
2 considering the principles of federalism and all
3 the issues involved. We are going to work with
4 you. I have explained to the executive committee
5 of the Judicial Conference, to the criminal law
6 committee, that we will welcome your
7 suggestions. We want to try to use the very
8 limited resources of this nation as wisely as
9 possible, without regard to turf, to do something
10 about violence, and I think we can. If you think
11 we stray, call me.

12 But it is clear to me that as we
13 confront the issue of violence, state and local
14 law enforcement, state and local prosecutors are
15 on the front lines. They handle 90 percent of
16 the cases involving violence in America. And it
17 is for that reason that the crime bill is focused
18 towards providing support in their accounts on
19 the front lines. I expect that the crime bill
20 will be reported out of conference within the
21 next two weeks and that it will be passed shortly
22 thereafter. Efforts are being made to ensure
23 that it will provide funding for 100,000 police
24 officers for community policing initiatives
25 throughout America. Community policing is

1 working.

2 This morning I went to an area here in
3 San Antonio where community policing initiatives
4 have substantially reduced crime. And wherever I
5 go around this country, I see community policing
6 making a difference. Some people ask what it
7 is. It's really good old-fashion policing. It
8 is the police officer knowing his community,
9 knowing the citizens, old and young, consulting
10 with them about their problems and the priorities
11 that they want to establish for their
12 neighborhood, and involving them in active
13 efforts to do something about it. It's the
14 community police officer identifying the ring
15 leader and working with other detectives to get
16 that ring leader out of circulation, while at the
17 same time developing through police athletic
18 programs, through other initiatives, through boys
19 and girls clubs initiatives, opportunities for
20 youngsters to keep them out of trouble rather
21 than letting them get into it. These community
22 policing initiatives can make such an
23 extraordinary difference.

24 But one of the most extraordinary
25 differences they can make is by bringing police

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1 together with the community and ending some of
2 the distrust that we have seen against police
3 officers that is so often undeserved. Today on
4 the streets of San Antonio, I watched kids gather
5 around police officers. There's a new thing,
6 ladies and gentlemen. It's not baseball cards;
7 it's community police officer cards. And the
8 kids wanted the those cards as if it were a
9 baseball card. When I asked kids in South
10 Central Los Angeles what they wanted to be when
11 they grew up, they looked over my shoulder and
12 said, "I want to be a police officer." A young
13 lady in South Dallas said she distrusted police
14 officers, but now she's come to recognize that
15 they can be mentors and leaders and can provide a
16 helping hand.

17 Community policing is what is making
18 the community feel safe enough to come out and
19 start to work together. How many of you know
20 people who would love to volunteer in a school
21 with a large number of children at risk but are
22 afraid to go there? A community police officer
23 is opening the door to the opportunity and making
24 a difference.

25 The clear question is what happens with

1 the people that they arrest? Look at these state
2 courts and state correctional systems.
3 Oftentimes the average sentence being served is
4 only 20 to 30 percent of the sentence. The crime
5 bill does provide monies for prisons. Prisons
6 make sure there is true sentencing for the truly
7 violent and dangerous offenders who now walk the
8 streets. But as I have indicated, I think youth
9 violence is probably the single greatest crime
10 problem we face. We need programs to let
11 youngsters know there is no excuse for putting a
12 gun on the side somebody's head and hurting
13 them. They can face a swift and certain and fair
14 sanction, but as much as we provide programs for
15 youthful offenders and sanctions for them, there
16 has also got to be a recognition that it makes no
17 sense whatsoever to put a youngster in a youthful
18 offender program for two years and then turn them
19 back to the community without job training and
20 placement, without adequate care, without follow
21 up and adequate supervision. They are going to
22 be doing it again.

23 The crime bill provides for active care
24 programs as part and parcel of the correctional
25 system. It provides money to expand the drug

1 force, to approach drug abuse with the current
2 stick approach. These issues and efforts can
3 make a difference and I think it is imperative we
4 get the bill passed.

5 But next critical issue is what about
6 all the federalizing issues in the senate bill?
7 What are we going to do about that? First of
8 all, I think we will get passed a safety valve
9 which will focus on youthful, low-level, first
10 offenders, and will give the judges authority to
11 depart from the minimum mandatories and sentence
12 under the sentencing guidelines for these
13 categories of offenders. The width of that
14 safety valve, I do not know. But I think it will
15 be a first step in addressing one of the problems
16 most often cited to me by federal judges.

17 We are proposing the proposal that
18 would make a federal crime any crime committed
19 with a handgun and others that are basically
20 street crimes. We are going to try everything we
21 can to prevent unwarranted federalization in that
22 bill. There will be some steps taken where
23 legislation is passed that may provide the
24 federalization of crimes that you think are
25 appropriate. We want to focus on it and make

1 sure that our charging policies reflect a correct
2 use of the federal resources and the federal
3 courts.

4 But as important as policing and
5 punishing are in the crime bill, prevention is
6 absolutely as critical. As a prosecutor in
7 Miami, I picked up too many presentence
8 investigations of 16 and 17 year olds, looked at
9 them, saw what could be done, and recognized that
10 we would never have enough dollars to help all 16
11 and 17 year olds similarly situated if we waited
12 that long. We started focusing earlier to
13 drop-out prevention programs. It became clear to
14 me that through programs developed for afternoons
15 and evenings and for good solid job training and
16 placement programs, we can make such a difference
17 with the youngsters of America. Those provisions
18 are in this bill and they make a significant
19 difference.

20 The next critical issue that I would
21 like to talk to you about is the whole issue of
22 civility and ethics. I can remember when I first
23 went to the Dade County courthouse with my
24 father. Lawyers went at each other hammer and
25 tong, but they were absolute gentlemen in that

1 courtroom. And then came outside and talked
2 together about their case and what it was like.
3 I think that's another time that I started
4 thinking about being a lawyer, because they were
5 fierce advocates, but they were absolute
6 gentlemen. That's what I understood the law was
7 about.

8 Now, in these last ten years, I have
9 watched the level of civility decline. I want to
10 do everything I can at the Department of Justice
11 to make sure that we provide an example; that we
12 reach out to the defense bar and begin the legal
13 discussions; that we have regular meetings that
14 discuss matters of mutual concern. Then let
15 those lawyers who are now thinking about
16 practicing law or those youngsters thinking about
17 practicing law see some examples of what the
18 practice of law should be like.

19 But I have concerns, also. My policy
20 at home, when a judge or a defense lawyer or
21 somebody else accused one of my prosecutors of
22 unethical conduct or inappropriate conduct, was
23 to immediately investigate it in the most
24 thorough manner possible. If I concluded that
25 the prosecutor did nothing wrong, I could go

1 downstairs to the judge, call defense counsel and
2 ask him to meet with me, and make known to the
3 judge what my findings were and explain to the
4 judge, based on what I had found, if he wanted to
5 send the prosecutor to jail, he could send me to
6 jail because I was the one that authorized this.
7 This seems to me, based on my investigation, to
8 be proper.

9 If the prosecutor did something
10 negligent and was just a year out of law school
11 and overwhelmed by the case load, we would take
12 appropriate corrective action and work with the
13 judge. If the prosecutor did something
14 intentionally, I would take appropriate
15 disciplinary action. I was constantly looking
16 for ways to improve the quality of prosecutors,
17 to train prosecutors as to the ethical standards
18 that I know are fair, and it was a matter of
19 great concern to me.

20 When I came to Washington, I was
21 disturbed to learn there was a tremendous back
22 log in the Office of Professional
23 Responsibility. That in other instances where
24 there was no back log, the Office of Professional
25 Responsibility did not undertake an investigation

1 until after an appeal had been finally decided.
2 That seemed to be strange. How could we possibly
3 represent our position in court without having an
4 investigation of the conduct complained of? I
5 didn't think it was fair to the prosecutors
6 working with me in the Department of Justice to
7 have something hanging over their heads for that
8 long. We immediately took steps to eliminate the
9 back log and we have made substantial progress in
10 that regard. We immediately provided for
11 investigations and do not wait for the cases to
12 exhaust themselves to appeal. And we are trying
13 to be as open and as responsive as the privacy
14 laws will permit us.

15 Again, I don't know quite how to act
16 with a nation this big and circuits this
17 diverse. I can't go downstairs and say, "Your
18 Honor, this is what I found after calling the
19 defense lawyer and asking him to join me," but I
20 want to do everything we can and I will hear your
21 suggestions. I am very proud of the Department
22 of Justice lawyers. They are fine, dedicated
23 people and I want to do everything I can to make
24 sure working together with the defense bar and
25 with the judiciary will make people proud of

1 American lawyers.

2 Another concern that I have is in the
3 area of civil rights enforcement. This great
4 circuit reflects the tradition of lawyering in
5 this field which did so much to give so many
6 people opportunity. We must do more. We must
7 first learn to explain the civil rights laws to
8 the people of the United States to make them
9 understand how important it is that they be
10 endorsed vigorously and fairly, and then we must
11 take all the appropriate action we can to see
12 that the civil rights laws are enforced against
13 those who thumb their nose at us. We will try to
14 do that, to explain it in clear terms, seek
15 compliance in thoughtful ways short of
16 litigation, but we are going to be prepared to
17 litigate.

18 Another area of deep concern to me, and
19 I think to you, is the whole problem of the cost
20 and delay the courts see. When I went to law
21 school, there were no courses in negotiation. It
22 has been fascinating to me to see the development
23 of negotiation as a real skill. But as I talk to
24 lawyers coming out of law school, too few have
25 had courses of negotiation and too few include

1 courses in negotiation as part of their
2 continuing education programs. I want to do
3 everything I can to make sure the Department of
4 Justice lawyers are trained in appropriate skills
5 at negotiation and we use them the right way,
6 recognizing I have seen too many lawsuits and too
7 many cases finally settle on terms in which the
8 client would much have preferred to settle up
9 front. I think working together we can make a
10 difference. Without the shrillness that has
11 sometimes perturbed everyone in this whole
12 question of civil justice reform, I think working
13 together we can make a difference.

14 But I think my greatest single concern
15 was in the fact that the law is not real to too
16 many people. The American Bar Association
17 estimates that 70 to 80 percent of the people in
18 America who are poor or who are part of the
19 working forum do not have access to a lawyer much
20 less court. The law is not worth much more than
21 the paper it is written on for too many people.
22 They feel disenfranchised, lost, hopeless, they
23 do not know where to turn. We wait for the
24 crisis to occur rather than providing a helping
25 hand up front.

1 We can make such a significant
2 difference. We can develop new concepts of
3 community advocacy through a four-year degree in
4 college that can provide so much help to so many
5 people who want to be somebody but can't work
6 their way through the bureaucracy and the cobweb
7 on the walls that snarls them.

8 But lawyers can do so much more. I
9 went to a conference about a year ago in
10 Washington in which everybody was patting
11 themselves on the back at the wonderful pro bono
12 victories they had won in the courtroom, and I
13 challenged the conference after I saw this film.
14 What about pro bono efforts on the streets? What
15 about adopting a block? What about adopting a
16 school? What about making a difference so people
17 do not have to end up in court, so they can get
18 their problems resolved short of going to court,
19 so they can build community and preserve their
20 block and keep their son out of trouble by having
21 a mentor or an advocate?

22 I didn't know how much that would come
23 true until I went to Grain Elementary School, a
24 school that I adopted in Washington that I go to
25 once every two weeks, on a Saturday afternoon to

1 see a prominent Washington law firm with some of
2 its senior partners on paint ladders painting the
3 building, where they planted the yard, where they
4 were making a shiny, significant difference at
5 one elementary school on one Saturday. It was
6 overwhelming.

7 Not only did they make a difference to
8 the physical aspect of that school, but they
9 harnessed energy of the students. There were
10 little kids running around with paint brushes so
11 amazed at what people were doing for their school
12 that they were being very careful. They hadn't
13 made a mess. They were extraordinary. They were
14 planting, they were working hand in hand. They
15 had brought in parents. That one law firm had
16 made such an extraordinary difference. There
17 were other lawyers leading the way in terms of
18 entering with one child, making one difference.

19 This morning I saw the Weed and Seed
20 Program, an opportunity in which military
21 personnel had volunteered their time to be a
22 mentor for a child at risk. Think of what would
23 happen if every soldier, every member of the
24 Department of Justice, every lawyer in the Fifth
25 Circuit became the mentor for one child at risk

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1 and made a difference. We can do so much if we
2 reach out and make that difference.

3 There is a statement on the east side
4 of the building of the Department of Justice
5 along 9th Avenue that says: The common law is
6 derived from the will of mankind, issuing from
7 the people, framed by mutual competence,
8 sanctioned by the light of reason.

9 Lawyers too often in these last 25 to
10 30 years have gotten caught up in process and in
11 form and in the substance of the law, but they
12 have forgotten the ultimate subject matter of the
13 law, and that is people. Too often they have
14 forgotten their client was flesh and blood who
15 has hopes and fears. But too often all of us as
16 lawyers have forgotten somebody who is so totally
17 unrepresented in America, and that is the
18 children of America who are at risk, who have no
19 family structure around them to guide them, who
20 have no hope for a future. We, as lawyers, can
21 make such a significant difference when we join
22 together not just to win the battles in the
23 courtroom and to see the justice done in the
24 courtroom, but to reweave the fabric of law
25 around our children, so all children in America

1 grow with a strong and positive future. We need
2 to make the law real, to make the law an
3 instrument of right, a sword against bigotry and
4 discrimination, and most of all a strong and
5 helping hand to show all people, including our
6 children who would profit from the path for
7 self-sufficiency and towards a future where they
8 can be anything they are equipped to be and
9 really want to be.

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