

1 REMARKS OF HON. JANET RENO
2 ATTORNEY GENERAL OF THE UNITED STATES
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10 Wednesday, October 25, 1995

11 4:00 P.M.
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19 Westin Hotel Grand Ballroom IV

20 Washington Street

21 Indianapolis, Indiana
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1 (Speech beginning at 4:00 p.m.)

2 Thank you. As you said, the key
3 word, "publishers". I thought that in my
4 upbringing it was not publishers, it was not
5 managing editors, it was city editor. I'm
6 delighted to be here with you today. It has
7 been a wonderful experience for me, and
8 someone asked me how I would get on in
9 Washington not having had any experience
10 there, not having any experience in the
11 federal government, and I said if you can live
12 with the mighty media for 15 years as a
13 prosecutor you can probably get on anywhere.
14 And when I see my friends from the Miami
15 Harold I tell them that they are responsible
16 for whatever success I've had, and if I have
17 had any failures I will assume responsibility
18 for that.

19 Carl Stern tells me that there is a
20 story told about a founder of the American
21 Press Institute who went on the road to sell
22 memberships many years ago. He came to a
23 small town weekly in New England where he
24 encountered the editor with the roll-top desk,
25 the green eye shade, and garters and his

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1 sleeves, but the editor just didn't seem to be
2 buying no matter how eloquently it was
3 explained to him that membership in the
4 institute might serve to improve his paper and
5 better serve his community. Finally the
6 salesman put on his best sales pitch; he
7 evoked the name of Alexander Hamilton,
8 James Madison, Benjamin Franklin and
9 John Peter Singer, and how, if the American
10 people meant to be their own governors, the
11 very survival our public depended on a current
12 and up to date press, meeting it's obligations
13 to it's readers. Concluding his impassioned
14 appeal he looked to the editor expecting him
15 to sign up immediately. Mister, said the
16 editor, this town just ain't worth it.

17 (Laughter).

18 I tell you this story because I think
19 your town is worth it. I think this nation is
20 worth it. And I think it is important that
21 your communities and your people know what
22 government is doing. The Justice Department
23 and the Clinton administration have given an
24 awful lot of time and attention trying to
25 enlarge the availability of public information

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1 because we think it's good government to do
2 so. We do it every day, taking one problem at
3 a time, trying our level best to make
4 improvements.

5 Let me give you some examples. After
6 several major news events in Washington we
7 became aware that it would take months,
8 perhaps years, before requests for documents
9 in those cases could be met under the Freedom
10 of Information Act. The law does not contain
11 a preference for news organizations. Yet the
12 delays inherent in even routine processing
13 were being misread as an effort to slow down
14 disclosure. And I believe that they were
15 undermining confidence in the integrity of the
16 process. So, we established a new procedure
17 for putting certain requests, those in which
18 widespread and exceptional media interests
19 exists and which raised questions about
20 government conduct to the head of the line.

21 Under this expedited processing
22 policy we have been able to make documents
23 that are much more in demand more quickly
24 available. Frequently in one or two days.
25 Recent examples include; the complete

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1 transcripts of the FBI's negotiations and
2 phone conversations with the Branch Davidians
3 at Waco; records dealing with alleged human
4 rights violations in Guatemala; the Justice
5 Department's command center logs disclosing
6 high level phone traffic during the Ruby Ridge
7 incident; and, closed federal investigative
8 files on incidents that may have involved
9 former Los Angeles police Detective Mark
10 Furman.

11 Our charter to reexamine information
12 policy and try to improve it came in October
13 1993 when President Clinton articulated a new
14 openness policy and called for disclosure to be
15 the norm. We rescinded the 1981 guidelines
16 under which decisions to withhold information
17 would be defended if a substantial legal basis
18 could be found for doing so. We turned that
19 around. We instituted a presumption of
20 disclosure. We said we would not defend
21 agency actions to withhold in the absence of
22 foreseeable harm that reasonably could be
23 expected to occur to the government or to some
24 other interests specifically protected by the
25 law. We said we would not defend withholding

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1 where the information only technically or
2 arguably fell within an exception. We
3 strongly encouraged all federal agencies to
4 make discretionary FOIA releases whenever
5 possible. We undertook a review of more than
6 500 cases to see whether information
7 previously withheld should be made available,
8 and did so in many of them. In one case, for
9 example, 1550 pages had been withheld; we
10 released all but 24. In another, 3008 pages
11 had been held back; we concluded that 305 of
12 them could be turned over without foreseeable
13 harm.

14 We said we would expedite the release
15 of reports on serious professional misconduct
16 by Department of Justice employees. We said
17 we would provide names instead of anonymous
18 summaries in an annual report as had been the
19 case previously; we kept our promise. We said
20 we would reexamine FOIA forms and formats, and
21 we have, making improvements in nearly all of
22 them. In fact, other agencies have become
23 aware of the effort and they have asked for
24 help with their forms. Among them the
25 Department of the Interior, the Labor

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1 Department, the Air Force, and the
2 Environmental Protection Agency.

3 We also tried to create a system to
4 respond to reporters who were having problems
5 getting information from the department and to
6 try to do something about it. Several
7 components in the Department of Justice had
8 required reporters to submit their stories --
9 their finished stories for 30 days advanced
10 clearance in exchange for obtaining access to
11 certain files or interviews on sensitive
12 subject matters. That's not so now. One
13 Justice Department component had a blanket
14 policy of not identifying by name employees
15 who were involved in incidents the press
16 inquired about; that's gone now.

17 One operating division of the Justice
18 Department automatically demanded of all FOIA
19 requesters that they get the written consent
20 of persons named in files before that
21 information could be available. The improper
22 use of that rule is gone now.

23 Sometimes there are first amendment
24 concerns that have nothing to do with your
25 access to our information, but our access to

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1 yours. There, too, we try to be responsive
2 and responsible. For example, we now require
3 an advance evaluation from the Justice
4 Department's Public Affairs director every
5 time a federal prosecutor seeks a court order
6 for a news organizations' records, or searches
7 of journalists' files, or for outtakes or
8 testimony taken under compulsion. That office
9 represents your interests vigorously,
10 encouraging our prosecutors to use alternative
11 means of acquiring evidence when confidential
12 source material is at issue or other matters
13 that concern you.

14 Every media subpoena for contested
15 material or testimony originates in the
16 Justice Department's criminal division and
17 goes to two places for concurrence before it
18 comes to me; to the Deputy Attorney General
19 and to the Director of Public Affairs, who was
20 a reporter for 34 years. Now I will also
21 point out that it had passed muster on those
22 two fronts and it came to me -- one came to me
23 recently and I said, no; so you have three
24 checks along the way. We have taken these
25 extra step to insure that your concerns are

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1 reflected in our deliberative process. But we
2 have not reached perfection and we still have
3 much to do.

4 Although 24 of the Department's 29
5 components either eliminated or reduced FOIA
6 backlogs last year we still ended the year
7 with a backlog of approximately 30,000 FOIA
8 requests. Most of that was the FBI where the
9 backlog was about 17,000 requests, and the
10 Immigration and Naturalization Service where
11 the backlog was more than 10,000 requests.
12 But it is still a disappointment to me that
13 the figure was as large as it was despite the
14 fact that the Justice Department has the
15 equivalent of 617 employees doing FOIA and
16 privacy act processing full time, and we spend
17 35 million a year in unreimbursed tax dollars
18 to meet this responsibility.

19 We have scored some successes. The
20 backlog is down 1 percent last year, the
21 second year in a row that responses went out
22 faster than your requests came in. For
23 example, the INS reduced it's backlog of
24 requests that had been pending a year or more
25 by 58 percent. The U.S. Attorney's office has

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1 made significant cuts in their backlogs, as
2 did the Bureau of Prisons, yet clearly the
3 number of requests we get each year, about
4 125,000 at the Department of Justice, makes it
5 very difficult just to keep up.

6 The reality is that frequently,
7 despite our best efforts, the Freedom of
8 Information Act doesn't work well for you.
9 Just as justice delayed is justice denied;
10 information delayed is sometimes the same as
11 information denied. You are in the daily news
12 business and you can't wait several years to
13 get a meaningful response. The dollars are
14 not available now to double or triple our FOIA
15 staffs; the original notion that fees could
16 substantially cover the cost is not realistic
17 for agencies like ours. It is not appropriate
18 to ask journalists and historians to pay the
19 millions of dollars it costs the Justice
20 Department and other federal agencies to
21 respond to FOIA requests each year. We are
22 going to have to find some other way to make
23 FOIA work better. Nearly 30 years after the
24 enactment of the Act it may be time to start
25 thinking about new mechanisms to improve the

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1 manner in which FOIA meets it's core
2 objective, letting people know how their
3 government works.

4 Let me emphasize that careful study,
5 very careful evaluation, needs to be done. We
6 would also want to work closely with Congress,
7 but it may be useful to begin generating
8 thoughts and ideas that might move us from the
9 current dilemma, one that frustrates us just
10 as much as it does you.

11 The purpose of the Freedom of
12 Information Act was to fulfill the Madisonian
13 goal of making it possible to be our own
14 governors. We would be able to do that by
15 having that power which knowledge brings.
16 Popular information would make popular
17 government possible.

18 Yet today relatively few FOIA
19 requests have to do with finding out what the
20 government is doing. The large bulk of
21 requests comes from individuals seeking
22 information which the government is merely
23 storing, information from government files
24 that might tell them more about a business
25 competitor, or a celebrity, or someone else

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1 that they might find interesting. Our experts
2 tell us that 50 to 80 percent of the FOIA
3 workload of some agencies, such as NASA, the
4 Securities and Exchange Commission, and
5 several department of defense agencies,
6 results from businesses seeking information
7 about their competitors' contract bidding
8 information or commercial data.

9 I do not mean to impose a value
10 judgment or to suggest that anyone be
11 eliminated from using FOIA, but maybe the time
12 has come to create different tiers or tracks
13 to give a priority to requests that have a
14 broad public purpose rather than a purely
15 private purpose. This is not a concept which
16 is foreign to the act. Right now one of the
17 elements that is weighed in considering fee
18 waivers is whether or not the information is
19 sought for the benefit of the public as
20 opposed to a purely private interest.

21 Such a standard has to be applied
22 generously to err on the side of the requester
23 when the purpose is mixed or unclear. But it
24 is something that we could think about. And
25 another aspect to consider is size and

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1 complexity. I do not mean to suggest that
2 larger requests in which thousands of papers
3 must be gone through -- what the FBI calls
4 project requests -- are less worthy than
5 others. In fact, scholars might argue that
6 they are the most valuable. But should
7 thousands of others have to wait in line while
8 one request clogs the system. Perhaps we
9 should offer the incentive of the more rapid
10 processing for requests of less than a certain
11 breadth or number of documents. A reporter
12 who is aware that a narrow request will go on
13 the express track is much less likely to ask,
14 for example, for all of congressman "X"'s
15 correspondence within the Department of
16 Justice if his immediate interests is the
17 congressman's 1993 correspondence concerning
18 the XYZ widget company. Again that is not a
19 foreign concept.

20 The FBI already has an informal rapid
21 track for simple requests. And our own public
22 affairs office handles simple requests for
23 documents under FOIA standards without putting
24 the requests into the formal FOIA queue as one
25 means of servicing the media requesters and

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1 lightening the load on FOIA officers.

2 Some news people and writers have
3 already figured that out. We worked with one
4 journalist to narrow his request from 87 boxes
5 of documents to five after he learned that it
6 would take more than one year to process his
7 full request. After delivery a few months
8 later he wrote it was a thin package but it's
9 all I needed.

10 Another writer needed a file
11 totalling 1300 pages in a hurry. We worked
12 with him, we reduced the request to 60 pages
13 and he got what he needed much faster. Those
14 give-me-all-you-got requests slow down the
15 system for everybody. In one instance a
16 single FOIA request tied up 60 FBI personnel.
17 Another individual with multiple requests
18 required the services of 13 analysts for more
19 than a year. Requests exceeding 100,000 pages
20 are not uncommon.

21 Groups believing the government has
22 all sorts of secret files on them have had
23 hundreds of their members file FOIA requests,
24 each of which must be processed individually
25 and specifically even though it is clear they

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1 all come from a common source. All these are
2 clogging the system.

3 Why is it while other other aspects
4 of our legal system recognize the need to
5 alleviate burdensome and duplicative requests,
6 we remain frozen, unable to do something about
7 FOIA. Why would it be wrong to impose
8 sensible and reasonable limitations.

9 Much of the Justice Department's
10 current backlog is caused by prisoner requests
11 and individuals involved in immigration
12 proceedings who are using FOIA as an early
13 means to get access to key parts of their
14 files. For example, could aliens be given
15 discovery rights at an earlier point without
16 using FOIA? Should alternatives be found to
17 providing information which would meet the
18 private concerns of prisoners and aliens or to
19 give access to information the government is
20 merely storing to free up FOIA to serve its
21 public purpose.

22 One more thought to chew on; could
23 mechanisms be devised to simplify what the
24 agencies must present to the courts to justify
25 the withholding of information. Note this:

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1 At the same time that the FBI is 4.8 million
2 pages behind in this processing, an estimated
3 29 percent of the time of its analysts is
4 devoted to drafting extensive Vaughn
5 declarations, as they are called, meeting the
6 requirements that courts have imposed on us to
7 explain the reasons for withholding material.
8 That is an enormous, and some would say,
9 disproportionate administrative burden. We
10 should work with the courts and with
11 interested parties to think of ways of
12 reducing that burden while still assuring
13 everyone that requests are being handled
14 conscientiously and in good faith.

15 I think that our future holds a
16 bright promise with respect to open
17 government. Under the laboratory program of
18 the national performance review the FBI is
19 spending \$3 million developing an electronic
20 document processing system to do the job
21 better and to do it quicker. An inner agency
22 group working together has been discussing
23 electronic formats for creating documents with
24 their releasable portions designated and
25 stored. We have already put thousands of

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1 documents into electronically retrievable form
2 through Internet and the Worldwide Webb. We
3 are now designing comparable systems for each
4 of our U.S. Attorney's offices so that you can
5 have access to local information. Every
6 document that could be accessed electronically
7 is one less document that is likely to be
8 sought under FOIA saving time and money for us
9 all.

10 The Department of Justice has also
11 become the first federal agency to write
12 performance standards for responding to
13 information requests into the job description
14 of each employee who might have a role in
15 receiving, transmitting or processing FOIA
16 requests. That includes all department
17 employees involved in the process, not just
18 our FOIA experts. We have made it clear we
19 expect a high level of performance in this
20 area and employees will be graded on how well
21 they do.

22 However, as I have suggested, that
23 won't do the job by itself. I want you to
24 know about all the good things that we're
25 doing, but good intentions and good ideas

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1 won't fix a problem in which there is no way
2 of providing enough resources to make the
3 current system work best for people like you.
4 We need to start thinking about necessary
5 improvements in the system, and we need your
6 help in doing so. It is appropriate that we
7 consider ways to streamline the Freedom of
8 Information Act as we move into 1996, the 30th
9 Anniversary of the Act. Expect to hear more
10 from us as a proponent of openness and
11 government in the sunshine. I believe I can
12 talk to you candidly about changes in FOIA.
13 You know me and you know what I stand for, and
14 I look forward to working with you in this
15 year to come.

16 I want the system to operate more
17 effectively, because unlike that New England
18 editor, I think this town, your town, our
19 communities, this nation, all of them are
20 worth it. The cause is right, the law is
21 right, it's time for you and the media to join
22 with us in suggesting ways to make the law
23 work better.

24 I look forward to working with you in
25 that effort.

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1 (Applause).

2 (Speech concluded at 4:45 p.m.)

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