



JANET RENO'S ADDRESS TO THE
AMERICAN ASSOCIATION OF LAW SCHOOLS

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1:30 P.M.

Thank you so much for letting me be here. I thank you for that warm welcome, but I'm the one that should be applauding you. And as we continue this dialogue, I'd like you to keep one question in mind. If you were the Attorney General of the United States, what would you do to promote what I talk about today, or about justice in America?

Five years ago, almost to the day, in Orlando, I spoke with you. I said then, that based on my experience, law professors and law deans were pretty wonderful people. Now, after five years, I probably more than any other lawyer in America have the advantage of seeing the results of your legwork, the results in terms of those who have come to the department in the Honor Graduate Recruitment Program. They are dedicated. They have stars in their eyes. The magic of the law is still with them. They are dedicated to using the law in the right way. There is none of that boredom that you would expect coming from law school. You have done a splendid job with them.

I have gone to many of your graduations, and I see the reverence with which they talk with their professors. I have seen their enthusiasm. I have seen the greatness of your work, and I have seen law professors in other dimensions. My labor law professor took the trouble to come to my office with his colleague to discuss his recent book on the results of affirmative action. I thought this was extraordinary in terms of Derek Bok's commitment to problem solving.

One of his latter-day colleagues has been to visit me on numerous occasions trying to figure how we deal with diversity. How do we create a nation that is one with the respects of the traditions of diversity? You have shared some of your most extraordinary colleagues with me, sometimes at a detriment to your law school, and you've done it

smiling, without complaining, and I thank you. I have one of your recent numbers who just joined the department as Assistant Attorney General for the criminal division. Jim Robinson is making such a marvelous contribution.

As Professor Carrie Menkel-Meadow pointed out, I asked some of your colleagues to meet with me to figure out what I can do, what we can do together, to create a problem solving capacity in all of America's lawyers, and to create a peacemaking capacity in all of America's lawyers. Let me hasten to add, I am a product of the case method. I learned probably more in law school than I learned at any other point, and I surely learned how to think better in law school than at any other point in my education. I don't take a thing away from it. I want us to still train vigorous advocates as trial lawyers who are unafraid to try cases, because if we can't try cases, we're not going to be very good at resolving disputes.

I want us to be the problem solver, the peacemaker, the sword, and the shield. From these professors who came to contribute their time in such a thoughtful way, I learned, as Carrie has pointed out, that some law schools are making great advances in incorporating problem solving into the core of education. These schools and others are working in promoting the role of the lawyer as counselor, as negotiator, as problem solver, as analyst, as planner. I salute you for this effort, but I come today to urge you to do everything you can to expand this mission to all law schools and to give all young lawyers the opportunity to participate.

The law in terms of both its institutions and its practitioners cannot function in ways that are isolated from the everyday experience of the people. The lawyer must serve the people and solve their problems, rather than just "winning" their cases if the rule of law is to prevail. But to see what we have today, let us look at what actually happens in a lawyer's professional life after graduation from law school. Before there are cases and long before there are any appellate decisions for us to study, there are people or corporations or government agencies with problems. In real life, most clients don't present themselves or their problems the way these are framed in a court of appeals decision contained in the casebook. I can assure you that most heads of government agencies, or even their general counsels, don't present the case as it appears in the casebook. People with problems usually give their lawyers incomplete or inaccurate information, not because they intend to, but often because their emotions get in the way of any logical resolution. Unlike an appellate decision, which give all parties a relatively clear view of the determinative facts, real life problems require lawyers to assist people in dynamically changing situations.

The good lawyer, the caring lawyer must be able to identify risk, assess the true value of a dispute, and work collaboratively with others to negotiate a swift and comprehensive resolution. A good lawyer must try to resolve a client's problem in a way that does not make the problem worse. A good lawyer has a duty to assist the client in maintaining continuing, positive relationships. This is the way I try to explain to lawyers the question of what I'm trying to do in this field of problem solving.

I never had the experience of going to a lawyer, but I've been to a doctor, worried about what was going to happen, confused, puzzled, anxious; and the doctor sat me down, explained the whole thing in a careful way, told me what needed to be done, gave me an assessment of the risk, and I walked out of there three feet off the ground, thinking that that was the kindest, most respectful person that I had seen in a very long time. We've got to have the same feelings for lawyers when clients leave the lawyer's office.

Problem solving, as I understand it and as I appreciate its practice at the Department of Justice, places emphasis on creative thinking. It builds on traditional legal education through three steps. First, in the core curriculum of contracts, property, civil procedure, criminal law, and advanced courses of environmental law, and even in tax, students can do more than learn the principles of law derived from an established body of law contained in a casebook. They can also diagnose these disputes, analyze them, learn why they arose, identify underlying interests, and construct solutions to these problems that do not involve a litigated outcome. They can achieve this by using transactional case studies adopted from a method long used in business school. Transactional case studies are a valued vehicle for teaching problem solving skills, for they present problems as the client might present them to a lawyer, and they require the students to engage in the process of analysis and solution creation. I also suggest to you that in every community in America where there is a law school, there is a myriad of real problems that need solutions that are wonderful opportunities for young lawyers to direct their attention to.

The second component of the problem solving approach requires that we reach out to other disciplines for knowledge, advice, and instruction which will help us to solve problems. Chesterfield Smith, the past President of the ADA, a person for whom I have a great admiration, said that lawyers tend to go down the little pig trails, and indeed we go down our little pig trails by ourselves. We're going to have to, if we're going to be the problem solvers joined with other professions, far more than we have today.

Now, I'm told by your colleagues that that's a very difficult thing to do because

everybody in law school wants to specialize and nobody wants to find out about a lot of things. I know it's difficult, but let me give you an example. My tax professor advised that the issue of valuation, when I was in law school, would be one constantly faced by most every lawyer in that large classroom. He also pointed out that they were ill-prepared to deal with it. Indeed, I was.

As I look back over my practice of law, including my time in the criminal work, the issue of valuation has come up again and again and again. But let us take the issue of valuation as presented to Attorney General in a tremendous case. We represent the Department of Defense. How do we value the settlement? How do we value the risks? We would be far better served to have had excellent work in valuation along the way as part of our law school curriculum, and it would benefit us in almost every undertaking that we pursue.

I try to get my client agencies to resolve cases before they ever come to us, in order to save the client agencies money, but the agency representative often doesn't understand the value of the case. The agency lawyer doesn't understand the value of the case, and the Department of Justice lawyer doesn't understand the value of the case until we have gone so far down the line that we have spent a lot of taxpayers' money, trying to go through the process without getting to the substance. We can short circuit all this early on.

I watch lawyers deal with environmental issues. They cast themselves as environmental law experts, but they have not had course work in some of the essential theories and principles governing the environmental considerations in this country. If students are going to specialize or pursue environmental issues, you can do so much in giving them some of the ingredients of what they need to know, and let me give you an example. They would say, well, we're going to trust the expert, but the expert won't know about the law and the legal restrictions. The lawyers, if they understand the environmental issues in some measure, will be able to be far more effective at constructing a solution that will solve everybody's problem rather than just some peoples' problems.

We can learn from business schools to gain an understanding of decision theory, risk analysis, and economics. The social sciences enable lawyers to better understand the non-legal aspects of their client's problems, and medical schools can give us insight into public health issues and principles which can be invaluable in the criminal justice system.

There is something exciting happening in this country. If you go to an advisory group on domestic violence, an advisory group that advises both the Department of Justice and the Department of Health and Human Services, you will find the

immediate past President of the ABA there with the President of the AMA. You will see doctors and lawyers coming together to understand that criminal justice and public health can be partners in solving so many problems we face today. It took me a long time to learn that. I had to be taken to the public hospital to understand what to do about crack-addicted infants and their mothers. It was a difficult learning process. Lives could have been saved along the way by all of us if we had had a better grounding in public health principles when we were in law school.

You say; "We just don't have the time, Janet. That's not what the market is asking for." But you've never been afraid to speak your opinion on what's right, even if it's unpopular when you write to me. You've got to help the market understand how valuable a lawyer is who knows how to problem solve.

The third component of problem solving requires us to place an even greater emphasis than you have on negotiation, dispute resolution, and collaborative working relationships. Students need to learn in negotiation courses about the obstacles for negotiated agreement and the means for overcoming them.

Of course we can teach students how to resolve problems before they deteriorate into potential lawsuits. Our young lawyers need to be educated to recognize that even if the outcome of litigation is relatively certain, there is not always just one right answer to a problem. A money judgment may not be an effective solution for all of the parties, and therefore, lawyers should work to provide for a lasting solution, one that is worked out through negotiation or appropriate dispute resolution. They need to be educated in how to root out, not just the facts of the problem, but to understand the context in which the problem arose. As Dean Brest said, a good lawyer can assist clients in articulating their problems, in finding their interests, ordering their objectives, and generating, assessing, and implementing alternative solutions.

Let us look for one moment at the tremendous growth in the field of dispute resolution. When we used processes such as mediation, we have learned, even in the Department of Justice, the power of an apology sincerely given. In mediation, we have worked as advocates for our clients to find long-term solutions to their problems, often solutions that no court has jurisdiction to provide. We're better able to assess the risk of litigation. We can use a mediator to help identify the real interest of the client, or even more significantly, the other party. These interests are rarely, rarely articulated in legal briefs filed in court, but this knowledge is essential if litigation is to be settled.

By adding problem solving courses to the legal curriculum, we would not abandon

our traditional courses that expose students to the legal system from the perspective of jurisprudence created by bodies of established case law, nor can we substitute for the invaluable mentoring that occurs again and again and again in the lawyer's first years of practice. We cannot ignore advocacy and trial skills, but in today's highly fragmented and specialized society, problem solving can teach lawyers to provide answers for people with problems in a way that will build respect for the legal profession and our system of justice.

There is no other discipline, no other profession so well suited for the bridging of the gap between disciplines to affect a problem solution. We cannot duck from it. We cannot run from it. We have a responsibility to enhance our skills and to perfect our abilities.

You are making real progress in this effort. Today more than 150 law schools have clinics or courses in negotiation or other skills involving dispute resolution. A number of young lawyers are coming to the Department of Justice well versed in dispute resolution and problem solving, but many are still lacking in some important knowledge and basic skills. I urge you to do more. Teach the young lawyer the economics of a lawsuit. Teach them what it's like to inherit the lawsuit, to figure the risk, to convince the client that they should settle, to perfect a solution that is in the client's best interest. Take them through the process. Take them through the process, and let them imagine what it would be like to try the case, produce the judgment, and find that the judgment was eaten up in costs. Let them listen to a client who has spent three years in litigation, only to have the case reversed on appeal and come back. And let the client tell that young lawyer just what it has meant to them, for the client to have to go through this lengthy process. Try to help them understand how to sit down with a client and talk to that client, so that the client will suddenly understand why they should and must settle.

Many young lawyers sit around the conference room in my office. It is one the great pleasures that an Attorney General has. I, unlike the Justices of the Supreme Court, can let them go as long as I want or cut them off whenever I want, and I rarely cut them off. Often, I have five lawyers on one side and five lawyers on another side, sometimes with ten different opinions as we try to reach a solution that will serve the interest of the people of the United States. I have such respect for them. They are well versed in the law. They are able. But, there are some problems, and we can do more.

First of all, as I read their briefing materials, you haven't taught them how to write yet, and I don't mean legal brief writing, I mean writing a memo that will prepare a client to make a decision, or one that will explain a legal position. One of the things I treasure and sometimes put in a drawer just to save as an

example is a beautifully written memorandum that is comprehensive, that flows so that you don't have to go back and forth and back and forth to see which phrase modifies which phrase. We're instituting writing courses at the Department of Justice. I would like to work with you in perfecting programs that will let lawyers be the best writers in America.

Others I've noticed, as they sit around the table, orate. Some of them mutter. Some of them meander, and a few look at you directly. These lawyers know how to talk to you, know how to present their case, know how to problem solve by their voice and their manner. Some of them listen to themselves but not to others. Some of them listen but don't hear, and if they hear, they don't heed. I hope you will place more emphasis on what professionals in the field of dispute resolution call active listening.

We are so taken with our roles as advocates some days, and so convinced of the power of our positions, that we often don't hear what the other side is saying. We're too busy getting ready to talk as soon as someone else pauses to take a breath. Good lawyers really listen, really hear, and really follow through. They not only hear what is being said to them, but what is not being said. I hope that you will teach the lawyers of America to listen with a listening ear.

Then they give me long case citations and great principles of law, and they go on and on, and I say, "But how does this apply to the real world and what impact is this going to have on a person?" Oh!

One of the most wonderful moments that I have had as Attorney General was to argue a case in the Supreme Court. I was scared to death of Justice Scalia, and I was thankful that I only had ten minutes. I got up, and I started out in a mechanical way. Suddenly I rocked back on my feet, and I thought, "Wait a minute. You've got to really get into this." Then, the questions began to come at me, and it was the best give and take. A police officer had asked someone in a traffic stop to get out of the passenger seat, and the Justices were asking me human questions and putting it in a human context. I suddenly thought, "This is what the rule of law is all about. This is the greatest institution of justice in the history of the world, and these people are real people asking human questions." We have got to put the law in the context as it is seen by the people themselves.

Now, your response is perhaps that the market demands specialists, and what I've said is all well and good, but they should have learned it in undergraduate years and now it's too late. My answer is the law must serve the people. If we are to preserve the rule of law, we must put the same strength and courage into problem solving that we have previously devoted to addressing important issues

in this country. I urge you to give to the market so many fine problem solving lawyers that all will know just how valuable this skill is.

Secondly, if you look hard and listen well, you will find that this is exactly what consumers of legal education are looking for, in both the public and the private sector. For the past three years, the Department of Justice has promoted negotiation, problem solving, and the use of dispute resolution. In 1995, I established a dispute resolution program that emphasizes consensual resolution based on negotiation, and where appropriate, the use of mediation and other forms of dispute resolution. In three years, we have tripled the number of cases where some form of dispute resolution has been used. We are training our lawyers in offices all over the country to be better negotiators and to be advocates for problem solving in all sorts of civil cases.

I was told at the outset, "Sorry, these are trial lawyers that are hard in their ways; they are not going to change, and they are not going to be interested." Now, I have people knocking on the door to get this training because they have discovered how valuable it is. Peter Steenland has been magnificent in that effort, and we should be very, very, proud of him. He has done a wonderful job. We want to hire lawyers who are problem solvers and peacemakers, so if you're worried about your market, there is a market at 10th and Pennsylvania.

Last May, the President asked me to chair an inner agency group to promote dispute resolution throughout the executive branch of the Federal Government. Right now, we are working with more than 60 federal agencies, helping them to establish dispute resolution programs. These programs will provide a swift and an inexpensive alternative to traditional administrative decision making in the fields of government contracts, workplace disputes, monetary claims against the government, and affirmative civil enforcement matters. Lawyers at these agencies are in the process of creating these new and exciting programs, and these agencies will also be hiring new lawyers for federal offices all across the country.

In the private sector, many corporations are demanding that their attorneys use dispute resolution as well. In an age when much of a law firm's business involves international transactions, new mechanisms need to be established to deal with disputes to resolve conflicts in a multi-cultural, international environment. And with business moving at the speed of the Internet, the prospect of having a dispute resolved in a civil action several years after the suit is filed is unacceptable. Law firms, as well as government agencies, will be looking for law school graduates who can provide effective legal counseling in a new and exciting environment dealing with international issues and the cyberworld.

New approaches are also emerging in the area of criminal law as a result of this new problem solving emphasis. Often times, these approaches involve specific cases: Solving the problem of the drug abuser rather than just recycling that person through the system, or addressing the problem of the battered spouse or the youth who has been the victim of youth violence. But problem solving also occurs in a larger sense. For too long, lawyers battled crime and protected individual rights by litigating cases or plea bargaining. The plea bargain was usually for a sentence and nothing more.

Now, communities are establishing drug courts across this land, which are making a difference. Lawyers are helping to develop comprehensive domestic violence programs that are saving lives. They are engaged in working within a community to create the building blocks for strong and healthy children who have a safe and positive future. They are addressing telemarketing fraud with the AARP, so they can prevent it before it starts. They are engaged in analyzing the cyber issues that we face. What happens when cyber tools are placed in the hands of terrorists? What happens when cyber tools are placed in the hands of the bad guys? How can we work to prevent this and still develop technology and law within the system of our Constitution in a way that solves that problem?

In everything that I do in terms of crime and law enforcement, I have asked the department to consider what can we do to prevent it up-front through problem solving, and the same question exists with respect to civil areas of the law. All of the lawyers, whether their practice is civil or criminal, who are involved in these efforts, really make a difference in the lives of the people they serve. By using problem solving skills, our civil practitioners can settle disputes more effectively. These lawyers enhance relationships by helping people find ways to solve disputes that do not involve scorched-earth litigation tactics. These civil and criminal lawyers are finding great personal satisfaction. They're finding that this is one of the reasons they went to law school, and they are not disappointed with the law. You are in the process of doing so much to change the face of the legal profession in America. I salute you for all that you have done in terms of presenting to this nation wonderful young lawyers, but I have three challenges for you.

There are three problems that affect the legal profession that we must come to grips with if we are going to address the issues that are important to this nation. First, we cannot problem solve, we cannot protect the rule of law in this nation until we make sure that every American has access to justice and access to the law. Now, the law is worth a little more than the paper it's written on for too many Americans. I want you to consider something: think for a moment about people who are not receiving legal assistance or problem solving support, and

they've got an awful lot of problems that are dragging them down further and further. Since we have tried legal services and we can't get it funded, and we tried pro bono work and we can't get it to be comprehensive enough, why don't we consider creating a new concept of community advocate, a four-year degree of problem solving in the community with emphasis on the law. Such a community advocate could assist people where they do not have access to justice: in landlord-tenant issues - - how to get the vacant lot cleared, or how you get your son into drug treatment, or how to deal with city hall to get the pot holes filled. All these problems just bear down on people who are trying to be self-sufficient but they also need an advocate. Let us work together to do that.

Second, let us not accept any further the fact that people are prosecuted in this country without adequate defense. We have got to make sure that the promise of Gideon is more than the paper that it's written on, that there is funding, at least in capital cases, for everyone so charged. Let us make sure that we work together to simplify the legal process. So much of the law is a lot of gobbledygook that doesn't need to be there if we could learn to develop new approaches and use the Internet in order to make the law truly responsive to people.

The third challenge is one that has some real urgency in terms of time. We are moving into a vast new stage of information technology that, as Adlai Stevenson would have said, staggers the imagination and converts vanity to prayer. We do not have enough people with the skills necessary to understand the technology, and to ensure the security of the technology. We need lawyers, as well, to understand the law, to ensure that we use this technology consistent with our traditional constitutional principles. We will get there, in a number of years, because many of these young people who come along and know this technology like the back of their hand will go to law school, but right now, we are in a period where we must all pull together to ensure that such expertise will protect the Constitution. We must ensure that this technology is used as we hoped it would, to give us new challenges and new horizons that we never dreamed of.

Finally, would you convey to your students one message. In this day and time people ask me, "Are you really glad you went to Washington? What was it like to be the State Attorney in Miami for years during all the drug wars? Were you really glad you did that?" I will tell you, that both my Miami experience and my almost six years as Attorney General are the most rewarding experience any lawyer could have. The opportunity in these last years to work with the great lawyers that you produced, to work with your colleagues who have come to work in government, to share ideas with you because you shared them with me is the greatest single experience a lawyer can have. We are trying to use the law the right way, to do the right thing to serve the American people. Tell your students

not to be dissuaded by what they read in newspapers. Just come talk to some of the lawyers at the Department of Justice and look at what

they're doing. Have them see how you prepared them and what a difference they are making for the people of this country. I thank you so much for the contribution that you have made. It has been invaluable.