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Remarks of U.S. Attorney General Janet Reno at the 2000 National Symposium on Indigent Defense

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Last year's inaugural National Symposium on Indigent Defense has been characterized as a milestone. The Department of Justice brought together nearly 300 people from all spheres of the criminal justice system and from all levels of government to focus on making indigent defense services stronger and more effective. We think it was a success. I hope so, but I know from my point of view that it was a great step forward and I want to thank the outstanding efforts of Mary Lou Leary, Nancy Gist, so many other people in the Department of Justice who made this possible.

This year's meeting is taking place at a critical, perfect time for such a meeting to occur. In recent months the American people have begun a national conversation about innocent people who are wrongfully convicted, and about the importance of competent counsel in the criminal justice system.

Columbia Law School's study recently reported that nearly 40 percent of death penalty convictions overturned on appeal during the period of 1973 to 1975 were overturned for reasons attributed to ineffective assistance of counsel.

We must be careful about generalizing from a small subset of the more than 10 million cases processed annually by our criminal justice system, but these cases reinforce a central truth: our system will work only if we provide every defendant with competent counsel. In our system, all defendants are presumed innocent until proven guilty, and all defendants are entitled by our Constitution to a lawyer who will provide effective assistance.

I think this represents the larger problem of how we make the law real to all Americans, how we make it something more than just the paper it's written on, and I think access to justice and access to the law is one of the most critical issues we face in America today.

A Defender's Duty

A competent lawyer will skillfully cross-examine a witness and identify and disclose a lie or a mistake. A competent lawyer will pursue weaknesses in the prosecutor's case, both to test the basis for the prosecution and to challenge the prosecutor's ability to meet the standard of proof beyond a reasonable doubt.

A competent lawyer will force a prosecutor to take a hard, hard look at the gaps in the evidence. I am fond of saying in the first month that I served as a prosecutor one of Miami's noted defense lawyers came to me with colored charts and other paraphernalia before we had charged and said, now, this is what I think you can prove, but these are the gaps, and it was one of the best examples I have ever seen of representation, because he took me through it step by step, exposed the gaps, cross-examined me, if you will, and his defendant, or his client was not charged.

A competent lawyer will know how to conduct the necessary investigation so that an innocent defendant is not convicted, and I would add another thought. A competent lawyer, if he or she possibly can, will help their client address the problems that caused the crime in the first place and help them solve the problems so that it does not occur again. A competent lawyer will help his client explain themselves to him, and he will help explain the client to others. He will build bridges, and fill gaps in the client's life as well.

A competent lawyer needs the investigative tools to go with it, because the search for the truth is often illusory if you have neither the time nor the tools to supplement your competence.

Although there has been much discussion of late about the remarkable forensic capability of DNA identification and its capacity to exonerate the wrongfully convicted, there is a relatively narrow

universe of cases in which DNA evidence is both available and material.

In the end, a good lawyer is the best defense against wrongful conviction and, I would add, a good prosecutor might equal them by not charging the person in the first place, and the good defense lawyer who fills in the gaps or points out the gaps can aid and abet that effort. In short, we should all have one common goal, that justice be done, justice be done according to the Constitution, and if we have competence and resources and tools and time in balance we ought to do so much more in achieving that goal.

In this room today and around the country, there are many remarkable lawyers who represent indigent defendants. You deserve this Nation's respect and our highest praise, because day-in and day-out you all do your best, with very few pats on the back. The cause you serve, helping poor people charged with crime, has never been popular, yet poor defendants make up about three-quarters of all felony defendants, and many of the lawyers who represent these clients face overwhelming obstacles in their efforts to provide quality representation.

Interwoven System

I think to address these issues we must look at several key issues. First, we must recognize the critical role of indigent defense services in the criminal justice system. Too often, there has been a tendency to see defenders as standing separate from the criminal justice system when, in fact, all components of the system are tightly interwoven. Defects in one part of the system have a measurable impact on the rest.

When we create a new drug court in a community, it's not going to work unless there is strong indigent defense representation at the table. When we set up a re-entry program for offenders coming back from prison, we must include the indigent defense representative at the table, or the program won't work.

Standards with Teeth

When we do State-wide or county-wide planning on criminal justice, we have to ensure that we provide the same level of support and oversight for indigent defense services that we provide for other agencies and functions, or our criminal justice system will not be a system and it won't work.

Secondly, we must strive to implement helpful standards for indigent defense, standards that cover, among other things, skills and experience and appropriate work loads for indigent defense offices. The Department of Justice has compiled a soon-to-be-released seven-volume compendium of standards. I hope that these volumes will enable State and local governments to compare standards from other jurisdictions and come up with their own, and we should explore ways to create incentives for counties and agencies to meet standards for competent indigent defense.

Indiana, for example, now reimburses counties for a fixed portion of their indigent defense costs when those counties comply with certain minimum standards designed to improve the quality of indigent defense. We should follow that example.

Sufficient Resources

Third, we must devote sufficient resources to indigent defense. I have supported in the past, and will continue to support efforts to have Congress appropriate funds to pay court-appointed public defenders at least \$75 an hour in Federal cases. I hope that State and county governments will look at their compensation levels for indigent defense lawyers and ensure both that they are sufficient to attract counsel with a high level of skills and experience, and sufficient to hire enough lawyers, investigators, and administrative staff to handle the overflowing caseloads.

Now, at the same time that we work to secure these resources, we must make sure that we put in place cost-containment measures to keep defense costs from becoming excessive, otherwise there will be some irate prosecutor like me who said, Bennett, what are you doing this for? Why can't we do it this way better?

Training

Fourth, we must insist that the indigent defense community, in acquiring essential training and technical assistance, be provided with what is necessary to do the job. Every time I turn around, whether it be in policing, in prosecuting, in judging, in providing defense, training can make such a difference, training from people who have been through it, who understand what to look for, how to do it, how to prepare, how to dig and dig some more, and some more.

Research

Understanding the latest technology used in crime analysis no longer is a luxury for an attorney who is defending or prosecuting a criminal case, and public defenders need access to training resources to the same degree that Federal, State, and local prosecutors have the same. Fifth, we have to gain a better understanding of just how well or how poorly indigent defense systems in this country are faring. The last comprehensive national survey of indigent defense systems was released 20 years ago, although a new survey is now in progress with funding from the Department's Bureau of Justice Assistance. When the new survey is complete, we must study it carefully so that we can focus our attention on those systems with the greatest need.

Collaboration

Finally, although we may be adversaries, the criminal justice system must work in collaboration. I see wonderful evidence in this room of the collaborative spirit that can make the system work. Public defenders have traveled here from their home districts and brought with them judges, prosecutors, police, corrections experts, legislators, county budget officials, bar leaders, and academics. You are all, by the fact that you're here, problem-solvers who have come here to really listen to each other and then return home better able to work together in improving the justice system.

I applaud all those who are not defenders who are here today, who have made themselves available to participate in this symposium. I think your attendance is particularly important, because it is a testament to your commitment to fairness in our justice system. At the Department of Justice we have tried to make collaboration the foundation for our work in indigent defense. We have used the model of collaboration to pursue exciting projects like our funding of the national defender leadership project run by the Vera Institute, which helps public defenders in management roles build coalitions, marshal resources, and garner support for their organizations.

We have also joined forces with the American Bar Association in funding the Juvenile Defender Training and Technical Assistance Center, which now serves as a long-overdue support system for the juvenile defense bar. This will give the members of that bar a forum for networking, creating partnerships, exchanging information, and participating in the national debate over juvenile crime, and I am looking forward to participating in the first official meeting later this year of the American Council of Chief Defenders, which will be a strong coalition of defenders to address common concerns in the criminal justice area. When people work together to develop a juvenile diversion program, for example, prosecutors and defenders do not compromise their adversarial roles, but they are able to achieve a result that is good for defendants and good for society if both work together according to their respective roles.

The same dynamic operates when law enforcement prevention and treatment specialists put their heads together and come up with a plan to reduce drug abuse in a specific community. The idea is to form a two-way street so that ideas and assistance can flow in both directions in order to further a larger goal, a fair and responsive criminal justice system.

The challenges that we face on indigent defense across the country are great. We cannot expect the defender community to make these improvements on its own. We need the voices of judges, prosecutors, legislators and others. We need to reach out to the business community and let them understand the mathematics of doing it in a way that's spread too thin, or doing it the right way, and letting them know that if they don't appreciate anything else, the return on their dollar is going to be much more effective if it's done the right way.

Public Education

We must all enhance and publicize the role of an indigent defender as someone who gives practical meaning to that wonderful document, the Constitution, and as someone who is essential in achieving justice. We must explain to lawmakers and the public how the failure to fully fund the indigent defense system in the long run imposes more cost in more ways than one, both on the defendant, but on the community as a whole.

We must all explain that when public defenders are overworked and underpaid, staff turnover will be high, cases will have to be relearned, and more frequent recruitment and training costs will be incurred. There will be more continuances, and more continuances, and we must all explain that if a criminal case goes to trial with a lawyer who lacks competence, and a conviction is subject to reversal by an appellate court, and we have to start the whole cumbersome process all over again, it is going to cost a lot more. The prosecutor, the judge, the victim, the police officers and other witnesses will have to go through a second trial. The human costs are too great to ignore.

Now is our Chance

We have all been working on and talking about this issue for a long time, but things are different. People are beginning to listen. Now is our chance, working together, to make real progress. Let's seize the opportunity and press for the improvements that are needed.

The administration of justice is among the most important tasks in any society. In these 7-1/2 years I have had ministers of justice, attorneys general, prosecutors, and even prime ministers come to the conference room of the Attorney General's Office from emerging democracies around the world. At first they come with stars in their eyes, with great hope, and with real spirit, because it is such an exciting challenge. Then they come back, sadder, wiser, more frustrated, and then sometimes they fail, and one of the things that I have been reminded of is how fragile, how frail the institution of democracy is, but I have also been reminded that it comes close to being a miracle, a miracle that people can use that Constitution over 200 years again and again to protect our citizens against tyranny, and to use it as it evolves with technology that our Founding Fathers never dreamed could exist.

But it is some thing that we cannot take for granted, and it is something that requires constant vigilance, and it is something that requires the rule of law to assist it in protecting individual rights.

Your role is so vital in that. We must do it fairly, and I would ask all of you to address in the months ahead what I think is also one of the great problems we face in America. How do we make sure that young people who don't get a good start in life, how can we make sure that at every step along the way the criminal justice system takes steps to correct that problem so that they don't get into trouble, or they don't get into trouble again?

We can stand at the end of the line and watch disparity in filings, disparity in punishment, but where we should also be focusing our efforts is in up-front efforts to keep people out of trouble, to keep people out of detention, to keep people out of secure detention and in home detention, to keep people in the juvenile justice system, to keep people out of long-term minimum mandatory sentences, to keep people away from the death penalty, and that is going to require an effort on the part of us all to achieve if we can.

But I think we can, because we have a sense of collaboration, a spirit that can bring us together to focus on young people who are about to get in trouble, or who have been in trouble, and through project reentries, through work with others, we ought to give to young people a chance, a true chance to get off on the right foot after the system has worked fairly.

There are so many things to do, but I look forward to working with you in every way that I can in the time I have remaining in this job, however long that may be before January, and then after that, after my trip in my red truck, I look forward to working with you all in every way that I can to see that we build in America true access to justice for every single American. Thank you all you have done to try to achieve that goal.

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