CRIMINAL JUSTICE: GOALS AND OBJECTIVES†

Janet Reno*

A simple truth: The criminal justice system in America is not working. The criminal justice system, as we know it, serves two principal purposes. The first is crime control—at least, that is what judges and lawyers have led the public to believe. The second is protection of the rights of the accused. But I suggest to you that our profession, which I love more than any other profession and of which I am proud, has abdicated its traditional role and has been responsible through this abdication for an ineffective criminal justice system. This has happened in a number of different ways.

LAWYER ABDICATION

First of all, lawyers have pitted themselves against each other in a very narrow arena. The great prosecutors and the great defense attorneys get into court; if the prosecutor gets a conviction, he thinks he’s won the battle; if the public defender or the great defense lawyer gets an acquittal or gets his client off on a motion to suppress or a motion to dismiss, he feels he’s won the battle. Neither thinks beyond to the next day. Neither thinks beyond to the impact that all of this is going to have on the individuals involved or on society.

Secondly, too many lawyers have completely forgotten the criminal justice system. I served on Sam Dash’s American Bar Association committee to study the issue of whether the fourth, fifth, and sixth amendments contributed to crime in America, an issue that had been raised by then Attorney General Meese. (It was a very unusual committee; at the first meeting we all decided that the amendments did not contribute to crime. We then held public hearings in Washington, St. Louis, and Los Angeles.) And I was amazed at the lack of interest on the part of the private bar in any aspect of the criminal justice system. Indeed, the only time I see the private bar really involved is when the private bar has been a victim of a crime.

But what do we do as prosecutors and defenders? Too many prosecutors are guilty, as I suggested, of convicting the person and walking away. And if

*State Attorney, Eleventh Judicial Circuit of Florida.
a public defender who gets his cocaine possession client off on a motion to suppress thinks that crack addict is free as he walks out of the courtroom, he has another think coming. That client is walking out in the grip of one of the most compulsively addictive, violence-inciting substances we have ever seen. He is walking out into a world where treatment is not available to him as an indigent. He is walking out into a world where there is no structure, no environment, no process by which he can get the help he needs to kick that habit and become a truly free individual.

Having created the best legal system that any group of people has ever created anywhere in the world, we now have a special responsibility to look at what we have done with the criminal justice system. We should look at how people get into that system and, as lawyers, take the responsibility for designing a system that works.

**Some Remedial Steps**

Let me begin at the end of the line. Let’s look at Florida today (which, from my hearings with the Dash Committee, I know exemplifies the situation around the nation). When I prosecute somebody and get him convicted and sentenced to ten years for armed robbery, I know he will be out in two to three years because we do not have enough prison cells to house people for the duration of their sentences. This makes a mockery of everything that’s gone on in the courtroom. And yet lawyers are not appearing before the legislature advocating the changes necessary to make the sentence of the judge mean what it says. We have to make sure that the sentences of our courts mean what they say. The entire legal profession has a responsibility to see that that’s done, because after the public gets fed up with the judge whose sentence is not carried out and with lawyers, it won’t want to pay the needed judicial salaries; it won’t have confidence in the criminal justice system; it won’t participate in the legal system. We’re going to have a lot of catching up to do if we don’t start now.

We, as lawyers, also must understand that it isn’t just punishment that makes the system work. In the last three years, we have had three different studies in Miami. Between seventy-five and ninety percent of the people booked into the Dade County jail have an illicit drug in their system. Similar figures have been shown for Washington and New York City. The medical examiner of Dade County did a study over a four-month period and found that twenty-five percent of the deaths from unnatural causes were caused by or related to cocaine. In Florida (and, again, the Dash Committee heard that the same is true in the other cities where we had hearings), eighty percent, or 2,400, of the prisoners between eighteen and twenty-five have a serious sub-
stance abuse problem. Yet only 200 of the 2,400 are being treated. As youthful offenders, they will serve an average of six months to a year. Then they will be right back on the streets, using and dealing and burglarizing to get cash to sustain their habits. As lawyers, we are participating in a revolving door. We’re standing by and doing nothing about it, either from the outside as a powerful, forceful bar or from the inside as participants in the criminal justice system. We must speak up before our legislatures and impress this fact upon them: Drugs are fueling the crime rate unlike anything we have ever seen. As lawyers we have the responsibility to say, “We need more prisons, and we need treatment for prisoners.”

We would not need that many more prisons if we used the old-fashioned carrot-and-stick approach—if we told the youthful offender that he could go to prison for five years (and serve the five years) or he could go into a treatment program, agree to random drug testing, graduate from high school, get a job, and remain drug free for five years. But we don’t have the carrots and we don’t have the sticks—because the prosecutors and the defenders have gotten caught up in the narrow arena of the courtroom, forgetting what happens beyond it, and the rest of the bar has stood on the sidelines without trying to help make the system make sense.

We need more than prisons. We also need more judges. Concern about the erosion of the judiciary has led some to say we don’t need any more judges, but something has to happen because there’s nobody else to give a felony case to in Dade County. Right now, the average circuit judge in the criminal division in Dade County has from 1,500 to 2,000 felony cases assigned to him or her each year. The most I ever saw a judge manage in the criminal division was eighty-nine jury trials in one year, and he was so burned out that he went back to private practice for awhile before he went to the federal bench. Assume for a moment that if a judge worked nights and weekends, with no vacations, he could conduct 100 jury trials in a year. He still has 1,500 other cases on his calendar. Florida has a strict speedy trial rule that gives me 180 days to get a case to trial, sixty days if the defendant demands it. If a defendant doesn’t get the speedy trial, he walks out of the courtroom free, and I can’t file charges against him. Now, if you were the public defender, you would fold your arms, stand back and say: “Just try to get those other 1,500 cases to trial.” And a wholesale dismissal of cases would result.

But that doesn’t happen, and the reason it doesn’t is that the trial judge creates a risk for a defendant who insists on going to trial. The judge lets the defendant know that if he goes to trial and gets convicted, he will get a stiffer sentence than he will if he pleads guilty. But the judge can’t put it in those terms because that would deny the defendant’s right to a fair trial guar-
anteed by the Constitution. Instead, the judge says: “Young man, I can’t penalize you for going to trial, but I can give you a benefit for pleading guilty because the Supreme Court of the United States says that’s the first indication of remorse and the first step toward rehabilitation.”

In other words, a so-called right to fair trial is used as part of a word game. And courts have been forced, not by laziness but by overwhelming case loads, to plea bargain. You can ask almost every person who has been the victim of a crime, and who is fortunate enough to have had the defendant arrested, what plea bargaining is like. Nothing else so erodes the public’s confidence in the system. But it does worse than that. If a judge in Dade County has fifty cases on his calendar on a Monday morning, he’s not going to be able to get to those cases to force a plea, and he’s not going to be able to force a defendant into a treatment program (even if we had the treatment program), because he doesn’t have enough leverage with the other cases he has to get tried. And so all the defendants are going to get is credit for time served.

Somehow, through compensation and through staffing, we must provide enough judges so that at least the serious cases, the cases that the citizens care about, get processed properly. The National Institute of Justice reports that of all expenditures by federal, state, county, and city governments—all governments in this nation—only 2.9 percent went to courts, corrections, and law enforcement. Yet, if you ask the average American, crime is a top priority. If we’re going to maintain public confidence in the law, we have to start with the criminal justice system because that’s what the average person sees, as the defendant, a witness, a juror—or as the victim.

That raises another problem. We have too often forgotten the rights of the victims. We pay lip service to them. Florida passed a victims’ rights amendment this past November. But the legislature didn’t provide any money to make that victims’ rights amendment worth any more to the victim than the right to a fair trial is to the defendant.

Our Constitution is going to be a document not worth a Supreme Court justice’s talking about unless we as lawyers make sure that the legislatures and the Congress of this country provide the judges and the resources to make it a living document and not just a document that lawyers quibble about in a courtroom.

**BEYOND THE CRIMINAL JUSTICE SYSTEM**

The worst thing, I think, that we as lawyers have done is to give the people the impression that the criminal justice system can really stop crime. That’s where a person ends up when the rest of the systems have failed—
when the family has failed, when the neighborhood has failed, when the schools have failed. Lawyers see how people get there, and we have a responsibility for designing a structure in this nation that will keep people out of the system. We know the immediate cause of much of the crime: drugs. I suspect that most of us have been touched by some problem associated with alcohol or drug abuse, through family members, friends, neighbors. We know how destructive, how wrenching, how terrible it can be.

Ironically, as a prosecutor I am now getting calls daily from people pleading for help: “I’m a crack monster. I’ve lost my family. I’ve lost my job. I don’t have the insurance or the money, but I need treatment. Please help me.” We have to design a treatment system for drugs. Some people tell me you can’t treat substance abuse, but more and more we see the medical profession learning how to do it. And we must keep in mind that although we sometimes can’t treat cancer, that doesn’t mean we stop trying. If we’re ever going to break free of what drugs are doing to America, lawyers must be innovative in helping government design a system that can deliver substance abuse treatment to people at prices they can afford without bankrupting the nation.

Other people tell me that drug abuse is not a disease but a habit. I think that’s a silly debate. Smoking is a habit that causes a disease called lung cancer, and we approach cancer from the perspective of treatment as well as prevention. We have to do the same thing with substance abuse, or we are going to be overwhelmed.

In the larger context, drugs are a symptom of a deeper problem in our society. They’re just a manifestation of something extraordinarily alarming that has happened in America. And lawyers, of all people, have a special responsibility in this area. I keep a copy of the Constitution on my desk, and one line haunts me: “to secure the blessings of liberty to ourselves and our posterity”—one of the reasons for the Constitution. And yet, the Council for Economic Development, a prestigious group of conservative businessmen formed to promote the American economy, has issued a study called “Children in Need,” which points out that twenty percent of the children in America are living in poverty—a greater percentage of children than any other age group. Thirty percent of the children in America are educationally disadvantaged. The Council’s concern is that unless we do something about those children now, by the year 1993 we will have a shortage of 23,000,000 Americans with the skills necessary to fill the jobs to maintain America as a first-rate nation. My concern is that unless we do something about those children now, we’re going to be building more prisons than you ever dreamed of and we will be seeing more crime than you ever dreamed of. We have abdicated our responsibilities to our children. Senior citizens’ life
expectancies have increased, and they have learned to be the great politicians of our time. They have organized into groups; they have become tremendous voting blocs; and legislators and congressmen listen to them. Nobody’s listening to the children.

You can see this in very graphic terms by visiting the major public hospital in the urban area closest to you. There, you will probably find cocaine babies—babies born to crack-addicted mothers who used cocaine during their pregnancies. In Dade County the situation is so bad that we send seventy-five percent of them home because there’s no other place to put them. But twenty-five percent of the cases are so hopeless that they remain in the hospital. And suddenly you understand what raising children means, when you watch a baby lying there, not held, not spoken to except when changed or fed. And after four weeks and then two months, you understand what nurturing and bonding mean, through the results of their absence. We can focus on that child and its mother and do something now; or we can build the prisons eighteen years from now, and we can spend millions in every one of our public schools in this nation five years from now for behavioral problems associated with the cocaine abuse when that baby was born, and we can spend millions at our public health hospitals in the next two years for the same reason.

How did it happen? How have we come to neglect our children? How have youth gangs developed to an organizational status that we never would have dreamed possible? Because these children have remained unsupervised. Because too many people have gone to work and left them at home. Because too many single parents are struggling in poverty to raise children in a situation that is not conducive to a good and strong life.

We have to understand the historical perspective: Up until the industrial revolution, the two principal teachers of the child were in the home, and the other teachers were in the neighborhood—the wheelwright, the carpenter, the tailor, the farmer. With the industrial revolution, the father went to the factory, and the public schools as we know them today began. After World War II, we began to see the disintegration of the American family. We saw more single parents raising children, and we saw both parents going to work. More responsibility for children was thrust upon the schools. And consider what else the schools had to face at the same time. They had to be the agency, public and private, most responsible for ending the effects of 200 years of slavery and discrimination. They were the agency, public and private, that so often had to step in to help the child who was in tears from the domestic strife at home. The schools also had to try to keep up with an incredible expansion of knowledge: My grandmother lived to be ninety-three, and in her almost century of life she saw the gasoline engine, flight,
space travel, man on the moon, the electric light, atomic energy, computers, lasers—probably the greatest burst of technological know-how in human history. All these burdens were placed on the schools, and yet we gave the schools the children when it was too late, when they were five and six. Child development experts will tell you that if you’re going to change a life for the better, you must do it in the years from birth to three, when the child learns the concepts of reward and punishment and develops a conscience.

THE ROLE OF LAWYERS

If we’re ever to make the Constitution a living document that means what it says—if we’re ever to secure the blessings of liberty to our posterity—lawyers are going to have to take the lead in developing a new structure or framework within the government, perhaps incorporating the public schools and social service agencies, to insure to children, very small children, an environment in which they can thrive and grow as strong and constructive human beings. We must be mindful that there is no substitute for the family; I have learned that even the worst parent, even the mother who is a crack addict in public housing and is prostituting her thirteen-year-old daughter to get cash for her crack habit, is generally better than the alternatives, if I can work with her; but we must work with the families. We must place each child in a situation and in a world that gives him half a chance.

One of the reasons I love lawyers is because they can be more innovative and more creative than anybody I know. And the time has come. But we also must not forget that lawyers must, and will, continue to protect the rights of the accused, despite the hysteria precipitated by drugs and drug-caused crime. Government can be abusive. Government can be everything we don’t want it to be. Particularly now as people look for shortcuts to the problem of drugs, lawyers have to stand as the ultimate protectors of the Constitution.