

March 2004

Overview

Janet Reno

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

Recommended Citation

Reno, Janet (2004) "Overview," *Florida Journal of International Law*. Vol. 16: Iss. 1, Article 20.
Available at: <https://scholarship.law.ufl.edu/fjil/vol16/iss1/20>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

Reno: Overview
**PANEL VI. LESSONS LEARNED: JUDICIAL REFORM AND
INTER-AMERICAN COOPERATION**

OVERVIEW

*Janet Reno**

When I started as Attorney General, there were so many international issues that we faced, particularly with respect to the Americas. There had been no system of formal meetings with ministers of justice and attorneys general and ministers of the interior who shared portfolios and so a number of us talked about the need to do that and we began a series of meetings. If you have ever been to one of those things, they are deadly. Staff has done work beforehand and they present you with the script that says very little and is vanilla in color and taste and everything else and you have a nice reception and you go home and you feel very frustrated and empty. So the second time around I started identifying people who had really good ideas, of which there were many, and started talking to them, and the flexibility we needed developed.

One of the key issues we faced was extradition and this frustration over the fact that another country would not extradite its nationals for crimes committed in the United States, even serious crimes in certain circumstances. As I listened to people, there was clear confusion on the law, on both sides. We did not understand; they did not understand. I just thought it would have been wonderful if there had been research done up front so we knew exactly what the case law was and what the history was, because there was so much confusion. It would have been interesting to hear firsthand some of the human rights concerns and address those. The then-minister of justice from Chile told me that she was moving from the inquisitorial system to the accusatorial system and I said, "Oh, you have a wonderful opportunity to learn all of the pitfalls you should avoid. We'll be happy to work with you and help you," wondering why she wanted to move to the accusatorial system. But that was also a wonderful opportunity for us to learn what we could that was good in the inquisitorial system because a number of people have said on a number of different topics here today that it is not either/or. You can draw so much from the experience of so many.

* Former U.S. Attorney General.

We talked about cybercrime and we needed to know a lot more about technology, the application of the law to technology, and privacy issues. We saw a larger privacy issue, even beyond the technology itself. Prior to recent developments, you would have an index card in one shoe box and another index card in another box and the information never came together, because we did not have computers to bring it together. Now with one push of the enter button it is possible to bring up a whole dossier on someone very easily. I do not think any of us anyplace in the world have satisfactorily addressed the issue of privacy in this world today, with our ability to compile information in seconds concerning everyone.

One of the greatest frustrations I have had in my legal career is when people talk about justice and access to the law. As Governor MacKay mentioned, we need to look at ourselves. We need to stop looking at other countries and see what we have to do here. Too many people in the United States do not have access to justice because they cannot pay for it and it is worth little more than the paper it is written on. When I look at children, when I look at so many different people, when I receive phone calls from people just pleading with me to take a case because they cannot afford justice, I realize we need to do far better. Again, the minister of justice from Chile, who is now the foreign minister, I believe, explained what Chile was doing in terms of requiring pro bono service from new law school graduates. There was much I thought we could learn if we only had the chance to study and discuss together and have our staffs work together on this. So we decided we needed to do that. We came together and through the OAS, the Justice Studies Center was formed. I think it was formed initially as a clearinghouse — and I will let Dr. Vargas talk about that — because people did not want brick or mortar. They wanted a real virtual exchange and a clearinghouse and an ability to network and to talk back and forth and to build and to research and to share that research and do appropriate studies. I wanted it to be clear that it was not U.S. dominated, that this was a true partnership between all of us, that we all had to grapple with these issues, large and small. I wanted it to be clear that each country, large and small, was to be an important part of it. So, as I understand it, we have developed a clearinghouse. There is a problem-solving aspect to it, and there is also a training aspect as well.

I am not the legal scholar that many of you are, but after sitting here listening today, I have trouble talking about the rule of law in a government of the people, by the people, and for the people. I have not seen those two concepts come together and be explained. I think for the rule of law to prevail, the people must want it to prevail; they must have confidence in it; they must understand it; they must believe in it; and it must be developed by trust. We have talked about trust and respect and the

need to assess that. As a prosecutor in Miami, I once brought in a number of volunteers at the height of our crime wave, right in the early 1980s. They helped out as interns. These were people from all walks of life. When I took them to lunch at the end of the year, after they had done so much for so many, there was one curmudgeon who said, "I came down to volunteer because I thought you all were selling the courthouse out from under us, but I got to sit in on all the judicial conferences between the prosecutors and the judges. I got to see everything in action and I think they have done one wonderful job." If people can but see how the system works, in many instances, they will believe in it. If the judges will spend some time and make sure that people have an opportunity to be heard, it will create trust. It is that opportunity to be heard that is so vitally important to confidence in the justice system. And there are too many judges who, just with an abrupt "let's get on with it," can destroy confidence in the system that can be obtained for little or no money at all.

I want to talk about what I think is one of the most important issues that we face in the justice system. I always believed in the adversarial process that it would ultimately get to the truth, but when I see 123 defendants exonerated for a crime for which they received a life sentence or substantial term of years by post-conviction DNA testing, I really began to be troubled by our adversarial system and how we seek the truth. I think practitioners of the common law and civil law systems can learn each from the other. We can learn a great deal by bringing the adversarial and the inquisitorial system together, understanding what works and what does not work, bringing psychologists, memory experts, scientists, DNA experts, fingerprint experts, media experts, and lawyers together, both in the criminal justice system and in the civil justice system, to seek the truth. We sometimes take our process for granted and we have an exciting window of opportunity to take these cases, to do DNA testing where it is relevant, and show just what can be done to really achieve the truth. If 123 people in 10 years, charged with serious crimes, have been exonerated, think for a moment about how many are out there who received a five-year sentence on a felony, where DNA is irrelevant but where they were probably railroaded. All of us, as lawyers, have to pay attention. Those of you who are moving from the inquisitorial system to the accusatorial system, beware and watch as you go. For those of us who are there, let us learn what we can from the inquisitorial system. It is not either/or.

I think we have got to learn how to be far better problem solvers. We tend to talk in legal concepts and legal theories and ideas. Those are wonderful and they've been a bulwark for our protection. But it is important that we talk about problem solving, too. Extradition does not have to be either/or. In some instances we can work out systems that give

people confidence. We can understand the law. We can build in amendments to our law that can protect these interests. We have got to understand better the human rights issues involved and the death penalty issues. With conflict resolution, we can do an enormous amount. Again, it is not either/or. It is not either a trial or conflict resolution. If you are not ready to go to trial, the conflict resolution process is not going to work at all the other side will think, "Well, those trial lawyers haven't been to trial in three or four years. We'll get them. They're going to be afraid to go to trial." But what we can learn from evaluation and the studies such as the Justice Studies Center could do so much in terms of evaluating what works and what does not work; what the key ingredients are, and how we can make it more effective.

One of the things I think we do not talk about is community building. I do not see how any of us can say that there is really an effective rule of law or effective attention to human rights when I look at the United States, the richest nation in the world, and how it treats its children. I think we have got to do far more in addressing the early days of the person's life where we can affect their future more than at any other time. In the first three years, fifty percent of all learned human response is absorbed. The concept of reward and punishment and the conscience is developed. We have got to talk in those terms if we are going to build a citizenry in all of our countries that can accept the responsibility of citizenship and participate in a government of the people, by the people and for the people.

When we talk about access to justice, again, it is not either/or. We can do so much if we work together and study together, respect each other and listen to each other, and if the United States does not go around saying, "We know best." Let us learn from each other. We talked about national security versus terrorism at one point. I do not think we have to have either just a focus on national security or civil liberties. I think lawyers are creative enough and thoughtful enough to take both into account. I think if the courts become more involved in some of the factual determinations, we can do so much to avoid situations such as I had to deal with as attorney general when I had to present a letter of apology, along with a compensation check, to Japanese-American citizens who had been interned in camps in World War II. It took us fifty years to set that situation right. If we worked together as lawyers, figuring out how we share information, how we understand how to do things, I believe we can do much more by involving the process and understanding that there is no one that has a monopoly on the truth.

I participated in the judicial reform of Florida's constitution. It was a particularly difficult area because the legislature did not come up with a proposal the first time. The second time it came up, the judges defeated it.

I was there the third time. We passed it over the opposition of justices of the peace, who said, "This is the people's court. You're just taking justice away from the people." It took about eight or nine years before the concept of community courts came up and they were included in the whole court operation. But this highlights how important it is for the people to hear and to see and to understand democracy in action. One of the great mysteries that I think we could also address is the appropriations process. I do not know about the other countries around this table, but anybody that has examined the federal appropriations process, much less the appropriations process of the people in the legislature of the State of Florida, knows it is a mystery. Far too often, we as lawyers talk about ideas and concepts and principles and do not talk about the dollars behind them that make it a reality. I have had an opportunity to meet so many wonderful lawyers around the country in the last ten years. My faith in the law and lawyers is greater than ever before, and I think the results of this gathering here today can do so much to advance the cause of justice around this hemisphere.

