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JUSTICE NEWS

Attorney General Eric Holder at the D.C. Court of Appeals Judicial Conference

Washington, D.C. ~ Friday, June 19, 2009

Remarks as prepared for delivery.

Thank you Judge for your kind introduction and the warm welcome.

There are too many familiar faces in this room to begin naming names, so I will just say that it is good to be among friends and neighbors.

This year's conference examines the ways in which computers, science, and the Internet impact the administration of justice, and how all of us in the law – the courts and the litigants who stand before them – must meet the challenges that come with technological change.

For some, this is a cause for concern. Many are simply fearful of, or are not comfortable with, change. But I urge all of us who participate in the administration of justice not to view technology as a burden. We in the Justice Department embrace it as an opportunity to be more efficient, more effective, and more fair as we carry out our enforcement responsibilities.

Long before he took the Oath of Office, candidate Obama promised to be a president who would restore science to its rightful place in our society. The President's commitment was so strong that he spoke about it in his inaugural address. And he recently told the National Academy of Sciences: "Science is more essential for our prosperity, our security, our health, our environment and our quality of life than it has ever been before."

Within the Department of Justice, we are following through on the President's words.

- For example, based on a study by the National Institutes of Health that says using DNA evidence in developing a case can lead to double the number of arrests and prosecutions for burglaries and other property crimes, we are putting more emphasis on DNA evidence than ever before. And we are mindful also that DNA can be used to exonerate those who are wrongfully charged. Our mission is not simply to win cases, it is to do justice. The science of DNA can help us accomplish this.
- Research from the National Institute of Justice has also helped us create a new mental health screening assessment that should help corrections officials identify mentally ill offenders within minutes, so they can refer them to trained professionals. This will help alleviate the tremendous burden on our nation's jails and prisons, which have become de facto mental health providers because of the sometimes overwhelming number of inmates with mental illness they must care for.
- And, scientific research has helped improve our understanding in other areas of crime and justice, as well – from crime mapping to sex trafficking to drug markets.
- In terms of technology, I have convened task forces at the Department to study how we handle discovery in both the criminal and civil contexts, and one of the key questions before the task forces is how to make sure we are using technology as best we can. In particular, we want to make sure we are using all available electronic tools to properly organize and completely disclose discoverable material in complex cases.

In each of these instances, we have been faced with a choice – should we leave well enough alone and stick to the old ways of doing our business or should we adapt and embrace the possibilities now available to us? In these early days of the new Administration, we have chosen to examine and improve our methods. That will be our approach going forward too and I believe that every day, we are

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I suggest to you, in fact, that the greater risk to the administration of justice in our nation comes not from the emergence of new technology, but rather from a failure to stay true to our original, fundamental, and most treasured values – values as old as our republic itself, the values embedded in our founding documents and our national identity.

From an old world governed by the whims of Kings, Dukes and Czars, where justice could be won only on fields of battle and never in courts of law, this nation of ours was settled and built by men and women from different places and continents but united by a new and immeasurably powerful idea: that certain rights are inalienable, permanent, constant, not subject to changing thrones or changing moods. And from the seed of that idea grew for the first time in the world's long history a nation of laws, not men.

The founding documents of our democracy – the Declaration of Independence and the United States Constitution – memorialized that fundamental principle on paper. Our founding fathers breathed life into that idea as they understand it, and put it into motion by building an entire government around it. And it is the force and majesty of this idea that has sustained the most powerful nation on earth ever since.

As members of our country's law enforcement community, we at the Department of Justice have a special obligation to uphold this historic commitment to the rule of law. It is incumbent upon us to keep that founding idea alive, to ensure that it is more than eloquent words on faded parchment. It must be the animating force behind the decisions we make every day.

In my four-plus months as Attorney General, not a day has gone by where I have not been called upon to make a tough choice. As judges and litigants, you understand what I mean when I say a "tough choice" – a choice in which there are good arguments and real concerns and serious consequences on both sides.

When faced with these tough choices, my approach has been twofold. First, the rule of law is my guide, and my goal is to honor that founding American idea – that justice derives from careful attention to facts and laws, rather than from the whims of men. Second, I try always to take the time to reflect, to seek out diverging opinions, and to keep an open mind. Recent history has shown the pitfalls of snap judgments. While some feel that decisive leadership means taking immediate action, we know that true leadership means taking the time to get it right. That is the approach we are trying to take in this Administration. Let me share with you an example of this approach.

In my career as a prosecutor and as a judge here in Washington, I often saw too many capable, fundamentally good young people sacrifice their claim to a future because they chose to become involved in criminal, but non-violent, narcotic offenses. Now, the Department of Justice will never back down from its duty to keep neighborhoods safe from the ills of drug abuse and the collateral damage from narcotics trafficking. But we need to make sure we discharge this duty in a way that is fair and right. And to do that, we have to take time to think through our approach to sentencing.

It is the view of this Administration that the 100-to-1 crack-powder sentencing ratio is simply wrong. It is plainly unjust to hand down wildly disparate prison sentences for materially similar crimes. It is unjust to have a sentencing disparity that disproportionately and illogically affects some racial groups. I know the American people can see this. And that perception of unfairness undermines governmental authority in the criminal justice process and breeds disrespect for the system. It leads victims and witnesses of crime to think twice before cooperating with law enforcement, tempts jurors to ignore the law and facts when judging a criminal case, and draws the public into questioning the motives of its officials. The result is that some drug offenders wind up right back on the streets without any punishment or rehabilitation and some go to jail for long and unfair periods of time – which is exactly the opposite outcome that tougher sentencing laws were meant to ensure.

I am confident that most of us agree that this situation benefits no one and must be reformed. But we also know that doing so won't be an easy task. Agreeing on the problem is just the beginning, and we need to all put our heads together to come up with the fairest solution. If our goal is to arrive at a 1-to-1 ratio, how do we get there? We are asking this question now at the Department, alongside related questions, such as what the role of reentry programs for the incarcerated should be in a fully realized system of justice.

Our commitment as we work toward answers to these and other questions is to take the time to weigh all options carefully, to use the latest in technology wisely and to be true to the old principles that should always be our guide. We will not solve all the problems we are forced to confront overnight, but I am confident that if we take a measured and deliberate approach, we can take out that most ancient instrument – an old technology – the scales of justice, and say that they are balanced. This will be the true measure of our success. In that effort I hope that all of you will be partners with us.

Thank you.

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