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National Public Defense Symposium: Keynote Address

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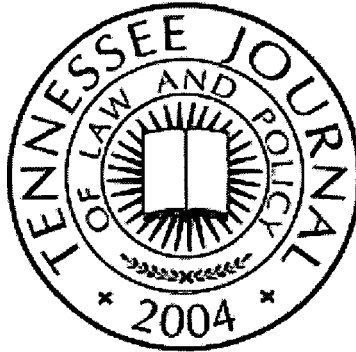
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NATIONAL PUBLIC DEFENSE SYMPOSIUM

***ACHIEVING THE PROMISE OF THE SIXTH AMENDMENT:
NON-CAPITAL AND CAPITAL DEFENSE SERVICES***

**REMARKS OF LAURIE ROBINSON
ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS
UNITED STATES DEPARTMENT OF JUSTICE**

KEYNOTE ADDRESS

THURSDAY, MAY 20, 2010

THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW

LAURIE ROBINSON: Thank you, Norm. It's good to see you again, and it's great to be here among old friends and colleagues.

I'd like to thank the sponsors of this symposium: the University of Tennessee College of Law, the *Tennessee Journal of Law and Policy*, the Justice Project, and of course the American Bar Association—where I spent my formative years as a criminal justice professional.

I'd be remiss if I didn't begin by acknowledging all the great work the ABA has done to advance the cause of adult and juvenile indigent defense over so many decades. I know a lot of people. No small number of organizations has devoted their energies to this issue, but the ABA has really been in the vanguard. Some might say I have a little professional bias here, but I doubt many would dispute the claim.

Of course, one of the pioneers in indigent defense is seated at my table here. I don't want to embarrass him, but I don't know where we'd be without Norm Lefstein. I can think of no one who has done more to diagnose the problems in public defense and to improve the professionalization of the field.

Norm understood, early on, that the promise of counsel pronounced by *Gideon*¹ was not enough. The effectiveness of representation was essential. As he said back in 1982 in his report, *Criminal Defense Services for the Poor*, "If providing an attorney to the poor is to be meaningful, it is essential that the lawyers render effective legal assistance."²

Norm has always believed that our responsibilities to the disadvantaged in the justice system do not end with a perfunctory nod to the Constitution. We must work

¹ *Gideon v. Wainwright*, 372 U.S. 335, 341 (1963).

² Norman Lefstein, *Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing*, American Bar Association (1982).

diligently to overcome the obstacles to ensuring effective counsel, whether they be inadequate training, excessive caseloads, insufficient resources, or just plain apathy.

We all owe Norm a tremendous debt of gratitude for his work. So thank you, Norm Lefstein.

As you can see, I'm proud of my association with Norm and with the ABA. Their work in indigent defense is finally getting the attention and respect it deserves on the federal level, thanks in part to an Attorney General who values the role of the public defense bar. At the National Symposium on Indigent Defense that we held in February, Attorney General Eric Holder said, "the fundamental integrity of our criminal justice system, and our faith in it, depends on effective representation on both sides."³

For Eric Holder and this Department of Justice (DOJ), equal justice under law is not a mere outgrowth of important legal principles, but the bedrock of American jurisprudence. He shares the belief stated in the ABA's Standards for Providing Defense Services, that "[o]ur system of justice is a reflection of our societal development, and the furnishing of adequate defense services a measure of our justice system."⁴

Only a few months after he had been in office, the Attorney General revived the Department's dormant efforts to address the indigent defense crisis in our country. The Department had already taken some serious steps in the 1990s, when I served my first stint as Assistant Attorney General.

³ Eric Holder, Attorney Gen. of the U.S., Looking Back, Looking Forward, 2000-2010, National Symposium on Indigent Defense, Washington D.C., Feb. 18, 2010, *available at* <http://www.justice.gov/ag/speeches/2010/ag-speech-100218.html>.

⁴ American Bar Association Criminal Justice Standards Committee. ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES 26 (3rd ed. 1992), *available at* <http://www.abanet.org/crimjust/standards/providingdefense.pdf>.

Eric Holder was part of that work when he served as Deputy Attorney General under Janet Reno. Now he's picking up where we left off.

Last June, he spoke at the American Council of Chief Defenders Conference, where he laid out the Department's goals for improving the indigent defense system. This is always something of a risky proposition—committing an agency the size of DOJ, with all its competing priorities, to a course of action on a major issue like indigent defense. But this is something that Eric Holder is passionate about. And I'm happy to say that, under his direction, the Justice Department has already taken a number of important steps.

First of all—as he promised in his speech last June and as I mentioned earlier—we've already held a National Symposium on Indigent Defense. We brought together about 500 people from across the country, and from across the criminal and juvenile justice spectrum. Then the Attorney General brought in Professor Larry Tribe from Harvard to head up the Department's Access to Justice initiative. That was sort of a bittersweet moment for me because I lost one of my key staff—a former Miami public defender—to Larry's office.

But it was for the greater good, and Larry and his staff have been working with components throughout DOJ to determine ways to bring defenders to the table on issues that affect the system as a whole. And I can assure you that the program plans emerging from this new office will feature indigent defense “front and center.”

And then in my agency, the Office of Justice Programs, we've found many ways to devote our resources to supporting public defense.

Last year, our Bureau of Justice Assistance (BJA) launched an Indigent Defense Hiring Project. We funded ten jurisdictions to hire additional public defenders to reduce case loads and improve the quality of

representation, including a site right here in Knox County. We'll be funding four additional jurisdictions this year.

We're providing seed money for a National Fellowship Program aimed at increasing the number of qualified public defense lawyers. I'm really excited about this because this is a great field-initiated program being run by the Southern Public Defender Training Center in partnership with Equal Justice Works. It's modeled on Teach for America, which brings talented young people into schools in low-income communities. It will provide three-year fellowships to recruit and train top law school graduates to work as public defenders in underserved areas. We're also providing funding to expand the Bronx Defender Holistic Advocacy Program. This is an interesting initiative because it addresses both the causes and consequences of involvement in the criminal justice system. It offers both legal representation and social support and advocacy. The project is developing an online resource center and providing targeted technical assistance to public defender offices across the country.

BJA has several projects designed to improve the quality of access that defendants receive in court. For example, this summer we'll be making an award under a program called Improving Court Communication. This is part and parcel of a research-backed movement to ensure procedural fairness in the justice system. Basically, what the research is telling us is that defendants who understand what's going on in their encounters with the system—including in court—perceive the process as fair, and this perception of fairness leads to higher compliance with the law.

What all of you know better than anyone is that indigent defendants too often do not understand the court process. The purpose of this project is to train judges and other courtroom actors on communicating more effectively

so that those who come into court get the information they need to fully and fairly participate in the system.

BJA is also reviewing grant proposals under its Wrongful Conviction Review Program. The purpose of this program is to try to ensure that defendants with post-conviction claims of innocence have high quality representation.

And we're looking at applications under our Capital Case Litigation Initiative, which supports training and technical assistance on death penalty issues. These funds go to state agencies, which then split the money equally for the training of defense attorneys and prosecutors. I think this is important to note because we know that public defenders have historically been severely underfunded relative to the rest of the justice system.

We're also taking great pains to address issues of defense in juvenile proceedings. If we're experiencing a crisis in indigent defense in the adult system, we should probably call what's going on the juvenile side a catastrophe.

On Monday of this week, our Office of Juvenile Justice and Delinquency Prevention released a bulletin on conditions of confinement, which summarizes findings from the *Survey of Youth in Residential Placement*.⁵

One of the *Survey's* findings is that just one-half of those in detention facilities have a lawyer. This is a disturbing finding given that it's been thirty years since the ABA and the Institute for Judicial Administration published their *Juvenile Justice Standards* advocating legal representation for juveniles from the outset of the court process. To be sure, the survey is based on self reports of youth in custody, but I think that only serves to underscore

⁵ Andrea J. Sedlak, *Introduction to the Survey of Youth in Residential Placement*, JUVENILE JUSTICE BULLETIN (U.S. Dept. of Justice Office of Justice Programs), Mar. 2010, at 1, *available at* <http://www.ncjrs.gov/pdffiles1/ojdp/218390.pdf>.

a persistent problem—that youth in court often perceive the system as stacked against them.

We're still dealing with a host of problems in the juvenile system: Youth who are explicitly or implicitly encouraged to waive the right to counsel; courts that appoint counsel too late in the process; and sub-standard representation due to administrative impediments.

The National Juvenile Defender Center characterized it this way in its recent publication, the *Role of the Juvenile Defense Counsel in Delinquency Court*.⁶ It said, "many juvenile courts still operate in a pre-*Gault* mode in which the defense attorney is irrelevant, real lawyering cannot occur, and the fair administration of justice is impeded."⁷ The result is that the situation identified by the Supreme Court forty-three years ago remains: juveniles in court still receive "the worst of both worlds . . . neither the [legal] protection[s] accorded [to] adults nor [adequate treatment]."⁸

Our Office of Juvenile Justice and Delinquency Prevention (OJJDP) is working to improve the juvenile justice system through a range of reforms—from detention alternatives to juvenile reentry programs. Improving juvenile defense is a critical component of our efforts.

In fact, I'm pleased that we recently posted a solicitation to fund a Juvenile Indigent Defense National Clearinghouse. We envision that this clearinghouse will provide a broad range of activities aimed at raising the level of systemic advocacy, improving the quality of representation of indigent juveniles, and ensuring necessary technical support for the juvenile indigent defense bar.

⁶ Robin Walker Sterling, *Role of Juvenile Defense Counsel in Delinquency Court*, (Nat'l. Juvenile Defender Ctr.) Spring 2009 at 1, available at http://www.njdc.info/pdf/njdc_role_of_counsel_book.pdf.

⁷ *Id.* at 5-6.

⁸ *Id.* at 1.

OJJDP will make one award for as much as \$500,000. We're accepting applications until June 24, 2010. I encourage those of you who represent juveniles, or who work with those who do, to consider this opportunity and let your colleagues know about it.

There are other areas in which we're working to support public defense. For example, the President's budget for next year seeks funds to augment the Census of Public Defender Offices administered by our Bureau of Justice Statistics. Currently, the survey focuses only on publicly-funded indigent defense offices and omits the work performed by contract attorneys and assigned counsel. So there are no current data that provide national-level estimates of public defense services. The expanded survey will give us a clearer picture of the state of indigent defense and will help us to better assess the training and resource needs of the field.

The President's budget also requests funding for a National Delinquency Court Improvement Program. Addressing juvenile defense is a critical component of this. Another bit of good news is that we're close to releasing our solicitation for the John R. Justice Program. For those of you who aren't familiar with it, John R. Justice is a loan repayment program for state and federal public defenders and state prosecutors who agree to remain employed as defenders and prosecutors for at least three years. BJA is working with the governor's office in each state to designate an agency to administer the program, and we expect funds to be awarded to the states by the end of September.

I think—I hope—it's clear that our commitment to improving indigent defense is serious. The Attorney General has made a pledge to bolster the public defense bar, and we are following through. I believe that our nation's justice system is capable of great things. Unfortunately, parts of that system too often have failed

those who have been—as Anthony Lewis put it in *Gideon's Trumpet*—“tossed aside by life.”⁹ The system has tremendous potential, but it needs guidance and support.

Justice Felix Frankfurter had written even before *Gideon*, “the history of liberty [is] largely . . . [the] history of [the] observance of procedural safeguards.”¹⁰ Sometimes, our highest ideals fail to play out amid unwarranted fear and old habits. The way to overcome those psychological barriers is to pull together and recognize that we all share the same goal, and that is a system of law that honors the dignity of every person.

That's what you're doing here through this symposium, and that's what we're trying to achieve in our work at the Department of Justice. I commend you for the good work you do every day on behalf of the poor and disadvantaged, and I hope you'll continue to see us as your partners in improving the indigent defense system in our country. Thank you.

⁹ ANTHONY LEWIS, *GIDEON'S TRUMPET* (Random House 1964).

¹⁰ *McNabb v. United States*, 318 U.S. 332, 347 (1943).

