

**Remarks as Prepared for Delivery by Attorney General Eric Holder at the
American Council of Chief Defenders Conference
Wednesday, June 24, 2009**

Thank you, Joann. I'm very pleased to be here.

I'm grateful to have this opportunity to bring the Department of Justice into the conversation you are having about equal justice. Ten years ago, when I was Deputy Attorney General, I worked with Attorney General Janet Reno to begin a national dialogue on indigent defense. We brought together the defense bar, prosecutors, judges, and others to talk about the crisis in our public defense system and to explore solutions. We held two national conferences – one in 1999 and one in 2000 – during which Janet and I helped NLADA launch the American Council of Chief Defenders.

Yet despite this promising start a decade ago, it is clear to me that the crisis in indigent defense has not ended. And the Justice Department has not remained an active part of the conversation about indigent defense in recent years. Groups like you have been carrying the mantle, but you should not have to carry it alone. When I took the oath of office as Attorney General, I swore to support and defend the Constitution of the United States. Supporting and defending the Constitution includes, in my view, a responsibility to serve as guardians of the rights of all Americans, including the poor and underprivileged.

Now, the obstacles to representing the indigent are well-known. We know that resources for public defender programs lag far behind other justice system programs – they constitute about 3 percent of all criminal justice expenditures in our nation's largest counties. In many cases, contract attorneys and assigned lawyers often receive compensation that doesn't even cover their overhead. We know that defenders in many jurisdictions carry huge caseloads that make it difficult for them to fulfill their legal and ethical responsibilities to their clients. We hear of lawyers who cannot interview their clients properly, file appropriate motions, conduct fact investigations, or do many of the other things an attorney should be able to do as a matter of course. Finally, we know that there are numerous institutional challenges in public defense systems, like budget shortfalls.

These challenges are not new. Justice Hugo Black saw the problem 45 years ago and wrote that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” What can be done?

Let me start with a first principle. Some may perceive the goals of the prosecution and the goals of the defense as irreconcilable – that those who represent the state and those who represent the accused are forever at odds. I served as a prosecutor for many years, and I strongly reject that premise. Our system of justice is adversarial to be sure, but the prosecutor is a special kind of adversary – for criminal litigation is not like

civil litigation in one important way. As the Supreme Court described United States Attorneys long ago, prosecutors are representatives “not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” Let me repeat – our goal at the Department of Justice is “that justice shall be done.”

That means that when the system breaks down, we all lose. And this is true not just because our shared principles are undermined, but for practical reasons too. When defendants fail to receive competent legal representation, their cases are vulnerable to costly mistakes that can take a long time to correct. Lawyers on both sides can spend years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins.

It also means that we at the Department put a premium on truth-seeking. The Department’s commitment to ensuring that justice is done is why, for example, I think defendants should have access to DNA evidence in a range of circumstances. DNA testing has an unparalleled ability to exonerate the wrongfully convicted as well as to identify the guilty. As you know, the Supreme Court held last week that there is no substantive due process right to access DNA evidence in post-conviction proceedings. But the Department distinguishes what is constitutional from what is good policy. And we have maintained that in a full and fair justice system, it is good policy to permit such access. Federal law already guarantees access to DNA evidence held by the federal government under specific conditions, and I hope that all states will follow the federal government’s lead on this issue.

Now, with that same goal of doing justice in mind, I am very glad to be here today and to renew the Department’s commitment to improving the indigent defense system by announcing five first steps that will bring us closer to making sure that we achieve our goal.

First, I want to resume the dialogue that we started a decade ago. The Constitution Project has done excellent work in describing the state of indigent defense in its report, *Justice Denied*. As the report pointed out, many jurisdictions have made great progress in their public defense systems in recent years, but wholesale improvements have been elusive. We’ve heard from many of you that the key players need to sit down together, take stock of the progress, and figure out where we go from here. I will begin by meeting the leadership of the NLADA and other groups to discuss the Department’s role in guaranteeing the true right to counsel. And together we will chart a course for how we can work to ensure fair and impartial justice for all Americans, particularly with so many Americans suffering in this economy.

Second, I want to expand and sustain today’s conversation by holding regular meetings with the criminal defense bar. This will be a resumption of meetings that former Attorney General Ed Meese started in the 1980s and that Janet Reno resumed during her tenure. I want to pick up where they left off and to make sure that this time,

we include you, the members of the indigent defense community. During these meetings, I want to discuss topical issues of interest and concern to you and to explore how we can find the resources necessary to address the challenges that have been identified. This will be a chance for public defense representatives to give us their feedback on how well our criminal justice system works.

Third, I want to make sure that public defenders are at the table when we meet with other stakeholders in the criminal justice system. I have asked the Deputy Attorney General, who I know is deeply concerned about issues relating to indigent defense, to encourage components in the Department to include members of the public defense system in a range of meetings. We will also involve you in conferences, application review panels, and other venues where a public defense perspective can be valuable.

Fourth, we will expand our commitment to collect accurate and meaningful data on public defense programs, so as to be better equipped to help them. For example, the Census of Public Defender Offices administered by our Bureau of Justice Statistics currently does not collect information regarding the services provided by contract and pro-bono attorneys. We need to capture those services by surveying a sample representative of all participants in the system.

Fifth, and finally, the Department will host a national conference focusing on issues relating to indigent defense. This conference will build on the two conferences held in 1999 and 2000, which centered on strategy development and innovative collaborations. We hope that this conference will help to develop a series of best practices among indigent defense programs throughout the country. We also hope to highlight innovative programs and efforts, including those that use tools like technology and mentoring in new and effective ways. Finally, a major goal of this conference will be to help public defense programs strategize about how to get involved in the decision-making process related to funding and, generally, find support in difficult economic times. As you can tell, this is an ambitious agenda – that’s because there is a lot that can be done. Putting together the conference and achieving its goals will require help from people like you, who are in the trenches of indigent defense, and I have asked Laurie Robinson and her team at the Office of Justice Programs to consult with members of your bar in planning the conference.

These five Department-wide efforts focus on gathering and sharing information about what works and what is needed in our public defense system. You will hear from Laurie in a moment about several other efforts that we have under way.

Let me end by going back to first principles. Justice Black, the author of *Gideon*, himself came from very humble origins. He was born in poor, rural Harlan, Kentucky, and he often referred to himself as “just a Clay County hillbilly.” Yet he was one of the most eloquent spokespersons for equal justice in our nation’s history. Twenty years before *Gideon*, he made his principled dissent in the *Betts* case. He said: “A practice cannot be reconciled with common and fundamental ideas of fairness and right which subjects men to increased dangers of conviction merely because of their poverty.” Two

decades would pass before that principle found a place in his opinion for the *majority* of the Court in *Gideon*. Justice Black must have felt great frustration in those 20 years between *Betts* and *Gideon*, but progress eventually came with time and perseverance. Another 45 years have passed since *Gideon*, and the promise of *Gideon* remains not fully fulfilled. It's our responsibility to continue to work toward realizing the principle that Justice Black described and worked for. Justice shall not be done until we do. I look forward to working with all of you.

Thank you.