

REMARKS

OF

THE HONORABLE KAROL V. MASON
ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS

AT THE

RIGHT TO COUNSEL NATIONAL CONSORTIUM
SECOND ANNUAL MEETING

ON

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WASHINGTON, DC

Thank you, Lisa [Foster]. It's a pleasure to be here with you and Vanita [Gupta] – and to reiterate the points that the Deputy Attorney General made so eloquently this morning. As she made clear, equal justice under law isn't simply a convenient legal principle, it's the very bedrock of American jurisprudence. I think it's important for everyone who works in this adversarial system to understand that. We're not here just to win cases – we're here to pursue justice.

I'm proud to be part of a Justice Department that embodies that philosophy – and to have worked for two Attorneys General during this Administration who have made an active push for better quality legal representation for all Americans. Coming from the nation's leading prosecutors, I think this sends an incredibly powerful message.

In his book, *Gideon's Trumpet*, Anthony Lewis referred to Clarence Earl Gideon as “one tossed aside by life.” Sadly, many of those who come into contact with our criminal and juvenile justice systems are exactly that – poor people living lives of hardship and struggle. And when they reach the system, they encounter more of the same.

This point was made in stark terms by the Justice Department's investigation of the Ferguson police department and municipal court. The investigation found that the city was relying on the justice system to close budget shortfalls – and poor, mostly African American citizens were literally paying the price. And Ferguson is not an isolated case.

The inability to pay these legal obligations, and the collateral penalties that go with them, drag people deeper into the justice system, and in many cases leave them with no way out. This is precisely what's happening to indigent defendants – both adult and youth – when they are denied effective counsel. Their poverty all but assures them of remaining entangled with the system for years to come.

Due to under-resourced public defense systems and overworked defenders, we have, effectively, two justice systems – one for the wealthy and another, worse one for the poor. The Department of Justice recognizes that this doesn't conform with the principle of fairness our legal system is supposed to represent, so we have been working to lower barriers to quality representation.

You heard Denise [O'Donnell] talk this morning about the Smart Defense Program that brings together researchers and practitioners, and Gideon's Call, which provides training to defenders and funding aimed at improving caseload management. We're also looking closely at the juvenile justice system, where the crisis of counsel is at least as pronounced as it is in the adult system.

Anyone who works with justice-involved youth knows that these young people are thrust into a system they don't understand and left to make decisions with little grasp of the consequences. In many cases, they're encouraged – either openly or implicitly – to waive counsel. The Survey of Youth in Residential Placement, which is based on self

reports of youth in custody, found that only half of those in detention facilities had a lawyer. This leads to what the Supreme Court 50 years ago called the “worst of both worlds,” neither the legal protection afforded adults nor the care and treatment a young person really needs.

Last year, our Office of Juvenile Justice and Delinquency Prevention launched its Smart on Juvenile Justice initiative to improve access to high-quality juvenile defense. Four states – Delaware, Indiana, Kentucky, and Washington – received grants to develop statewide juvenile defense strategic plans. Two of those states – Delaware and Indiana – were awarded follow-up grants to implement their plans.

The National Juvenile Defender Center is our training and technical assistance provider for the program, and we’re working with them to support regional juvenile defender resource centers to provide data, training, case support, and other resources.

Our investments extend beyond capacity building. A hallmark of our mission is to lay a foundation of knowledge on which we can build a smarter justice system. Our National Institute of Justice supports research on evidence-based tools, protocols, and policies to help state, local, and tribal systems meet their responsibilities to ensure effective counsel.

Over the years, NIJ has funded a variety of projects. One was a study by the RAND Corporation that examined the effects of public defender versus court-appointed attorney representation on homicide case outcomes. It found lower rates of conviction and shorter sentences when public defenders were on the case. This is critical information in the debate about the role of assigned counsel and the lack of financial incentives for private attorneys.

NIJ has several ongoing projects that we’re excited about. We’re conducting a multisite evaluation of holistic defense programs. We’re studying the effects of waivers in juvenile court. And we’re taking a look at how defenders can play a role in reducing racial disparities in felony court cases.

Our data collection activities are also giving us a clearer picture of the state of indigent defense in our country. Next month, our Bureau of Justice Statistics will publish data from its National Survey of Indigent Defense Systems. This will tell us about staffing, budget, caseload, and other aspects of state and county systems. Work is also underway to field test a survey instrument that will capture the experiences of attorneys who represent indigent defendants.

I hasten to add that these are all activities specific to addressing right to counsel, which should be seen through the wider lens of inequities and disparities in our justice system as a whole – something that OJP and the Department have been working hard to tackle.

As part of that effort, Vanita, Lisa, and I, and our offices, are working together to reduce over-reliance on fees and fines, which – as I mentioned earlier – disproportionately affect the poor.

OJP is also supporting reforms to our pre-trial system, to move away from its focus on money bail – which again penalizes the disadvantaged – and toward individualized assessments based on risk.

We're trying to improve our understanding of the factors that lead to wrongful convictions and working to eliminate these errors. We're providing training and tools to help attorneys who represent defendants in capital cases.

And we're supporting efforts like problem-solving courts and other diversion alternatives that can help address the challenge of mass incarceration and blunt its outside impact on poor and minority communities.

Access to counsel is very much tied to these challenges, and we must address it as part of a larger strategy.

We've got a lot of work to do, but I believe we're making progress. Thanks in great part to the people in this room, we've shone a light on a serious and long-standing deficiency in our justice system, and we're catching the attention of policymakers and the public.

Overcoming these obstacles will obviously take far more time than we have left in this Administration, but I'm encouraged that we've generated significant momentum – and I'm confident that positive and lasting change is on the horizon.

Thank you.

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