

Remarks as Prepared for Delivery by Attorney General Eric Holder at the Brennan Center for Justice Legacy Awards Dinner

WASHINGTON, Nov. 16 /PRNewswire-USNewswire/ -- The following are prepared remarks of Attorney General Eric Holder at the Brennan Center for Justice Legacy Awards Dinner:

Thank you, Jim, for that wonderful introduction. It's always a pleasure to be introduced by a great lawyer, an old friend and a person committed to the ideals of this wonderful institution.

I also want to thank the leadership of the Brennan Center for Justice for honoring me with this award. Let me also congratulate my co-honoree and friend, Nicole Seligman, for the award she is receiving tonight. Nicole, thank you for all you do -- your award is well deserved.

I also want to congratulate and commend the members and supporters of the Brennan Center for your dedication to democracy and the rule of law. You have been leaders in the effort to modernize voter registration -- that is, to remove the single biggest barrier to voting in the United States, our antiquated registration system.

You also have worked hard to protect voting rights through your lawsuits and advocacy, and you have provided us with critical support in our determined effort to defend campaign finance reform legislation.

In these and other issues -- from access to justice to racial justice, to ensuring that we advance the rule of law as we defend our national security -- please know that we hear you in Washington, we respect your views, and we appreciate your engagement.

Now, as many of you know, Justice Brennan came from humble beginnings. The son of Irish immigrants, he epitomized the American dream, growing from a boy who delivered milk and pumped gas to become one of the most renowned and influential Supreme Court Justices of our time. Throughout his illustrious career, Justice Brennan never forgot where he came from. He credited his interest in individual rights and civil liberties to his upbringing and the hardships he witnessed in his own neighborhood.

Justice Brennan's legacy -- his work and the way he approached it -- embodies our collective responsibility to those who do not always have a voice in the legal and policy decisions that impact our communities. You honor his legacy not only in your critical work for justice, but with this annual reminder to all of us to strive toward realizing the values of equality and common human dignity that motivated Justice Brennan.

"Equality and common human dignity." Justice Brennan knew that these values, although lofty, are attainable. I want to use our time together tonight to reflect on a challenge -- a really difficult challenge -- that calls for our ongoing, collective commitment to these values: the need for indigent defense reform. Given the Center's work in New Orleans, Michigan and elsewhere, as well as your publication of helpful resources such as the *Guidelines for Appointing Defense Counsel*, I know that this is an issue about which you care deeply, as do I.

Imagine with me for a few moments that you receive a frantic call saying that your son or daughter, niece or nephew, has been arrested and charged with a crime. I would wager that most of you would make a call and hire a great lawyer. You certainly would never allow your child to plead guilty and face the possibility of jail time without first speaking to a lawyer. You would not stand by if someone in your family was made to wait weeks, even months, before getting access to a lawyer who could fight for his or her release.

But, hard as it may be to believe, some of our fellow citizens suffer through circumstances like these every single day.

A recent report commissioned by a joint resolution of the Michigan state legislature, for example, found counties in the state where defendants are charged and plead guilty to crimes that carry jail time *without ever speaking to a lawyer*. In other parts of the country, according to another report, defendants may sit in jail cells for weeks, even months, waiting for a lawyer. In one example, a 50-year-old woman charged with shoplifting spent 11 months in jail waiting for a lawyer to be appointed. Another woman charged with stealing \$200 from a slot machine spent 8 months in jail before receiving a lawyer.

Even when counsel is appointed the appointment is oftentimes not meaningful, not truly effective. The most recent comprehensive national study on the state of indigent defense documented a Missouri county where the public defenders office started to refuse cases after its lawyers began averaging 395 cases a year, causing the State Public Defender Director to acknowledge publicly that with caseloads that high, mistakes were being made.

In Tennessee, a county public defender office had six attorneys handle more than 10,000 misdemeanor cases in 2006 -- which means lawyers could spend an average of just under an hour per case. High caseloads leave even those lawyers with the best of intentions little time to investigate, file appropriate motions, and do the basic things we assume lawyers do. Some don't even have time to go to trial.

High caseloads are not the only problem. Although Gideon was decided more than 45 years ago, there are still seven states in this great nation that contribute nothing to trial-level public defense, putting the burden on their counties. Because of a chronic lack of resources, many counties, in turn, rely on so-called "flat-fee" contracts that pay lawyers the same amount regardless of how much (or more likely, how little) time the attorney spends on each case. Indeed, in states like Utah and Pennsylvania that rely entirely on individual counties to fund indigent defense, the quality of legal representation that a defendant receives may end up being determined by the side of a county line on which the crime was committed.

In addition to resource problems, many public defender offices have insufficient independence or oversight to ensure that the lawyers are effectively representing the interests of the accused. In some places judges assign cases to lawyers, which can influence the representation the lawyers provide. For example, a statewide survey of Nebraska judges in 2006 raised such concerns, including about judges who refused to reappoint those lawyers who requested too many trials.

Perhaps most troubling, all too often we've seen similar problems in juvenile systems. In 2005, for example, the Florida Supreme Court found that in one Florida Circuit, *three out of four youth* waived the right to counsel and faced charges without the guidance of counsel. What is more, such waivers sometimes occur without the opportunity to speak to counsel who might help young people understand what they're giving up.

For me, this is an issue of personal importance and national conscience. As a judge, I saw firsthand how ill-equipped and unprepared defense counsel distort the entire system.

Ours is an adversarial system of justice -- it requires lawyers on both sides who effectively represent their client's interests, whether it's the government or the accused. When defense counsel are handicapped by lack of training, time, and resources -- or when they're just not there when they should be -- we rightfully begin to doubt the process and we start to question the results. We start to wonder: Is justice being done? Is justice being served?

The integrity of our criminal justice system aside, the crisis in indigent defense is also about dollars and cents. An analysis conducted by the State Appellate Defender Office in Michigan found that the state's failure to invest resources at the trial court level has contributed to the costly imprisonment of defendants whose

convictions were later reversed. The office reported that since 1996, there have been approximately 50 successful habeas corpus actions based on ineffective assistance of counsel claims in state court proceedings.

Even assuming these defendants were guilty of the crimes for which they were originally convicted, the public still must bear the cost of appeals and retrials because the system didn't get it right the first time. And for those cases in which the defendants were not guilty, then obviously the price tag is much higher -- both in the ultimate nightmare scenario of sending an innocent person to jail, and in terms of letting the person who actually committed the crime remain free.

Let me give you just one example of all of the losses associated with the crisis in representation. Eddie Joe Lloyd served nearly 17 years in a Michigan prison for the murder and rape of a young girl -- crimes that DNA evidence later proved he did not commit. Lloyd's appointed attorneys -- one replaced another a week before trial -- failed to conduct *any* investigation. No one ever cross-examined the police about Lloyd's false confession -- which Lloyd gave to the police while he was a non-voluntarily committed patient in a mental health hospital. No one ever interviewed Lloyd's family or his doctors. No one visited the crime scene, or challenged Lloyd's competence. The appeals and the 17 years of imprisonment cost Michigan nearly a million dollars, and that amount does not include the \$4 million civil judgment Lloyd later obtained for his wrongful conviction. And of course there is the real danger to the community of having the actual murderer and rapist remain at large some 20 years later.

So, what is to be done? In order to fulfill the promises of Gideon and Gault, we need the engagement of partners at the federal, state, and local levels, both within and outside of government. Much good work has already gone into developing model standards for public defense systems, including the American Bar Association's *Ten Principles of a Public Defense Delivery System* and the National Juvenile Defender Center's *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems*. I am grateful for organizations like the Brennan Center that are on the front lines of this effort, whether it is through education or litigation.

I want to emphasize education because I believe that if more Americans knew more about how some of their fellow citizens experience the criminal justice system, they would be shocked and angered.

I am also encouraged by the fact that some states and local jurisdictions have begun to do the hard work to ensure that their public defense systems have the independence, oversight, and resources needed to operate effectively. In Nevada earlier this year, for example, the state Supreme Court issued an order calling for widespread changes in the public defense system, including requiring attorney performance standards and removing judges from the appointment process. In April, New York City became the first city to commit to phase in caps on caseloads for public defenders. The state legislature in Michigan -- where Eddie Joe Lloyd was convicted -- will soon consider proposed legislation to establish there for the first time a statewide public defense system.

At the Department of Justice, I have convened an internal working group to help me identify ways we can do our part in this effort. I've instructed them to leave no stone unturned in identifying potential funding sources, legislative initiatives, and other ways we can work with our state and local partners to establish effective public defense systems. I have personally met with leaders from the indigent defense community to learn more about the problem and to get their advice and ideas on ways the Department can help. And our Office of Justice Programs is currently planning a national indigent defense conference in February that will bring together public defenders from all 50 states.

As I have said before, every day, conscientious prosecutors around the country do justice on behalf of the American people, often under very trying circumstances. We owe them our sincere gratitude for their hard work and their sacrifices on our behalf. But our system of justice cannot depend on them alone.

Justice Brennan once said, "We must remember that society's interest is equally that the innocent shall not suffer and not alone that the guilty shall not escape." Let us ensure that we further Justice Brennan's legacy by maintaining the most basic constitutional protection -- the right to have truly effective defense counsel. In the past few days, with the stakes at their highest, I have expressed great faith in our criminal justice system. As great as it is, we need to significantly improve the quality of representation that is provided in that system to the poor and the powerless. Let us truly dedicate ourselves to the legacy of Justice Brennan by working to reform that system so that it truly reflects those most basic of American values: equality and fairness. The problems I have mentioned are man made. They are, therefore, susceptible to man made solutions. Together, I am confident that we can create a system that is both consistent with our founding documents and of which we can truly be proud. I look forward to working with you in that effort.

Thank you.

SOURCE U.S. Department of Justice