

## Attorney General Merrick B. Garland Delivers Remarks at the Office of Access to Justice's Gideon Celebration

Washington, DC ~ Friday, March 17, 2023

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### *Remarks as Delivered*

This is the first time I discovered the advantage of having a standing room crowd. It looks like you're giving me a standing ovation. Thank you very much. And I guess anybody who doesn't like it will have to sit down.

Alright, so good afternoon. Much of what I am going to say today I said yesterday, at another event honoring the anniversary of *Gideon*. But this is important enough I think to say twice.

We are here today because this weekend marks 60 years since *Gideon v. Wainwright* held that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”

Just to describe the experience of Clarence Earl Gideon before his case reached the Supreme Court is to recall how different the American justice system was before that decision in this case.

Gideon was charged with breaking and entering a pool hall. Without funds, and with only an eighth-grade education, he asked that the trial judge to appoint a lawyer for him. When his request was denied, Gideon endeavored to represent himself.

As Justice Black's opinion for the Court recounted: Gideon “conducted his defense about as well as could be expected from a layman. He made an opening statement to the jury, cross-examined the State's witnesses, . . . and made a short [closing] argument.” The jury soon returned a guilty verdict, and Gideon was sentenced to five years in state prison.

After the Supreme Court reversed the judgment, however, the case was retried. This time, he was represented by a local defense attorney, and he was acquitted.

At every stage of my career – as a criminal defense attorney, prosecutor, judge, and now our nation's chief law enforcement officer – I have seen the truth of what Justice Black wrote in *Gideon*: “Lawyers in criminal courts are necessities, not luxuries.”

Without capable criminal defense attorneys, defendants cannot understand the true scope of their rights at each stage of the criminal process.

Prosecutors cannot learn of errors in their factual assumptions or legal analyses that could lead them to seek different resolutions.

Jurors cannot hear the full stories needed to fairly adjudicate cases.

And judges cannot hear the full legal arguments needed to guide their decisions.

Criminal defense attorneys put the government's case to the test. In so doing, they make every part of our system fairer, more equal, and more just.

But the *Gideon* decision did more than just help ensure justice in individual cases.

With its decision in *Gideon*, the Supreme Court transformed the American legal system by renewing the foundational promise of equal justice under law.

It reaffirmed that the law protects all of us – the poor as well as the rich, the powerless as well as the powerful.

In so doing, it reaffirmed this country's commitment to the Rule of Law.

And trust in the Rule of Law is what holds American democracy together.

That trust requires not only that justice be done, but that it be seen to be done. And only the presence of counsel zealously defending their clients' rights can ensure public confidence in the legitimacy of judicial proceedings, regardless of their outcome.

There is still so much more work to be done to make the promise of *Gideon* real.

That work demands enormous effort from the legal community. Most of all, it makes enormous demands on those lawyers – like many in this room today – who serve as public defenders, Criminal Justice Act attorneys, pro bono

lawyers, and appointed counsel of every kind.

Our justice system today would be no different than it was before *Gideon* if tens of thousands of lawyers had not stood up – and continue to stand up – to take on the calling of public defense. Your work is essential not only to your clients, but to the functioning of our judicial system.

I know that our system does not treat you accordingly.

However much we at the Justice Department complain – and rightly so – about our limited resources, I know full well that yours are far more limited.

I know that public defense remains drastically underfunded. I know that public defenders offices are suffering serious recruitment and retention problems that only worsened during the COVID-19 pandemic.

I know that you often carry staggering caseloads and that your staff and investigative resources are insufficient – to say nothing of your financial compensation. I also know that the pressure on criminal defense attorneys is enormous – there is no small case when someone's liberty is at stake.

The Justice Department recognizes the urgency and seriousness of these challenges. And we are committed to doing all that we can to support our colleagues who have devoted their careers to public defense.

One year after *Gideon*, Attorney General Robert F. Kennedy announced the creation of an Office of Criminal Justice within the Justice Department, focused on the provision of counsel to the poor. In doing so, he said: "It must be our purpose in government ... to insure that the department over which I preside is more than a Department of Prosecution and is in fact the Department of Justice."

It is with that same conviction that I announced the restoration of a standalone Office for Access to Justice within the Department in 2021. And it is why I asked Rachel Rossi, a former public defender, to lead it.

Our Office for Access to Justice is working closely with those of you on the front lines to identify and address the most urgent criminal and civil needs of communities across America.

Over the past few weeks, Department officials have crisscrossed the country to hear from public defense leaders on the ground.

Associate Attorney General Vanita Gupta will discuss those efforts soon in much greater detail.

Like the Attorneys General who came before me, I begin every day by walking through a rotunda outside my office, where these words are inscribed: "The United States wins its point whenever justice is done its citizens in the courts." The message of course, is that this is true regardless of whether the outcome is the one that the government favors.

This is what distinguishes our justice system from those of many other countries. And it is what distinguishes our Justice Department from the law enforcement agencies of many other countries.

We are responsible not only for enforcing the law, but for upholding the Rule of Law. We are responsible for protecting civil rights and for pursuing justice for all Americans.

And justice demands more than good prosecutors and good judges. It demands meaningful access to counsel for the accused, including those who cannot afford attorneys.

To provide that access, and to reaffirm the kind of faith in law upon which our democracy depends, public defender offices need more resources.

Our nation needs more lawyers to answer the call of public service by providing criminal defense for those who cannot afford it.

And as a legal community, we need to recognize and reaffirm the necessity and the nobility of the public defense profession.

When I was a law student, one of my mentors was John Hart Ely. Although he was recognized as one of the foremost legal scholars in the country, Ely emphasized that the thing he was most proud of was the work he did on the *Gideon* brief when he was a summer associate at Arnold, Fortas & Porter in 1962.

No doubt that influenced my own subsequent decision to join the same law firm.

The firm's then-senior partner was Abe Krash, who had supervised Ely and worked with Abe Fortas on the *Gideon* argument. Abe Krash never failed to emphasize to every new lawyer that Clarence Earl Gideon was the most important client the firm had.

Mr. Krash is with us today. He's 95 years old. *[Applause]* John Ely and Abe Krash knew that the integrity of the American criminal justice system depends upon effective representation for indigent defendants.

They knew that there are few things more meaningful and more honorable than applying one's talent, experience, and education to representing another person before the state – no matter what that person is accused of having

done.

And they knew that the impact of *Gideon* would be felt for generations.

And they knew that fulfilling the promise of *Gideon* would require each generation of our country's lawyers to take up its important cause.

The Justice Department is proud to stand with the public defenders and criminal defense attorneys in this room and across the country who are doing just that.

Thank you all for everything that you do.

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**Speaker:**

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**Component(s):**

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