



## OFFICE FOR ACCESS TO JUSTICE OF THE U.S. DEPARTMENT OF JUSTICE

*"[T]he current deficiencies in our indigent defense system and the gaps in legal services for the poor and middle class constitute not just a problem, but a crisis. And this crisis appears as difficult and intransigent as any now before us."*

Attorney General Eric Holder  
Remarks at the Shriver Center Awards Dinner  
October 14, 2010

### FIVE-YEAR ANNIVERSARY ACCOMPLISHMENTS

Since its launch in 2010, the Office for Access to Justice (ATJ) has served as the catalyst within the Department of Justice to marshal the power and resources of the Federal Government to secure fair outcomes for all in the justice system. ATJ works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance, and to improve the justice system that serves people who are unable to afford lawyers.

#### Indigent Defense

In the criminal justice system, public defender offices are underfunded and understaffed, often so severely that they cannot hope to provide their clients with effective representation. Indigent defender annual caseloads can range from 500 to 900 felony cases and over 2,000 misdemeanors, at least five to six times the recommended ceilings set by the National Advisory Commission on Criminal Justice. In some instances, jurisdictions have reported case load assignments to be so high that defenders average just seven minutes per case. Understaffing leads to lack of attention to individual clients' cases, which in turn can lead to grave injustice, including wrongful convictions and unjust imprisonment.

A key priority of the Office for Access to Justice is working with national indigent-defense advocacy groups and public defenders from across the country to address the crisis in the provision of indigent legal defense. To date, ATJ's accomplishments in this area include:

- **Supporting Development of Quality Indigent Defense Systems**

**As part of its work to protect the guarantee to effective assistance of counsel, the Office for Access to Justice, in partnership with the Civil Rights Division (CRT), has filed a series of Statements of Interest related to state criminal justice systems:**

*Wilbur v. City of Mount Vernon*: In 2013, ATJ and CRT filed a Statement of Interest in a class action lawsuit alleging that accused indigent defendants were systematically denied effective assistance of counsel. The Statement of Interest took no position on the merits of the case but requested that if the United States District Court found constitutional violations, it consider as part of its remedy workload controls for public defense providers and the appointment of an independent monitor to ensure compliance. On December 4, 2013, the district court found a systematic deprivation of the right to assistance of counsel and issued an injunction in favor of the plaintiffs that required the defendant cities to hire a part-time public defender supervisor tasked with monitoring and reporting on the delivery of indigent defense representation.

*Hurrell Harring v. State of New York*: In 2014, ATJ and CRT filed a Statement of Interest to offer the Department's views with respect to right to counsel. In this case, a class action pending before the Supreme Court of the State of New York, the plaintiffs alleged that, due to systemic failures in five New York counties, indigent criminal defendants had been constructively denied the right to counsel. The plaintiffs claimed that a lack of funding deprived public defenders of the time, resources, and ability to prepare cases or meaningfully represent their clients and amounted to the denial of counsel. In its Statement, the Department advised the court that under-resourcing public defense systems may force even otherwise competent and well-intentioned public defenders into a position where they are, in effect, a lawyer in name only. The case settled soon after the Department filed its Statement.

*Varden v. City of Clanton*: As part of the Department's commitment to ensuring that state and local criminal justice systems are fair, nondiscriminatory, and rest on a strong constitutional foundation, in 2015 ATJ and CRT filed a Statement of Interest in *Varden v. City of Clanton*. In this class action litigation, the plaintiff alleged that incarcerating individuals solely because of their inability to pay a cash bond violates the U.S. Constitution. The Statement evaluated the constitutionality of fixed-money bail practices and asserted that any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes poor public policy. The filing advocated that courts make an individualized assessment of each defendant to determine whether the defendant is a threat to public safety or a flight risk, and argued that pretrial detention should be based on an objective evaluation of these factors, not on the defendant's ability to pay.

[N.P. v. State of Georgia](#): In 2015, the Department filed a Statement of Interest in Georgia state court addressing right to counsel concerns for juveniles. The class action asserted that the public defense system in the Cordele Judicial Circuit has been so underfunded and poorly staffed that juveniles are routinely denied their right to legal representation. Based on legal precedent, the Department identified procedural safeguards that must be provided to children who appear in court. The Statement addressed the issue of waiver of counsel specifically and argued that if a child decides to waive the right to an attorney, courts must ensure that the waiver is knowing, intelligent, and voluntary by requiring consultation with counsel before the court accepts the waiver. The case settled less than a month after the Department filed its statement.

**After the passage of the Tribal Law and Order Act of 2010 and then the Violence Against Women Reauthorization Act of 2013, the provision of indigent defense services in tribal settings has been dramatically altered. ATJ provides expertise to Tribes, Tribal Public Defender Offices, and federal partners on the right to counsel and encourages the development of alternatives to incarceration based on traditional practices:**

*Special Domestic Violence Criminal Jurisdiction and Defendants' Rights*: In March 2013, President Obama signed into law the Violence Against Women Reauthorization Act, or "VAWA 2013". VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian Country. This new law generally took effect on March 7, 2015, but also authorized a voluntary "Pilot Project" to allow certain tribes to begin exercising SDVCJ sooner, if they could demonstrate to the Department that the rights of defendants are protected. The Office for Access to Justice was actively engaged in activities around the "Pilot Project" phase and provides defense-related expertise to the Department and interested Tribes.

*Native American Traditional Justice Practices & Alternatives to Incarceration*: ATJ and the Bureau of Indian Affairs' Office for Tribal Justice Support (OTJS) co-sponsored an expert group meeting in April 2013 on the use of traditional Native American justice practices to respond to criminal and delinquent behavior. The one-day roundtable meeting brought together leaders and experts on the use of traditional justice practices to discuss the benefits and challenges of these programs and developed recommendations to the Federal Government on how to support these practices. Both offices participated in a listening session at a peacemaking gathering hosted by the Chickasaw Nation in April 2014. [A report](#) summarizing the expert group's discussions and recommendations was disseminated to tribal criminal justice stakeholders in furtherance of the Tribal Law and Order Act's mandate that both Departments help tribes develop alternatives to incarceration.

**ATJ also supports the development of international guidelines and best practices on indigent defense. Through this activity, ATJ helps to ensure that U.S. best practices are shared on the global stage and international best practices are identified for potential transfer to the United States.**

*United Nations:* ATJ staff served on the U.S. delegation to the United Nations Commission on Crime Prevention and Criminal Justice (UN Crime Commission) to assist with negotiating a resolution which supported the [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#)—the first international principles and guidelines on indigent defense. On December 20, 2012, the General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187) and the United States was one of 16 co-sponsors of the UN Crime Commission resolution that first adopted the document in April 2012. ATJ has continued to participate in activity to support the implementation of the principles and guidelines, including the follow-up international conference on criminal legal aid in Johannesburg, South Africa in June 2014.

*Organization of American States:* ATJ represents the U.S. Government on access to justice efforts at the Organization of American States. This includes meetings called by the Committee on Juridical and Political Affairs and technical meetings on legal cooperation on access to justice of the Meetings of the Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA).

- **Assisting with the Creation and Development of Federal Resources to Support Indigent Defense Providers**

**ATJ works with the Department's Office of Justice Programs (OJP) to develop and support grant programs, training, and technical assistance for indigent defense providers:**

*BJA Solicitations:* ATJ worked with the Bureau of Justice Assistance (BJA) to develop a \$3.2 million grant program over two years to help jurisdictions implement one or more of the ABA Ten Principles of a Public Defense Delivery System. The purpose of the “[Answering Gideon’s Call: Improving Indigent Defense Delivery Systems](#)” grant initiative is to contribute to indigent defense practice and knowledge by implementing and testing approaches to providing quality indigent defense services using the Ten Principles. After receiving an impressive number of qualified applications, BJA awarded grants to four agencies in Texas, Delaware, Massachusetts, and Michigan in Fall, 2012. Each grantee is partnered with a research organization in order to track outcomes. In 2013, five new grants totaling \$4.5 million were awarded for training and technical assistance to cover trial advocacy training, pretrial advocacy, a comprehensive national study of public defender services, and state reform work in Mississippi, Utah, and elsewhere.

ATJ also worked with BJA in 2015 to develop a Smart Defense Initiative as part of BJA’s “Smart Suite” of criminal justice programs. The purpose of this program is to improve the

quality of public defense delivery systems guided by the Ten Principles. BJA estimates that it will make up to five awards of up to \$400,000 each for a 24-month project period, beginning on October 1, 2015.

*Byrne/JAG Guidance:* ATJ also worked with BJA to promote increased representation of the indigent defense community on the state and local advisory committees responsible for allocating DOJ's Edward Byrne Memorial Justice Assistance Grant (JAG) Program formula grants. The JAG Program provides federal funding for states and localities to promote effective strategies across the criminal justice system. The JAG program [solicitation](#) now includes important new language encouraging state and local jurisdictions to bring all system stakeholders, including indigent defense providers, together in the strategic planning process. It also requires applicants to submit information describing their strategic planning process and identifying whether or not they are making a commitment to indigent defense in both their planning and funding decisions.

With BJA and the National Criminal Justice Association, ATJ has also conducted a series of [webinars](#) to highlight the DOJ's ongoing work to encourage jurisdictions to bring together all system stakeholders in criminal justice planning conversations, and to showcase strategies for integrating indigent defense and other functions into criminal justice resource planning.

*NIJ-Supported Research:* In January 2011, ATJ and the National Institute of Justice's International Center (NIJ) co-sponsored an Expert Working Group on International Perspectives on Indigent Defense. The workshop identified domestic and international best practices for representing low-income defendants and devised a research agenda on indigent defense. A report summarizing the workshop and the expert working group's recommendations – [Expert Working Group Report: International Perspectives on Indigent Defense](#) – was issued in September 2011, which helped inform NIJ's [Solicitation for Social Science Research on Indigent Defense](#) issued on February 23, 2012. In Fall, 2012, NIJ announced \$1.5 million in grants to fund three research projects that are currently underway: (1) an evaluation of holistic defense methods; (2) an evaluation of the factors that affect juveniles' waiver of counsel; and (3) an examination of the challenges of representing indigent defendants with mental health disorders. In FY 2015, NIJ organized another research workshop on indigent defense.

*Tribal Court Trial Advocacy Training Program:* With the U.S. Department of the Interior's Bureau of Indian Affairs (BIA), Office of Justice Services (OJS) and OTJS, ATJ helped to launch the *Tribal Court Trial Advocacy Training* program. This three-day trial advocacy course is designed to improve the trial skills of judges, public defenders, and prosecutors who appear in tribal courts. Trainings have been held in Rapid City, SD; Phoenix, AZ; Duluth, MN; Ignacio, CO.; Great Falls, MT; Chinle, Navajo Nation, AZ; Seattle, WA; Albuquerque, NM; Flagstaff, AZ; Missoula, MT; Grand Forks, ND; Reno, NV; and Philadelphia, MS, and additional trainings are being scheduled for the coming year. All trainings are free and are staffed by attorneys from ATJ, Assistant United States Attorneys who practice in Indian Country, the Executive Office for U.S. Attorneys' Native American

Issues Coordinator, Assistant Federal Public Defenders, and tribal prosecutors, public defenders, and judges.

### **Civil Legal Aid**

The majority of Americans who come to court do so without a lawyer, left by their economic circumstances to face life-altering events — such as losing their home, the custody of their children, or even the privilege to reside in the United States — without legal assistance. More than 50 million Americans technically qualify for federally funded legal assistance, but over half of those who actually seek such assistance are turned away because available funding is so low. Similarly, for those living just above the qualifying line, even basic legal needs are beyond reach. There continues to be a substantial “justice gap” between truly meeting the needs of low- and moderate-income people and the resources available for civil legal services.

- **Advancing Federal Objectives through Partnerships with Civil Legal Aid**

**ATJ works across the Executive Branch to advance Federal priorities through partnerships with legal aid, including through the development of new and existing grant programs, training, and technical assistance for legal aid providers:**

*Legal Aid Interagency Roundtable:* Conceived of and staffed by ATJ, in 2012 the White House Domestic Policy Council (DPC) and DOJ convened the Legal Aid Interagency Roundtable (LAIR) to explore ways in which civil legal aid can support federal efforts to promote access to health services, housing, education, employment, family stability and community well-being. With its 18 collaborating Federal entities, LAIR has three main objectives: (1) identify programs within federal agencies that could be more effective and efficient and produce better outcomes for Americans if legal services were among the range of services for which funding is provided; (2) identify opportunities where civil legal aid partners can collaborate with federal agencies outside the grant-making process; and (3) identify and do away with unintended barriers that can prevent civil legal aid providers from becoming grantees, sub-grantees, or partners in federal initiatives. LAIR’s work is premised on the recognition that applying the power of legal services to meet federal objectives creates more opportunities for Americans to climb the ladder of opportunity to the middle class. LAIR members have worked diligently to determine which programs that help the vulnerable and underserved would better achieve their goals by including legal aid. A sampling of LAIR accomplishments includes:

- o More than two dozen grants involving reentry, access to health care, citizenship, homeless veterans, and other Federal priorities, have been clarified to allow legal services that further program goals;



- o More than two dozen webinars and other presentations to Federal grantees, the civil legal aid community, and Federal agency staff about how legal aid advances Federal priorities;
- o New training and technical assistance opportunities;
- o New research about civil legal aid;
- o Launch of [LAIR Toolkit](#) on ATJ's website, an online resource guide containing useful information about civil legal services, and how those services can help advance a broad array of Federal objectives;
- o International engagement by highlighting LAIR's efforts through activities related to the Universal Periodic Review (UPR) of the United States by the United Nations Human Rights Council, such as a civil society consultation on access to justice in April 2014 and reporting of LAIR efforts as examples of domestic human rights activities in the United States' 2015 UPR submission; and
- o The 2014 Government Service Award from the National Legal Aid & Defender Association.

*Interest on Lawyers' Trust Accounts (IOLTA):* In Fall 2010, the National Association of IOLTA Programs asked DOJ to support legislation to ensure continued unlimited FDIC insurance coverage for state IOLTA, due to an oversight in the drafting of the Dodd-Frank Wall Street and Consumer Protections Act. ATJ worked with DOJ's Office of Legislative Affairs to secure Department support for legislation to continue full FDIC protection for IOLTA accounts, and with Congressional leadership and staff to adopt the legislative fix.

*Notario Fraud Task Force:* ATJ has been involved in an intra-agency task force with other DOJ components to address the unauthorized practice of law in the immigration context (commonly referred to as "notario" fraud). The Notario Fraud Task Force is committed to developing educational materials so that those seeking immigration assistance do not fall victim to notarios and are able to identify legitimate representation. ATJ's primary focus in this effort has been increasing the availability of free and low-cost legal assistance for fraud victims through helping to organize a series of lawyer trainings and free legal clinics. ATJ has also participated in webinars focused on notario fraud issues.

*Deferred Action for Childhood Arrivals (DACA):* ATJ partners with the Department of Homeland Security in its efforts to inform and educate about DACA, conduct outreach, and build capacity of legal assistance for potential applicants. ATJ also assembled a resource guide on DACA that helps individuals avoid immigration scams and the unauthorized practice of immigration law. ATJ also partnered with U.S. Citizens and Immigration Services (USCIS), American Immigrant Lawyers Association (AILA), Catholic Legal and Immigration Network (CLINIC), the American Bar Association (ABA), and others to identify four underserved areas within the U.S. and host a series of programs that focus on public education, training, and free legal services with regard to DACA renewal. The first program took place in Los Angeles, California at the end of January 2015.

*Unaccompanied Immigrant Children:* In 2014, ATJ helped launch the "[justice AmeriCorps](#)" program—a partnership between the Department and the Corporation for National and

Community Service— to place lawyers and paralegals with organizations providing counsel to certain unaccompanied immigrant children.

*AmeriCorps VISTA:* To encourage use of AmeriCorps VISTA, the Federal Government's national service program designed to fight poverty, by the legal services community, ATJ and the Corporation for National and Community Service, drafted *A Guide to the AmeriCorps VISTA Program for Legal Services Organizations*.

*Hague Child Abduction Convention Guidance:* ATJ supports efforts to ensure that foreign parents of abducted children, regardless of their income, have access to legal services in the United States in cases brought under the Hague Convention on Civil Aspects of International Child Abduction. In December 2011, the Legal Services Corporation (LSC), in consultation with the Department of State and ATJ, [developed guidance](#) clarifying that LSC grantees have the authority to represent indigent foreign nationals in these cases brought in United States courts for the return of, or access to, their children.

*Academic/Practitioner Partnerships:* ATJ is working to support research about civil legal aid through a series of efforts: collaborating with the Stanford Center on the Legal Profession, the Harvard Program on the Legal Profession, and the American Bar Foundation on a 2011 roundtable forum about enhancing the role of legal scholars and teachers in closing the justice gap in America; hosting a series of meetings leading to a successful National Science Foundation (NSF) grant application by the American Bar Foundation for a December 2012 workshop to develop a broad research agenda and plan for a sustainable infrastructure to support the research; supporting a follow-up workshop for academic/practitioner teams with concrete research proposals, leading to at least 4 successful NSF grant applications; supporting a FY 2015 and FY 2016 \$2.7 million request in the President's budget for civil legal aid research; and a May 2015 convening on civil legal aid research hosted by NIJ, ATJ, and NSF.

### **ATJ advances access to legal services in high-stakes civil proceedings:**

*Foreclosure Mediation:* ATJ worked to increase access to foreclosure mediation programs for the millions of American households at risk of losing their homes by promoting best practices and effective research models, and by helping inform the national conversation on how the historic foreclosure settlement funds can support foreclosure mediation, legal assistance, and housing counseling. ATJ hosted several national-level convenings and briefings on effective foreclosure mediation strategies, and published two white papers: "[Emerging Strategies for Effective Foreclosure Mediation Programs](#)," and "[Foreclosure Mediation: Emerging Research and Evaluation Practices](#)." ATJ, along with the Department of Housing and Urban Development's (HUD) Housing Counseling Program, also hosted a briefing call for State Attorneys General to discuss the presence of and need for foreclosure mediation, legal assistance, and housing counseling resources in their states, and how settlement funds might support these activities.



*9/11 Victim Compensation Fund:* ATJ worked with other DOJ components, the New York City Bar, law schools throughout the New York region, the private bar, and advocacy organizations to help make sure that potential claimants for the 9/11 Victim Compensation Fund, including first responders and those who participated in the cleanup, could easily understand their rights and secure needed assistance. The website for filing claims was translated into Spanish, Mandarin Chinese, and Polish. Legal clinics were set up at law schools in the New York area to offer free assistance to individuals in filing their claims.

*Gulf Coast Claims Facility:* ATJ worked with the Associate Attorney General's office to be sure that those affected by the BP oil spill received clear explanations of the legal right to compensation and that the Gulf Coast Claims Facility (GCCF) provided for free legal assistance to individuals and businesses submitting claims to the GCCF. Ultimately, the GCCF recommended that practice be adopted by claims facilities addressing losses from future catastrophic events.

- **Supporting the Pro Bono Bar**

Working with the Department's Pro Bono Program, ATJ supported the revision of the Department's pro bono policy reissued in October 2014 that allows all DOJ employees up to 30 hours of administrative leave for pro bono work, such as court appearances and mediations that take place during business hours.

- **Establishing and Strengthening Access to Justice Commissions**

*Judicial Support for Commissions:* In July 2010, Senior Counselor Laurence Tribe gave keynote remarks at the Annual Conference of Chief Justices (CCJ) that included a charge to establish statewide Access to Justice Commissions in all states that lack a Commission, an entity that he described as "one of the most important justice-related developments in the past decade." Following his remarks, the CCJ unanimously adopted [Resolution 8: In Support of Access to Justice Commissions](#), urging states without active commissions to establish one. Staff has provided technical assistance to more than a dozen states considering creation of new Commissions, and supported ABA Resource Center for Access to Justice Initiatives, the Public Welfare Foundation and the Kresge Foundation in developing a national strategy for establishing and strengthening Commissions, bringing the total number of states with an active Commission to more than 30.

## Cross-Cutting Initiatives

The Office for Access to Justice also works with a diverse array of partners to tackle issues spanning the breadth of the justice system. These efforts, and the related speaking engagements of the DOJ leadership and ATJ staff, further draw the attention of the public to pressing access to justice issues.

ATJ's accomplishments in this area include:

- **Promoting Innovative Justice Solutions through Collaboration with the White House**

*White House Champions of Change Event:* ATJ took the lead in organizing a White House “Champions of Change” event on October 13, 2011, to honor and recognize the work of legal leaders from communities large and small who are dedicating their professional lives to closing the justice gap in America. Sixteen leaders from across the country were recognized for their work in public interest law and providing legal services to people throughout the country who could not afford them. Students, professors, clinicians, pro bono directors, and law librarians from [118 law schools nationwide participated live via the internet](#).

*White House Middle Class Task Force Event:* Attorney General Eric Holder and the Office for Access to Justice co-hosted a Middle Class Task Force event on November 19, 2010, at the White House with Vice President Joe Biden and announced a series of steps designed to help middle class and low-income families secure their legal rights. The actions included strengthening foreclosure mediation programs, helping veterans secure the legal help they need, and making it easier for workers to find a qualified attorney when they believe their rights have been violated.

- **Promoting Innovative Justice Solutions through Multi-agency Collaboration**

*Federal Interagency Reentry Council:* The twenty-member Federal Interagency Reentry Council, established by Attorney General Eric Holder in January 2011, represents a significant executive branch commitment to coordinating reentry efforts and advancing effective reentry policies. ATJ has played a critical role in the Council and has been working to increase support for legal services that help remove employment, housing and other barriers to the population exiting incarceration or supervision.

*U.S. Interagency Council on Homelessness:* The USICH is an independent agency within the federal executive branch dedicated to achieving the goals outlined in the first federal strategic plan to prevent and end homelessness, “Opening Doors.” ATJ convened a summit with the USICH, supported by HUD, which brought together stakeholders from around the country, including local officials, law enforcement, business representatives, and advocates

to discuss constructive alternatives to the criminalization of homelessness, including alternative justice system strategies. A related report, "[Searching Out Solutions: Constructive Alternatives to Criminalization](#)," further exploring themes raised at the summit was published in May 2012. ATJ led the Justice Department's efforts in producing a guide, "[Reducing Homeless Populations' Involvement in the Criminal Justice System](#)," intended to generate greater awareness in the field about Department of Justice resources available to serve homeless people, and those at risk of homelessness, who are involved in the criminal justice system.

- **Serve as US Government Experts on Access to Justice with Foreign Governments and International Organizations**

*Visiting International Delegations:* As the primary office in the U.S. Government charged with strengthening and improving criminal and civil legal aid, ATJ has met with officials, government representatives, and members of civil society from Afghanistan, Australia, Bulgaria, Canada, China, Finland, Hungary, Nepal, the Netherlands, Sweden, Thailand, Ukraine, the United Kingdom, Vietnam, and the West Bank on these issues.

*Serve as United States Government Experts on Access to Justice, International Legal Aid Group:* ATJ represents the U.S. Government in activities with a variety of international organizations and networks, such as the International Legal Aid Group, the Organization of American States, and various bodies of the United Nations. By participating in these efforts, ATJ can help ensure that U.S. best practices are shared on the global stage and international best practices are identified for potential transfer to the United States.

### **For More Information**

To be added to the Office for Access to Justice's quarterly e-newsletter mailing list, and to receive updates about funding, grants, ATJ publications and other related news please visit our email updates page by clicking [here](#).