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VII. Justice — A Reality or an Illusion

Nicholas Katzenbach†

Whether we are going to betray *Gideon*³¹⁰ or whether we are really going to achieve all that *Gideon* stands for depends very much on what your vision of society is. What is the kind of society that we want to live in? The Court that decided *Gideon* and certainly people like Abe Fortas and Abe Krash, had a vision of society, as I think did many in the 1960s — a vision that did not want two societies, one rich and one poor. It did not want haves and have-nots when it so often turned out that the have nots were black.

So it seems to me it is important and not easy to try to think of what it is that we are celebrating in *Gideon*. Is it providing attorneys in criminal cases or is it a much broader concept? *Gideon* may be about obtaining access for everybody in our society to the system of justice that we have — that's a big job. Not an impossible job, but a big one. *Gideon*, however, may be about the illusion of justice and not the reality of it.

Why do I say that? Because it seems to me that people of almost any political faith agree that, in criminal cases, defendants ought to have lawyers. But what kind of representation are they meant to have? Most criminal defendants are guilty, so it isn't just a question, I assume, of making sure that you haven't picked up an innocent person in that net. If we want equal justice, we want people to have the same representation that they would have if they had money: vigorous representation whether they are guilty or whether they are innocent. I think it is at that point that a surprising number of people get off the boat. These people say, yes, they ought to have a lawyer but look at all the other things they want. They want expert testimony for example. Why give them all that? That costs money. And so, it is not really popular.

† This section of the conference was presented by Nicholas Katzenbach — Partner, Riker, Danzig, Sherer, Hyland & Perretti; LL.B., cum laude, Yale University School of Law, 1947, Rhodes Scholar, Oxford University, 1947-49; United States Attorney General, 1956-66; Senior Vice President and General Counsel, IBM Corporation, 1969-86.

310. 372 U.S. 335 (1963).

We also have civil legal services programs. These programs were initially enthusiastically supported. But they have become less popular. Bright young lawyers that joined these programs were viewed as troublemakers and therefore the programs became less popular. Many people in society, the governor of my state, for example, will tell you that equal access isn't the problem of society; it is the problem of the lawyers. Lawyers ought to provide equal access, not other people. Lawyers ought to give their time. Other people should not have to give their money to achieve this.

Thus, it may be that what many in our society want *Gideon* to stand for is an illusion that there is equal access, that there is equal justice, when they are unwilling to pay the price to ensure that it actually occurs. I would say, therefore, that it is important to try and focus on what we want. No, *Gideon* is not going to be abandoned, but whether or not *Gideon* is betrayed or questioned or achieved is going to depend a good deal on what we want, and, perhaps even more, on what we are willing to pay for.