

Statement for Day of the Endangered Lawyer, January 2026

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Thank you all for being here.

Without Lawyers, no one would be there to stand between the awesome power of the government and the accused, the oppressed, and the marginalized.

Indeed, lawyers are now endangered in the US. The US has joined the list of dictatorships and autocracies where lawyers are threatened, jailed and even murdered. Every year, a particular country is selected as the focus country for the Day of the Endangered Lawyer (DEL), to concentrate attention on the specific challenges lawyers face there. Past years have focused on Turkey, the Philippines, Iran, Afghanistan, and Belarus, among others.

How long will it be in the United States before an ICE agent arrests (It has already happened) or even kills a lawyer in the US. That could happen any day because brave lawyers are on the front lines in the US, marching, serving as legal advisors, demonstrating, gathering evidence, representing immigrants and protesters. Any lawyer could be next for a trigger-happy ICE Agent.

As the DEL Report says, the US has long been held up as a model of constitutional governance, judicial independence, and civil liberties. Of course, this has frequently not been true for racial and ethnic minorities—basically anyone who is not white.

Now we see something vastly different. This Administration under President Trump wants to rid the country of all immigrants, legal and illegal, ignore all international standards and treaties. As for treaties, the US has never honored any it didn't like. The United States government made 500 treaties with the Native Americans and broke or failed to ratify every single one.

I want to talk about a bit more history so we can put this into perspective. Brave lawyers have stood against the government since this country was founded.

Courageous lawyers have been there when others--including other lawyers--turned their backs or heaped abuse.

John Adams, who went on to become the second president of the United States, defended the British soldiers who killed innocent American civilians during what became known as the Boston Massacre. Six of the soldiers were found not guilty, two were convicted of manslaughter, not murder. They were branded on the thumb as punishment.

John Adams said of his defense: "The Part I took in Defence of Cptn. Preston and the Soldiers, procured me Anxiety enough. It was, however, one of the most gallant, generous, manly and

disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country.”

Would John Adams have been willing to take that case today, knowing he wanted to be President?

Col. Kenneth Royall defended eight Germans who came ashore in 1942 intent on damaging US weapons factories. Six of the eight German agents were executed for sabotage and espionage. Two were imprisoned for long terms but eventually deported to Germany after the war.

Royall’s defense ensured that the accused had at least some due process in a hurriedly convened military commission during a war. It showed his commitment to rule of law even during a war.

Col. Royall, who later became Secretary of the Army, also proclaimed his defense of the Nazi saboteurs as his finest hour as a lawyer.

In 1954 the US Supreme Court held in *Brown v Education* that separate education for white and black children was not equal education.

The whole world saw the photograph of the US marshals surrounding a tiny six-year-old black girl as she walked out of a white school as segregationists shouted abuse and threats.

Would we win this case today? Would the government of today send US Marshall to protect a little black girl? I doubt it.

In 1963, Clarence Earl Gideon wrote to the United States Supreme Court on a yellow pad from his prison cell in Florida. He said he was innocent but did not have a lawyer to represent him. He would have spent most of his life in that cell, were it not for a lawyer’s vision and courage.

Mr. Gideon would never have had the second chance he needed to hear those sweet words, all accused wait to hear: "Not Guilty."

Where would Mr. Gideon have been if the lawyers who finally represented him did not have the courage to refuse to embrace the prevailing legal concept of the day that said that a poor person is not entitled to a free lawyer?

As a result of his yellow pad, all accused now facing jail time in the US have the right to a lawyer.

Would he get that lawyer now? In April 2025, the Trump Administration suddenly pulled federal funding from a multitude of organizations training lawyers, including those representing people charged with death penalty cases, most of whom are poor and rely on a free lawyer. At the same time, the number accused facing the death penalty has gone up because the Administration demanded that states add more death eligible crimes.

State public defenders must fight daily for the resources they need to effectively represent their clients. Does someone truly have a lawyer, when that lawyer is overworked with too many clients and not enough resources for investigation and experts?

In 1973, lawyers swam upstream to convince the US Supreme Court that a woman has a right to privacy over her own body, in *Roe v. Wade*. Now women have lost that right.

How many more significant cases will we lose with a Supreme Court weighted to support the far right and anything Mr. Trump demands.

Criminal defense lawyers in the United States have defended hundreds of terrorism cases, both citizens of the United States and non-citizens.

When the US, under President Bush, sent almost 800 men to Guantanamo starting in 2002 it assumed they would never have lawyers. But the Supreme Court eventually required lawyers for all of them. Would the current Supreme Court? At least six of the remaining 15 men at Guantanamo have never been tried and will not be. They are called forever prisoners.

The lawyers who took cases in Guantanamo did so pro bono, representing many innocent men who were captured in Afghanistan by bounty hunters in exchange for thousands of American dollars. Most of these lawyers worked for free to defend our precious liberties as they are gradually eroded and dismantled.

Liz Cheney, the daughter of former Vice President, Dick Cheney is herself a lawyer and former member of the US Congress. She advised lawyers not to take the Guantanamo cases, and she and others attempted to smear them as supporting terrorism. So, the lawyers who took those cases knew they might lose corporate clients.

But they didn't bend to the power of the government like we saw some of the Big Law firms do last year.

Indeed, the Trump Administration's executive orders issued in early 2025 targeted specific big law firms that had played a role in high-profile cases that concerned or implicated the current Administration.

These measures included provisions that severely restricted the exercise of the law firms' professional duties, stating for instance that a "firm's access to federal facilities is suspended," or that "the security clearances would be withdrawn" and more,

These and other severe limitations on lawyers—are now wielded as instruments of political power against those who litigate against or criticize the government. These are not random episodes, but part of a broad campaign to subordinate adversarial legal practice to political norms eschewing challenge or critical opinion.

Four of the targeted law firms challenged the Administration's orders in federal court. All four prevailed in final trial court decisions explicitly noting the retaliatory character of the

orders. Some are under appeal.

But nine law firms agreed to provide a total of \$940 million dollars in so called “pro bono” work basically, to anything the President wants. The details for who they are is in the Report.

They were afraid they would lose the ability to represent their big corporate clients who frequently have cases against the government. But the Washington D.C. Bar ethics committee noted that firms that enter into agreements with the government that may limit or shape their law practices must consider whether this will create a conflict of interest, and seek waivers from certain clients.

However, since the agreements as to what pro bono work the Administration will demand is unclear, “knowing waivers” (i.e. a waiver based on the client’s awareness of the right being abandoned, and the consequences of the abandonment) will be difficult to obtain.

So maybe they will lose these clients after all.

And then there are the sanctions. The US has sanctions against at least 25 countries. Trump has made this even worse by issuing executive orders against the ICC, defined as the ICC’s current or possible investigations into “protected persons,” meaning the US, Israel or certain allies, as an “extraordinary and unusual threat.” The order makes the provision of direct or indirect services by US nationals to those subjected to sanctions a criminal act under the International Emergency Economic Powers Act (IEEPA), punishable by up to 20-year prison sentences and fines of up to one million dollars. This was expanded to impose sanctions on a total of eight ICC judges, the ICC Chief Prosecutor, and two Deputy Prosecutors.

So how does this affect lawyers? A significant number of US lawyers work under the direction of the ICC Prosecutor and in support of the ICC judges in international criminal proceedings. Other lawyers represent victims at the ICC, who by their very nature, cooperate with the prosecutor. These sanctions criminalize the lawyer’s professional activity. You can read the details in the Report.

In July 2025, the Administration applied sanctions on the UN Special Rapporteur Francesca Albanese, whose UN mandate concerns human rights in the occupied Palestinian territories. These sanctions are unprecedented and clearly political.

Many more details are in the Report.

What else is so different now that we are endangered?

For one, we can no longer rely on the appellate Courts. The district courts have been firm at stopping the abuses of the Trump Administration. But the US Supreme Court almost always does what Mr. Trump wants. I read recently that the Supreme Court acted on 23 emergency applications, no briefs, no arguments, involving Trump policies and sided with the government fully or partially in 21 of them.

In cases in front of lower federal appellate courts, the government has only lost 12 of the 133 administrative cases before those courts during Trump's term.

For another, we now have armed troops—ICE, Immigration and Customs Enforcement. But they are the military-- just look at them with their names hidden, their faces hidden, armed, wearing flak jackets, carrying long guns.

They are not remotely like policemen or customs enforcement agents. A policeman would've gone up to Renee Nicole Good and told her to move, or she would get a traffic ticket, not run up to her and yell at her to “get out of the fmg car!” And her murderer is whisked away so they can get their stories straight. The Vice President says immigration agents are immune. That is not correct, but what difference does it make if the government refuses to prosecute and will not share evidence with the state of Minnesota?

What chance do we have? But we must not give up.

Yes, lawyers are endangered, we can no longer rely on the courts and lawyers may correctly fear going to jail or even fear for their lives, but as long as we have lawyers willing to stand up to the government, to demand that the rule of law be followed, we have a chance to turn this around.

Recently criminal defense lawyers in NYC on behalf of the Lawyers for the Rule of Law appeared in Immigration court to do whatever they could to support the immigration lawyers who were assisting their clients before they are removed from NY. The lawyers were waiting in a room titled Waiting Room. When they refused a clerk's demand that they not wait in the waiting room, who shows up but ICE in full battle regalia. Fortunately, ICE backed down this time, but the lawyers were willing to be arrested, dragged away.

All lawyers must be willing to stand up for our clients and the rule of law.

Because without lawyers, no one will be there to stand between the awesome power of the government and the rest of us. The dictatorship will have won. We cannot let that happen.

Thank you to the ECBA for nominating the US to be this year's focus of the Endangered Lawyer.

Thank you for inviting me.