

April 4, 2013

The Honorable Eric H. Holder, Jr.
United States Attorney General
Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Re: White House Commission on the Fair Administration of Justice for the Indigent Accused

Dear Attorney General Holder,

Honored to have been panelists at the Department of Justice's March 15 commemoration of the 50th anniversary of the historic decision in *Gideon v. Wainwright*, and inspired by your dedication to addressing persistent deficiencies in the provision of counsel, we have come together to propose the creation of a bipartisan, White House-sponsored National Commission on the Fair Administration of Justice for the Indigent Accused ("Commission").

In 1963, the United States Supreme Court declared it to be an "obvious truth" that a poor person accused of a crime "cannot be assured a fair trial unless counsel is provided for him," in the landmark *Gideon* case. Fifty years later, this promise remains unfulfilled in the majority of state and local trial courts in the country.

As House Judiciary Chairperson Goodlatte correctly pointed out in his anniversary letter, "[c]onfidence in our system of justice will be weakened if we cannot ensure that the government's evidence will be put to the test by able advocates." Yet today, defendants of insufficient means may wait weeks if not months to be appointed an attorney, only to discover that the lawyer is often juggling hundreds of pending cases while bearing the burden of financial incentives to do as little work on each client's case as possible.

In far too many jurisdictions, a judge controls which defense attorneys are allowed to take Sixth Amendment cases, and how much they will be compensated for doing so. This forces many lawyers to consider what they must do to please the judge, rather than advocating solely on behalf of the defendant. And in the lower courts, where misdemeanors are heard and felonies begun, the indigent accused often fail to get an attorney at all. It is unfortunately true, as Senator Leahy observed in his letter, that "in some parts of the country, it is better to be rich and guilty than poor and innocent[.]"

As you so aptly stated at the March 15th commemoration of the *Gideon* decision, "America's indigent defense systems exist in a state of crisis." Moreover, you declared that this crisis "is unacceptable – and unworthy of a legal system that stands as an example for all the world."

We agree with your assessment; and therefore we propose decisive action to address the problems that have prevented the dream of *Gideon* from being realized. Specifically, we propose the creation of an adequately staffed and supported bipartisan Commission, composed of experienced, creative and highly respected persons whose understanding of the criminal justice system and the right to counsel assure the requisite expertise and credibility so essential to effective results.

We propose that the Commission meet monthly for one full year. Special emphasis will be placed on the treatment of the indigent accused throughout the criminal justice process. The first six meetings should focus on the following topics:

1. Pre-trial release and use of cash bond;
2. Early appointment of counsel;
3. Independence of the defense function;
4. Increased use of diversion and reclassification of low level non-violent offenses to infractions;
5. Uncounseled waivers of representation; and
6. The fiscal and human costs of over-incarceration.

The next several meetings would be devoted to further study of one or more of these issues, or of additional topics the Commission might decide to examine. The final meetings would serve to hone and finalize the Commission's recommendations.

This recommendation is based, in part, on the successful experiences of states where significant improvement to their right to counsel delivery services has recently occurred, or is occurring, through similarly constructed bipartisan collaborative commissions. If desired, we will be happy to send you background materials on such efforts in Louisiana, Nevada, Idaho and Michigan.

The right to counsel is a precious right that goes to the core of who we are as a people. Just as the Second Amendment guarantees the individual the right to bear arms to protect liberty and to be a check against the potential tyranny of big government, and the Fourth Amendment protects every person from illegal searches and seizures unsupported by probable cause, so does the Sixth Amendment protect an individual's liberty by balancing the scales of justice from overreach by the machinery of law enforcement. May we never forget, as Representative Goodlatte reminds us, that "when Clarence Earl Gideon was retried for his alleged crimes, the testimony of a key witness against him was meticulously dissected, and discredited, by his appointed lawyer, leading to [his] acquittal."

In closing, we concur with the words of the United States Supreme Court in *Gideon*, "The right to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." The time is now, in the immediate aftermath of the historic anniversary, to rededicate ourselves to the enormous task of fulfilling the promise of *Gideon*. Thank you for your consideration of this proposal.

Sincerely,

Sue Bell Cobb (w.l.) Walter F. Mondale (w.l.)

Sue Bell Cobb

Walter F. Mondale

William Leahy Bryan Stevenson (w.l.)

William Leahy

Bryan Stevenson