

**James R. Silkenat**  
President

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October 15, 2013

Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington D.C. 20530-0001

Dear Attorney General Holder:

I write on behalf of the American Bar Association to express the Association's support for the creation of a National Commission on Indigent Defense. The ABA has been pleased and is grateful for the ongoing dialogue between the Department of Justice and the indigent defense community, as well as for the steps the Department has taken to address the ongoing crisis in indigent defense systems. I was proud to present remarks in August at the 50<sup>th</sup> Anniversary of the Criminal Justice Act. The ABA and many others have also recently commemorated the 50<sup>th</sup> Anniversary of the important Sixth Amendment principles enunciated in *Gideon v. Wainwright*. We believe that the creation of a commission, such as the one suggested by Former Vice President Mondale and others in an April letter to you, will help the criminal justice system do more than simply commemorate the passing of time.

There can be no denying that the indigent defense system in the United States is in crisis, as you have noted in remarking upon "our well documented...national difficulty to meet the obligations recognized in *Gideon*." That candid acknowledgement, as well as many other forthright descriptions of the "crisis of indigent defense" contained in the Statement of Interest filed by the Department of Justice in the *Wilbur v. City of Mount Vernon* case in Washington state, encourages the Association to support a working commission that focuses on efficient use of scarce resources without sacrificing effective assistance of counsel.

The ABA policy-making House of Delegates voted in February 2013 to "Urge Congress to establish an independent federally funded Center for Indigent Defense Services for the purpose of assisting state, local, tribal and territorial governments in carrying out their constitutional obligation to provide effective assistance of counsel for the defense of the indigent accused in criminal, juvenile and civil commitment proceedings." (Resolution 104A; also, substantially similar resolutions were adopted in August 1973 and February 1979.) This Resolution was proposed by the ABA's Criminal Justice Section, which is comprised of both prosecutors and defense lawyers.

The proposed commission may be but an interim step toward the establishment of a national center for indigent defense. However, the journey toward equal justice for all must begin

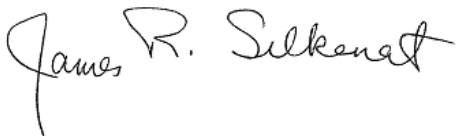
somewhere. With the proper focus, the commission can provide the momentum for indigent defense improvements similar to the progress that the Department of Justice's Defending Childhood Initiative has enabled for services to the children of this country.

It is vital that the commission work quickly and efficiently under a strict deadline; that it have a clearly defined mission; that it look at all defender systems - state and federal, public defender and appointed counsel systems, as none operate in a vacuum but all function within the same criminal justice system; and that it examine means by which the right to counsel can be assured to all who fall within the dictates of *Gideon* and the Sixth Amendment, avoiding arbitrary denials of assistance based on unrealistic eligibility requirements or other artificial barriers. Numerous blue-ribbon panels, including some created by the ABA, at both the state and federal level have sufficiently documented the persistent problems in fulfilling the constitutional mandate. The commission should not retrace their steps: it should focus on solutions and set goals for achieving them.

At a September 30th meeting between bar, indigent defense and Department of Justice leaders, Associate Attorney General Tony West noted that the formation of the commission would be informed by the participation of the bar and the indigent defense community. The ABA stands ready to assist, and to bring to the table extensive experience and expertise in the area of indigent defense, as demonstrated through promulgation of our *Criminal Justice Standards*, the *Ten Principles of a Public Defense Delivery System* and the *Eight Guidelines of Public Defense Related to Excessive Workloads*.

We, as a nation of laws, have not kept the promise of *Gideon* that the right to counsel is fundamental and essential to a fair trial. The ABA supports the establishment of a national commission on indigent defense to move us toward realizing the promise of the right to counsel.

Sincerely,

A handwritten signature in cursive script that reads "James R. Silkenat". The signature is written in black ink and is positioned above the typed name.

James R. Silkenat  
President