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Honorable Ted Deutch
United States House of Representatives
1024 Longworth Office Building
Washington D.C. 20515

Dear Representative Deutch:

I write on behalf of the American Bar Association to commend you for introducing the National Center for the Right to Counsel Act and to express our strong support for this important legislation. We believe that the enactment of your legislation and the establishment of a national center is an essential step forward toward fulfilling the promise of our Constitution.

The ABA and other organizations focused on the right to counsel have recently commemorated the 50th Anniversary of the important Sixth Amendment principles enunciated in *Gideon v. Wainwright*. There is widespread acknowledgment of the chronic and acute shortcomings of the provision of indigent defense, but also reaffirmation of the commitment to do more than simply commemorate the passing of time.

Over the five decades since *Gideon*, the ABA has played an instrumental role in developing standards and guidelines setting forth what competent counsel must do to adequately represent his or her clients. It has published white papers describing the state of public defense in America and has provided technical assistance to every state attempting to improve its public defense delivery systems. Those efforts have not been enough, and too many states still fall far below what the Constitution requires.

Thirty-five years ago, the ABA recommended that the federal government establish and fund an independent, nonprofit Center for Defense Services to administer matching grants and other programs to strengthen the services of public defenders, private assigned counsel, and contract defenders. As envisioned by the ABA, the proposed Center would receive funds directly from Congress and be governed by an independent Board of Directors appointed by the President. The establishment of such a program continues to be an ABA goal.

In an effort to speak directly to courts, legislators, and policy-makers, we developed the *ABA Ten Principles of a Public Defense System*. Their straightforward language describes what a sound public defense system must look like and proposes a constitutional floor below which no system should go. These 10 Principles provide a template to measure a system's health,

highlight what is broken, and then prescribe solutions. They are now used across the country in jurisdictions large and small.

In 2003 and 2004, the ABA held hearings across the country to honor *Gideon's* 40th anniversary. The resulting report, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, (2004), concluded that "indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction." The ABA report recommended that to fulfill the constitutional guarantee of effective assistance of counsel, the federal government should provide substantial financial support for the provision of indigent defense services in state criminal and juvenile delinquency proceedings. While some federal funding reaches state criminal defenders and defender offices under the Byrne Grant and Justice Assistance Grant programs, indigent defense services have remained poor stepchildren compared to state prosecutors and prosecutorial resources funded through those programs. The ABA believes that state indigent defense should be made a priority area for support from those critical federal programs.

Rules of professional responsibility, underscored by recent ABA ethics opinions, require defenders and their supervisors to provide competent services and not to accept excessive caseloads that undermine the quality of their representation. However, the relentless assignment of new cases routinely prevents adherence to this admonition. And the situation has become much worse due to the economic downturn.

The ABA believes that the need is urgent. A chronic, persistent indigent defense crisis has reached a point of system breakdown in a number of states, and lawyers increasingly have sought relief in the courts, often unsuccessfully. With a few notable exceptions, the judiciary is not responding to the crisis. It is up to Congress to act.

Earlier this year, on the eve of the 50th anniversary of *Gideon v. Wainwright*, the ABA renewed its call for the creation of an independent federally funded Center to assist state, local, and territorial governments to comply with their constitutional obligation to provide effective defense services to the indigent accused. We are grateful for your leadership in introducing the National Right to Counsel Center Act, which embodies our shared goal of establishing a national center that would work with state advisory bodies toward comprehensive improvement of public defense delivery nationwide.

The ABA looks forward to working with you toward House passage and final enactment of this legislation.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman