May 12, 2015

The Honorable Charles E. Grassley  
Chairman, Senate Judiciary Committee  
Dirksen Senate Office Building, SD-224  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Member, Senate Judiciary Committee  
Dirksen Senate Office Building, SD-152  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

I write on behalf of the American Bar Association (ABA) to commend the Judiciary Committee for scheduling a hearing on the Sixth Amendment right to counsel in misdemeanor cases. As the United States Supreme Court held in its landmark 1963 ruling in *Gideon v. Wainwright*, “lawyers in criminal courts are necessities, not luxuries.” (372 U.S. 335, 344). Yet millions of Americans each year face misdemeanor charges without counsel by their side. Given the number of lives affected, and the serious repercussions of conviction, the denial of the right to counsel in misdemeanor cases is a major problem in the United States. The ABA applauds your attention to this pressing systemic issue.

Because they frequently appear to have modest impact on the community, misdemeanors rarely garner media attention, although, nationwide, misdemeanors account for 70% to 80% of all criminal cases. The direct consequences of misdemeanor conviction—including imprisonment, probation, fines, and fees—are substantial. Additionally, the so-called “collateral consequences” of misdemeanor conviction—including denial of employment, denial of professional licenses, student loan ineligibility, or loss of housing—can be devastating and may be imposed for life. (See [www.abacollateralconsequences.org](http://www.abacollateralconsequences.org).)

Despite potentially life-changing consequences, many Americans face misdemeanor charges alone, in violation of the Sixth Amendment. Without an attorney, laypersons stand little chance of successfully navigating the criminal justice system. Consequently, the ABA strongly supports the right to counsel. See, e.g., ABA Defense Function Standards, 4-2.3 (4th ed., approved Feb. 2015) (“A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance.”).

Even when counsel is appointed, many defendants are still denied their Sixth Amendment right to counsel’s effective assistance. Public defense attorneys assigned to misdemeanor courtrooms often represent hundreds or thousands of clients each year—far too many to deliver the representation recommended by the *ABA Standards for Criminal Justice* or the *ABA Ten Principles of a Public Defense Delivery System*.

Assembly-line justice in misdemeanor cases falls short not only of our nation’s ideals, but of its constitutional guarantees. Yet it occurs every day in courtrooms across the United States. By way of
example, in Upstate New York, nonattorney judges frequently fail to appoint counsel, leaving no one except the prosecutor with legal training in misdemeanor courtrooms. These unfair and indefensible practices are repeated in many other jurisdictions throughout the nation.

The ABA appreciates your attention to this urgent challenge and stands ready to assist you and the Committee in addressing the right to counsel in misdemeanor cases.

Sincerely,

Thomas M. Susman