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**I. Scott Messenger**  
Chief Operating Officer

January 6, 2010

Governor Steve Beshear  
Commonwealth of Kentucky  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601

RE: Public Safety Requires Funding Public Defense

Dear Governor Beshear,

You know far better than us that Kentucky, like many other areas in the country, faces an unprecedented budgetary crisis. In the past, you have made sure that Kentucky public defenders had enough resources to get through the last fiscal year in these challenging times because you understand and appreciate the fact that the courts cannot function properly and public safety is at risk when defenders are unable to perform their constitutional role. Sufficient resources for defenders are evermore needed as fiscal shortfalls increase if financial efficiency is to be ensured and a waste of taxpayers' dollars avoided.

More than 45 years ago, the United States Supreme Court handed down its landmark decision in *Gideon v. Wainwright*, which found that "lawyers in criminal courts are necessities, not luxuries." The Court concluded that governments have an obligation under the U.S. Constitution to provide legal representation for people charged with a felony who cannot afford to hire their own counsel. Soon afterwards, the Court extended *Gideon*, applying the right to juvenile delinquency cases and to misdemeanor cases where imprisonment may result. This right to counsel is now accepted as a fundamental precept of American justice, yet is often implemented in ways that betray the great promise of *Gideon*.

We are co-chairs of the Constitution Project's bipartisan National Right to Counsel Committee. Its members are individuals with expertise in every relevant part of the criminal justice system - including prosecutors, judges, victim advocates, defenders, and scholars. In *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, the Committee unanimously concluded that this country's indigent defense system is in crisis, that the government's obligation to provide lawyers in these cases has for too long been ignored, and that it cannot be ignored anymore. We issued 22 recommendations for urgently needed reforms - reforms that we urge Kentucky to adopt.

Our recommendations are not just a matter of what our Constitution requires. They are also a means to conserve limited resources and ensure public safety. Public defenders who are properly trained and funded help ensure that a criminal trial is properly conducted, reducing the chances of costly appeals. These public defenders lessen the likelihood that innocent people will be wrongly convicted while the true perpetrators remain free, continuing to victimize society.

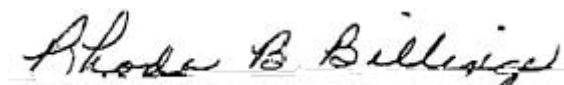
As you know, every year, Kentucky's public defenders provide representation to defendants in over 147,000 cases, each handling a caseload that is two to three times what a private attorney would reasonably be expected to manage. Public defenders work long hours. With burdensome caseloads and work hours, the resources of the Public Defender's Office are stretched beyond reasonable limits. Any potential funding cut would only exacerbate the situation and jeopardize the fairness and reliability of Kentucky's criminal justice system.

America's criminal justice system is a model for the world. It contemplates defense lawyers who serve as the primary safeguard against the risk of wrongful conviction, who actually talk to clients, learn their stories, and investigate the facts and circumstances of their charges in order to effectively advocate for them. It contemplates that the quality of justice should not be determined by the amount of money a criminal defendant has. Our Sixth Amendment is not only intended to serve the interests of an individual charged with a crime, it serves a fundamental American value for all of us.

The recent Kentucky Bar Association Roundtable, composed of prominent criminal justice leaders including judges, prosecutors, defenders, and law school professors, recommended that "adequate funding should be provided to the courts, prosecutors, and public defenders so the criminal justice system in Kentucky can properly protect constitutional rights, guarantee public safety, and ensure that the courts render valid and reliable results in a timely and fair manner." We echo its recommendation.

As you lead Kentucky while it faces extraordinary budgetary pressures, we ask that you continue to find cost-effective ways to fund the essential right to counsel. We urge you to provide defenders with sufficient resources in the coming months and in your proposal to the General Assembly for the state's next two-year budget. Failing to do so will not only cost the Commonwealth more in the long run, it will betray one of the Constitution's most fundamental rights in the process.

Sincerely,



Rhoda B. Billings  
*Former Chief Justice of the North Carolina Supreme Court*



Robert M.A. Johnson  
*District Attorney for Anoka County Minnesota*



Timothy K. Lewis  
*Former Judge on the United States Court of Appeals for the Third Circuit*

*The authors are co-chairs of the Constitution Project's National Right to Counsel Committee.*