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Safeguarding Liberty, Justice & the Rule of Law

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April 29, 2016

The Hon. Sean Patrick Maloney
United States House of Representatives
1529 Longworth House Office Building
Washington, DC 20515

Re: The Constitution Project Support for the Equal Justice Under Law Act

Dear Representative Maloney:

On behalf of The Constitution Project (TCP), I write to commend you on the introduction of the Equal Justice Under Law Act of 2016. The right to effective representation by counsel is a fundamental principle underlying our criminal justice system. Congressional attention to the crisis in our indigent defense system is a welcome development. Thank you for your leadership on this issue and for introducing Equal Justice Under Law Act. TCP is pleased to support it.

As you may know, TCP is a nonpartisan organization that promotes and defends constitutional safeguards. Our work—which is driven by bipartisan committees of experts who craft consensus solutions to the issues we address—has long focused on reforming the nation’s broken criminal justice system and strengthening access to justice.

More specifically, TCP has been working for years to fully realize the Sixth Amendment right to counsel, through the reports and policy recommendations of our blue-ribbon [National Right to Counsel Committee](#) (Committee). Former Vice President Walter Mondale and former FBI Director and federal judge William S. Sessions serve as honorary Co-Chairs of the Committee, which comprises a politically diverse group of former judges, prosecutors, defenders, scholars, and others with firsthand experience in the system. We are determined to assist governments in realizing the promise of *Gideon v. Wainwright* that any person accused of crime, regardless of his or her ability to afford a lawyer, has the right to effective legal representation under the Sixth Amendment.

In 2009, the Committee issued [Justice Denied](#), which documents the structural and financial impediments jurisdictions face in ensuring that indigent defendants receive effective assistance of counsel and sets forth consensus recommendations to overcome them. The Equal Justice Under Law Act would implement one of the Committee’s key recommendations:

When indigent defense systems require defense attorneys to represent more clients than they can competently represent or otherwise fail to assure legal representation in compliance with the Sixth Amendment, litigation to remedy such deficiencies should be instituted.

The Committee reached this recommendation after examining the adequacy of legal representation for people facing any potential loss of liberty, whether for a traffic violation, commission of a minor offense, or failure to pay a fine or some other

probation violation.¹ The Committee’s investigators—two former judges and one law professor—visited eight jurisdictions across the country and made a number of troubling findings, including:

- In **Rhode Island**, a judge offered a defendant six months in jail for an immediate guilty plea without counsel and cautioned that if the defendant requested a lawyer, he would likely be sentenced to three years in jail.²
- In **Ohio** and **Indiana**, many juveniles waive the right to counsel and acknowledge guilt without ever speaking to a lawyer.³
- In **Mississippi**, a woman accused of stealing \$200 from a slot machine languished in jail for eight months without a lawyer before she finally decided to plead guilty in order to get of jail.⁴

Often, counsel was either provided late or not provided at all. The following is illustrative of the Committee investigators’ findings on this problem:

[T]he judge advised . . . [approximately 15] . . . defendants [all of whom were in custody] that they had the right for counsel to be appointed, but the circumstances. . . almost impel indigent defendants to plead guilty and give up their right to counsel. There is no public defender or appointed counsel present at the proceedings with whom defendants can consult. Consequently, a defendant who wants . . . counsel must wait several days for counsel to be appointed and possibly several more days for appointed counsel . . . to make contact.⁵

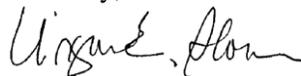
In such cases, all but one or two defendants pled guilty and received fines with probation and suspended sentences.

And even jurisdictions in which a public defender *was* available to represent an accused defendant, the investigators found that she or he was often laboring under such an excessive caseload that effective representation under the Sixth Amendment was simply not possible. For example:

- In **Tennessee** in 2006, six misdemeanor attorneys handled over 10,000 cases, averaging just less than one hour per case.
- In **Miami, Florida**, defender misdemeanor caseloads rose from 1,380 in 2006 to 2,225 in 2009. One defender was so busy that he did not have time to check the calculation of a minimum sentence for a client charged with theft. He accepted the prosecutor’s calculation of 2.6 years, but later found—only through the prosecutor’s disclosure—that the client’s minimum sentence was only one year.

Thank you again for your leadership on this important issue affecting the millions of Americans each year who are unable to afford a lawyer. We hope that that you will look to TCP, our reports, and our Committee members as a resource on issues affecting access to justice for defendants. Please do not hesitate to reach out to Madhu Grewal, Senior Counsel, with any questions ((202) 580-6939 or mgrewal@constitutionproject.org).

Sincerely,



Virginia Sloan

¹ THE CONSTITUTION PROJECT NAT’L RIGHT TO COUNSEL COMM., JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 85 (2009) (hereinafter JUSTICE DENIED). The jurisdictions were California, Colorado, Florida, Georgia, Mississippi, Nevada, South Carolina, Texas, and Washington. *Id.*

² JUSTICE DENIED, at 89.

³ *Id.* at 87. Jurisdictions employ varying nomenclature to describe the entrance of a guilty plea in juvenile proceedings, including “acknowledgement of guilt,” “assumption of responsibility,” or that the youth is “found involved” – all of which are tantamount to and have the same effect as a guilty plea.

⁴ *Id.* at 86-87.

⁵ *Id.* at 85-86.