



The Honorable Sean Patrick Maloney
United States House of Representatives
1027 Longworth House Office Building
Washington, D.C. 20515

February 2, 2017

Re: Support for the Equal Justice Under Law Act

Dear Representative Maloney:

The National Association of Criminal Defense Lawyers strongly supports the Equal Justice Under Law Act. Fifty-three years ago, the US Supreme Court declared, “Any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him.” Despite progress over the last 50 years, the right to counsel in all criminal prosecutions announced in *Gideon* is far too often short-changed or ignored.

Numerous recent reports and court decisions have documented the severe underfunding of the public defense function across the country and the resulting failures to provide counsel when required by law. One of the best overviews is the 2009 report “Justice Denied” by The Constitution Project’s National Right to Counsel Committee. That distinguished group summed it up well: “Today, in criminal and juvenile proceedings in state courts, sometimes counsel is not provided at all, and it often is supplied in ways that make a mockery of the great promise of the *Gideon* decision and the Supreme Court’s soaring rhetoric.”

Nationally, the average defender caseload is 360 cases, well above existing caseload standards. There are offices where attorneys handle well over 1000 felonies per year. While 22 states have state-based indigent defense systems, the others have county-based, which means those public defense systems are subject to unpredictable and frequently deficient funding streams. Forced to make cuts, offices have no money for training; indeed, in some offices, new defenders have no training before taking on hundreds of cases. Lack of adequate funding forces some jurisdictions to do triage, meaning accused persons are denied counsel for bail hearings and misdemeanor

proceedings. The NACDL has documented these problems across the country, most recently in South Carolina and Indiana.¹

The lack of adequate financing for public defense increases pretrial detention, increases the length of sentences, increases the pressure on defendants to plead guilty, inevitably leads to wrongful convictions and results in a loss of confidence in our criminal justice system.

As Senator Grassley noted at a 2015 hearing, “Many states are not providing counsel as the Constitution requires.” Likewise, at the Justice Department's 50th Anniversary Celebration of *Gideon*, then Attorney General Eric Holder observed: “America’s indigent defense systems exist in a state of crisis.” The Equal Justice Under Law Act would provide important tools to alleviate the crisis. True justice in our adversarial system can only be achieved – and our fundamental rights can only be safeguarded – through the assistance of competent defense counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "B. J. Pollack". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Barry J. Pollack
President

¹ [*Summary Injustice: A Look at Constitutional Deficiencies in South Carolina’s Summary Courts*](#), National Association of Criminal Defense Lawyers (2016); [*Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights*](#), National Association of Criminal Defense Lawyers (2017); [*The Right To Counsel in Indiana: Evaluation of Trial Level Indigent Defense Services*](#), Sixth Amendment Center (Commissioned by NACDL) (2016).