



**An Open Letter to Judge Sean C. Gallagher,
Court of Appeals of Ohio, Eighth Appellate District**

February 10, 2016

Dear Judge Gallagher:

We read with interest and dismay your “Sua Sponte” comments in the recent issue of *Litigation Journal* (Winter, 2016), in which you respond to the featured article entitled “Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads” written by several of our American Bar Association (ABA) colleagues. Among other things, you claim that such a characterization “is an oversimplification that doesn’t hold up.”

Instead, you maintain, despite considerable evidence to the contrary, that our criminal justice system is “overwhelmingly fair” and that we must “find an acceptable balance between efficiency and justice.” Finally, you rather cynically urge all of us to “accept the reality that things are not going to dramatically change.”

That we refuse to do. We are the National Association for Public Defense (NAPD), a two-year-old organization of more than 13,000 public defenders all over America who everyday do the heroic, indeed Sisyphean work of defending poor people accused of crimes against the power of the state. The pervasive problem of excessive public defender workloads all over America was the primary organizing principle driving the formation of the NAPD.

As noted by our ABA colleagues in their well-documented article, both the Missouri Supreme Court (in 2012) and the Florida Supreme Court (in 2013) have squarely held that a judge exceeds his authority and is subject to an immediate writ of prohibition when he orders a public defender to violate the Rules of Professional Conduct and the United States Constitution by accepting new appointments when that public defender has so many cases that she cannot provide reasonably effective assistance of counsel to each one of her clients.

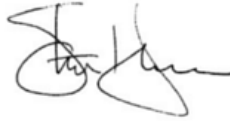
In sharp contrast to your observation that our criminal justice system is “overwhelmingly fair,” the Florida Supreme Court described the evidence presented in that case as “a damning indictment of the poor quality of trial representation being afforded indigent defendants.”

Led by the ABA’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and some of our nation’s leading accounting and consulting and research organizations, we are now generating the reliable data and analytics (not just anecdotes and generalizations) that will provide the factual predicate for systemic case refusal as a remedy for such systemic Sixth Amendment and ethical violations all over the country.

So we refuse to accept your admonition to accept the reality that things are not going to change. On the contrary, that is precisely what things are about to do.

Justice Stevens, speaking in a Fourth Amendment context that could well apply in the Sixth Amendment context, has described our criminal courts as “loyal foot soldier(s) in the Executive’s war on crime.” We will no longer march to the beat of that drum.

Sincerely,



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