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Indigent Defense in New Orleans: Better Than Mere Recovery

Vol. 33 No. 4

By Stephen I. Singer

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Sometimes change is sudden, unsettling, and dramatic. Hurricane Katrina effected change with a vengeance. Water lapped at the criminal district courthouse steps and drowned the evidence room, prisoners saved from the floodwaters baked out on the 100-degree highway before getting lost in the system for months, the indigent defense structure, such as it was, blew away with the last of the hot winds.

At other times, change is slow, barely perceptible, and creeps along in painfully small increments. That is the case with the rebuilding of the indigent defense structure in New Orleans. If we are lucky, that system will be nothing like it was. To understand the profundity of something as simple as a public defender's office having its own office space, one has to understand a bit about how terribly broken the indigent defense system was before Katrina—mercifully—demolished it.

A Pre-Katrina Disaster

Every outside expert who has studied indigent defense in New Orleans has concluded that the system was a disaster—among the worst in the nation. The Department of Justice Bureau of Justice Administration described it as "court-based," catering primarily to the needs and convenience of the court and the individual criminal court judges rather than to those it was supposed to serve—its clients.

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The New Orleans Public Defender's Office was composed of forty-two attorneys who, save a few exceptions, were part time and were paid relatively small salaries. The public defenders maintained private practices that included private criminal cases in Orleans Parish. Because they were salaried, there was a perverse financial incentive to spend as little time as possible on their public cases so they could devote more time to private ones.

Cases were rarely investigated. Witnesses were rarely tracked down and interviewed. Public defenders infrequently visited their clients in jail or met with their families. Little, if any, time was spent preparing and filing motions or researching legal issues. Public defenders appeared in their designated courtrooms on their scheduled days, handled whatever matters were on the docket that day as quickly as possible, and then left to attend to their private practice or other matters.

Because the public defenders handled private criminal cases in the same courthouse as their public cases, there was an incentive to please the judges—or at least not anger them—and gain favorable treatment for their paying clients. This coincided nicely with the judges' and prosecution's interest in moving through the docket as fast as possible. Most days, most courtrooms were empty by lunchtime.

To encourage the speedy resolution of cases, individual public defenders were assigned by courtroom, not by cases or clients. Each handled whatever came through the courtroom doors on that day, attending to the needs of "his" or "her" judge, who referred to the defender as "my" public defender. Indeed, one district court judge famously paid one of the public defenders extra money out of court funds so that the defender would give up private practice and be "his" public defender full time. That judge no longer sits in the Orleans criminal district court. He was promoted to the intermediate appellate court.

This courtroom-based system of representation has had devastating consequences for indigent defendants in New Orleans. In Louisiana, the prosecution has forty-five days in the case of misdemeanors and sixty days in the case of felonies to file charges. The accused are usually held in jail during this time because they are too poor to post the draconian bonds set at the initial appearance. The horizontal structure of the New Orleans Public Defender's Office would leave an accused person unrepresented—hence, no investigation, few preliminary hearings, no bond reduction motions, no preservation of exculpatory evidence—for upward of two to three months. Only after formal charges were filed was a case allotted to one of twelve divisions of the Orleans Parish Criminal District Court. Only for arraignment, which may be

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up to another thirty days later, did the accused finally meet a public defender and obtain any sort of attorney for representation.

The primary source of funding for the office was, and still remains, fees assessed on every conviction, including municipal and traffic violations and bond forfeitures, creating a perverse interest in the public defender's office as a whole: its funding is based on bad outcomes for its clients.

To further intertwine the public defenders with the court, the "office" consisted of a single room in the courthouse where coats, briefcases, and umbrellas could be left. There was no privacy for attorneys to meet with clients, families, or witnesses, and the attorneys did not have their own computers, telephones, or desks. Of the four working computers, only two had Internet access, and the two phone lines did not have voice mail. The office consisted of a few file cabinets, several shared desks, and a single copier for the entire staff of forty-two attorneys.

The public defender's office is supervised by a board of directors appointed by the criminal district court judges. Before and immediately after Katrina, this board consisted of private criminal defense attorneys who regularly practiced before the judges who appointed them. Indeed, the chair of the board was the attorney for the police officers' foundation and routinely represented police officers accused of misconduct. The board exercised direct control over hiring and firing and the assignment of attorneys. Overall, the system sorely lacked independence from the judiciary and had no semblance of competent, client-centered representation.

The Immediate Post-Katrina Havoc

While Katrina clearly wreaked havoc on the lives of many who were jailed when the hurricane hit New Orleans, the foregoing description demonstrates that there was little to lose for the indigent defense system. After Katrina wiped out the primary source of funding for the office—fees on traffic tickets—the staff was reduced to six attorneys and one support person to handle more than 6,000 open cases. No one knows the actual number of open cases because the office had no case management system. Large numbers of cases never had even a paper case file, let alone an electronic one. Because the office itself was not flooded by Katrina, this shortcoming can be attributed to poor office practices.

Change and Resistance

In April 2006, the old board of directors was finally ousted and a new, more professional and independent board was installed. It is composed primarily of attorneys who do not practice before the criminal district court judges. The new board brought on a new management team to reform and rebuild the office in the summer of 2006. That team includes Ronald Sullivan as chief consultant,

Jonathan Rapping as training director, Christine Lehmann as special litigation counsel, and me as chief of trials.

The first change one will notice is that there actually *is* a physical public defender's office. The public defenders have leased an entire floor of an office building a half block from the courthouse and jail. The office has a reception area, a conference room for meetings and training, and private interview rooms. It has furniture donated by the Minnesota Bar Association. The attorneys have 'offices' with doors so that they can work and meet with clients, families, and witnesses in private. Each attorney has a desk, a telephone with a personal extension, and voicemail. Each has a laptop networked through individual docking stations their desks with an office-wide e-mail system, financed through a donation from the Louisiana State Bar. The District of Columbia Public Defender Service donated a state-of-the-art case management system, which is being installed. These seemingly ordinary aspects of any modern, functioning law office are nothing short of revolutionary for the New Orleans public defenders.

Another major change was the added requirement that all public defenders be full time and give up their private practice. Despite a salary increase, on par with the Orleans Parish District Attorney's Office, the change to full time caused an outcry from some public defenders, several of whom vacated their positions, as well as judges. Feeling the small breeze of change beginning, many judges objected, strongly preferring their dependent, part-time public defenders.

These judges played out their objections in the media and in court. The switch to full-time representation initially left some temporary gaps in representation, all of which were quickly filled. Suddenly and ironically, these judges were interested in the lack of representation for clients for whom they had shown little regard until this point. As a result, the judges have threatened to hold me in contempt over a half dozen times since I joined the office. They issued a contempt order and scheduled a contempt hearing against the top management and directors of the office for failure to assign and staff the office in the manner the judges desired. The judges backed down when confronted with negative press and a governing statute that prohibits them from participating in the management decisions of the office.

More recently, the chief judge of the Juvenile Court in New Orleans held me in contempt and incarcerated me at the Orleans Parish prison because he was dissatisfied with the way the court was being staffed and refused to discuss the status of reform in the public defender's office. I was released after several hours when the intermediate appellate court stayed the contempt ruling, which was later dismissed. The judge and I met, talked about the

pending reforms, and both subsequently appeared on the local news, speaking the same pro-reform message. Shortly thereafter, the office contracted its juvenile cases with a national, award-winning juvenile services organization.

Instead of relying upon an old guard, the office hired a new crop of energetic, committed young attorneys in the fall of 2006. Instead of being sent into courtrooms without any training, as their predecessors were, the newcomers were provided with intensive, weeklong training programs. The office plans to hire its second "class" of new attorneys this fall and is actively recruiting dedicated law students from around the country. This sort of nationwide recruitment is light years away from the old system of "appointments" among local friends.

In addition, the public defender's office is in the process of converting to a structure of vertical representation that provides continuous representation from first appearance, within twelve to twenty-four hours of arrest, through the conclusion of the case. The first step in this process is also meeting with judicial resistance. To make this conversion, the office must cover the huge backlog of cases in the sections, and it has relied upon an emergency pro hac vice rule passed for this purpose. The rule has allowed the office to create partnerships with the Public Defender's Offices in Minnesota, Philadelphia, and Washington, D.C.—all top-flight offices—which are sending two or three attorneys each for six-month sabbaticals to help represent indigent clients.

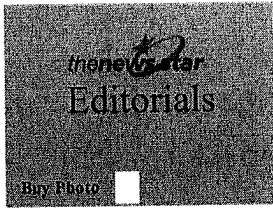
Again sniffing the winds of change, the chief judge refused to allow any out-of-state attorney to practice in his courtroom without a Louisiana lawyer literally by his side at all times. The rule does not require this, but change comes hard, and many of the judges will not go down without a fight.

Many of the judges have complained vociferously that the reform effort is a waste of money and that, against all reports, the criminal justice system in New Orleans worked just fine before Katrina and the public defender's office simply needs to return to the way it was. These judges have complained that money for proper office space, for computers and a modern telephone system, and for proper salaries for full-time attorneys are all a waste of resources. Yet, the current board and management team of the New Orleans Public Defender's Office are striving for more than recovery from a storm. We are fighting for real justice for real people for the very first time.

As published in *Human Rights*, Fall 2006, Vol. 33, No. 4, p. 9-11

Find cash for proper defense

8:55 p.m. CT March 18, 2015



(Photo: THE NEWS-STAR)

By now, the line is etched permanently in the memory. It was heard in every episode of "Law & Order" and countless other police shows on TV.

You have the right to an attorney. If you cannot afford an attorney, one will appointed to you.

It's part of the Miranda rights that protect us against overzealous police and prosecutors, as American as the premise that all are to be considered innocent until proven guilty beyond a reasonable doubt.

The reality is, in most cases, police get it right. The person arrested is guilty. And providing representation is costly to taxpayers. Approximately 90 percent of cases in the criminal justice system require a public

defender. Why bother?

Easy. The system can get it wrong. Look at all of the cases where DNA evidence has shown erroneous convictions. Imagine the chaos and the greater chance of error if competent legal representation wasn't provided.

The statues of Justice seen around courthouses show a woman blindfolded, not to turn an eye to systemic abuse but to assure fairness.

So it should concern everyone that more than 40 percent of Louisiana's public defender offices ran deficits in 2013.

The state Legislature appropriates \$33 million to the state Public Defender Board, which then doles out the money to the local offices: \$17 million is divided among the 42 local districts; \$13 million goes to nine nonprofit organizations — \$9 million to death penalty cases, and \$3 million accounts for the state board's budget.

The share for the 4th Judicial District makes up only 25 percent of its budget. And with the state's budget woes, those funds might be in jeopardy.

The other 75 percent comes from local funding based on traffic ticket fines or forfeited bail bonds. Recently, those funds, too, have been declining. The district has enough money to fund indigent defense through August 2016.

When that money runs out, desperate measures may be taken. In 1986, lack of funding resulted in attorneys — some with little criminal defense experience — being appointed by the courts to handle public defense, some without compensation. Pity the defendant who has to rely on counsel that is inexperienced coupled with a lack of motivation.

If the 4th District has to again rely on appointed attorneys, the docket certainly will slow down. That requires longer stays in jail in cases where bail is a problem, adding to the taxpayers' costs.

But a greater concern lies with the possibility cases could be reversed because adequate counsel could not be provided. The U.S. Supreme Court ruled defendants are entitled to adequate counsel, and if that cannot be provided a guilty verdict can be reversed. That serves no one. Retrial further ties up the courts, increases costs and plays with the dignity of the defendant.

A local criminal case policy board is looking at ways to improve finances to prevent a worst case scenario. It's imperative that 4th District Attorney Jerry Jones and the court do everything they can to improve the collection of fines, fees and assessments. Justice depends on it.

The editorials in this column represent the opinions of The News-Star's editorial board, composed of General Manager and Executive Editor Kathy Spurlock, Business and Politics Reporter Greg Hilburn and Education Reporter Barbara Leader.

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Lead prosecutor apologizes for role in sending man to death row

STROUD: DEATH PENALTY IS 'ABOMINATION THAT CONTINUES TO SCAR THE FIBERS OF
THIS SOCIETY'

A.M. "Marty" Stroud III, Shreveport

state's witnesses, concluding with the question, "how does it feel to be wearing a black glove?"

Glenn Ford debate: ADA on death penalty: 'We need to kill more people'

[\(http://www.shreveporttimes.com/story/news/local/2015/03/27/glenn-ford-dale-cox-charles-scott-caddo-parish-death-penalty-execution-marty-stroud/70529188/\)](http://www.shreveporttimes.com/story/news/local/2015/03/27/glenn-ford-dale-cox-charles-scott-caddo-parish-death-penalty-execution-marty-stroud/70529188/)

Members of the victim's family profusely thanked the prosecutors and investigators for our efforts. They had received some closure, or so everyone thought. However, due to the hard work and dedication of lawyers working with the Capital Post-Conviction Project of Louisiana, along with the efforts of the Caddo Parish district attorney's and sheriff's offices, the truth was uncovered.

Glenn Ford was an innocent man. He was released from the hell hole he had endured for the last three decades.

There was no technicality here. Crafty lawyering did not secure the release of a criminal. Mr. Ford spent 30 years of his life in a small, dingy cell. His surroundings were dire. Lighting was poor, heating and cooling were almost non-existent, food bordered on the uneatable. Nobody wanted to be accused of "coddling" a death row inmate.

But Mr. Ford never gave up. He continued the fight for his innocence. And it finally paid off.

Pursuant to the review and investigation of cold homicide cases, investigators uncovered evidence that exonerated Mr. Ford. Indeed, this evidence was so strong that had it been disclosed during of the investigation there would not have been sufficient evidence to even arrest Mr. Ford!

And yet, despite this grave injustice, the state does not accept any responsibility for the damage suffered by one of its citizens. The bureaucratic response appears to be that nobody did anything intentionally wrong, thus the state has no responsibility (<http://www.shreveporttimes.com/story/news/local/2015/02/25/glenn-ford-compensation-louisiana-new-orleans-murder-caddo-parish-isadore-rozeman-jake-robinson/24039067/>) This is nonsensical. Explain that position to Mr. Ford and his family. Facts are stubborn things, they do not go away.

At the time this case was tried there was evidence that would have cleared Glenn Ford. The easy and convenient argument is that the prosecutors did not know of such evidence, thus they were absolved of any responsibility for the wrongful conviction.

RELATED: In apology, ex prosecutor calls for abolishment of death penalty

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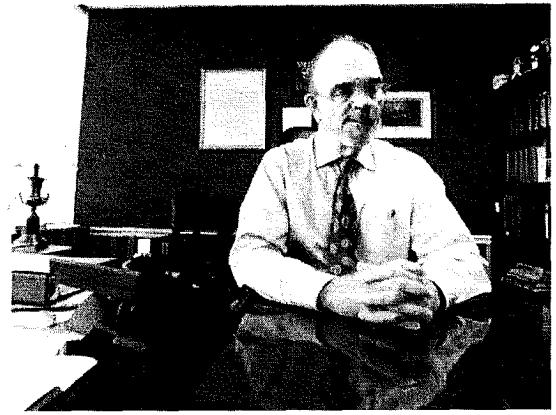
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I can take no comfort in such an argument. As a prosecutor and officer of the court, I had the duty to prosecute fairly. While I could properly strike hard blows, ethically I could not strike foul ones.

Part of my duty was to disclose promptly any exculpatory evidence relating to trial and penalty issues of which I was made aware. My fault was that I was too passive. I did not consider the rumors about the involvement of parties other than Mr. Ford to be credible, especially since the three others who were indicted for the crime were ultimately released for lack of sufficient evidence to proceed to the trial.

Had I been more inquisitive, perhaps the evidence would have come to light years ago. But I wasn't, and my inaction contributed to the miscarriage of justice in this matter. Based on what we had, I was confident that the right man was being prosecuted and I was not going to commit resources to investigate what I considered to be bogus claims that we had the wrong man.

My mindset was wrong and blinded me to my purpose of seeking justice, rather than obtaining a conviction of a person who I believed to be guilty. I did not hide evidence. I simply did not seriously consider that sufficient information may have been out there that could have led to a different conclusion. And that omission is on me.



(Photo: Douglas Collier/The Times)

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Furthermore, my silence at trial undoubtedly contributed to the wrong-headed result.

RELATED: [Glenn Ford's compensation fight not unique](http://www.shreveporttimes.com/story/news/local/2015/03/09/glenn-ford-new-orleans-shreveport-innocence-project-ministry-death-penalty-sister-helen-prejean/24674357/)

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I did not question the unfairness of Mr. Ford having appointed counsel who had never tried a criminal jury case much less a capital one. It never concerned me that the defense had insufficient funds to hire experts or that defense counsel shut down their firms for substantial periods of time to prepare for trial. These attorneys tried their very best, but they were in the wrong arena. They were excellent attorneys with experience in civil matters. But this did not prepare them for trying to save the life of Mr. Ford.

The jury was all white, Mr. Ford was African-American. Potential African-American jurors were struck with little thought about potential discrimination because at that time a claim of racial discrimination in the selection of jurors could not be successful unless it could be shown that the office had engaged in a pattern of such conduct in other cases.

And I knew this was a very burdensome requirement that had never been met in the jurisprudence of which I was aware. I also participated in placing before the jury dubious testimony from a forensic pathologist that the shooter had to be left handed, even though there was no eye witness to the murder. And yes, Glenn Ford was left handed.

RELATED: [Glenn Ford: 'I'm trying to make every day count'](http://www.shreveporttimes.com/story/news/local/2015/02/28/glenn-ford-trying-make-every-day-count/24185927/)

(<http://www.shreveporttimes.com/story/news/local/2015/02/28/glenn-ford-trying-make-every-day-count/24185927/>)

All too late, I learned that the testimony was pure junk science, at its evil worst.

In 1984, I was 33 years old. I was arrogant, judgmental, narcissistic and very full of myself. I was not as interested in justice as I was in winning. To borrow a phrase from Al Pacino in the movie "And Justice for All," "Winning became everything."

After the death verdict in the Ford trial, I went out with others and celebrated with a few rounds of drinks. That's sick. I had been entrusted with the duty to seek the death of a fellow human being, a very solemn task that certainly did not warrant any "celebration."

In my rebuttal argument during the penalty phase of the trial, I mocked Mr. Ford, stating that this man wanted to stay alive so he could be given the opportunity to prove his innocence. I continued by saying this should be an affront to each of you jurors, for he showed no remorse, only contempt for your verdict.

How totally wrong was I.

I speak only for me and no one else.

I apologize to Glenn Ford for all the misery I have caused him and his family.

I apologize to the family of Mr. Rozeman for giving them the false hope of some closure.

I apologize to the members of the jury for not having all of the story that should have been disclosed to them.

I apologize to the court in not having been more diligent in my duty to ensure that proper disclosures of any exculpatory evidence had been provided to the defense.

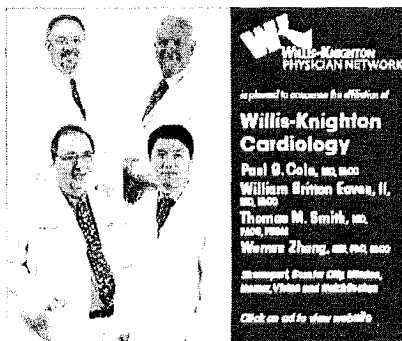
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Glenn Ford deserves every penny owed to him under the compensation statute. This case is another example of the arbitrariness of the death penalty. I now realize, all too painfully, that as a young 33-year-old prosecutor, I was not capable of making a decision that could have led to the killing of another human being.

No one should be given the ability to impose a sentence of death in any criminal proceeding. We are simply incapable of devising a system that can fairly and impartially impose a sentence of death because we are all fallible human beings.

The clear reality is that the death penalty is an anathema to any society that purports to call itself civilized. It is an abomination that continues to scar the fibers of this society and it will continue to do so until this barbaric penalty is outlawed. Until then, we will live in a land that condones state assisted revenge and that is not justice in any form or fashion.

I end with the hope that providence will have more mercy for me than I showed Glenn Ford. But, I am also sobered by the realization that I certainly am not deserving of it.



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Letters: Orleans Parish needs fully funded public defenders

The Advocate JUL 8, 2015 - 1:29 PM

Regarding: "Criminal justice watchdog reports progress in resolving cases at Orleans Parish courthouse," published July 3:

A recent Metropolitan Crime Commission report hailed the progress in moving felony cases through the system more efficiently but sees room for improvement. While we at Orleans Public Defenders think the analysis and the ranking of judges' dockets does not take into account a number of factors (such as multiple-defendant racketeering cases, which can take weeks to try), one thing is certain: Without a fully funded public defender office, there cannot be efficient – or fair – justice.

OPD represents approximately 85 percent of all defendants in Criminal District Court. Because of state budget cuts and an unstable, unreliable and inadequate user-pay system dependent on fines and fees, OPD expects, without further assistance, almost a \$1 million budgetary shortfall for the fiscal year that began July 1. Without additional funding, the coming months will see waitlists for defendants, layoffs of personnel and officewide furloughs, significantly decreasing our ability to ensure justice is given to the citizens of New Orleans.

Story Continued Below

Even before the current budget cuts, OPD received less than half the funding of the District Attorney's Office. When the DA's Office budget is coupled with other law enforcement agencies that assist in prosecution, OPD remains significantly under-resourced.

We can all agree everyone – rich and poor alike – deserves a full defense. Without a fully funded public defender office, the entire criminal justice system cannot be fair and just and it certainly cannot be efficient. If we are committed to the continued gains in case processing times, then we must all come together to support a fully funded public defender office. Justice in New Orleans depends on it.

Derwyn Bunton

chief district defender, Orleans Public Defenders

New Orleans

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Opinions

I'm a public defender. It's impossible for me to do a good job representing my clients.

by Tina Peng September 3, 2015

NEW ORLEANS

The Orleans Public Defenders are facing a million-dollar deficit as a result of statewide budget cuts. For a small office like ours, that's devastating. To avoid layoffs, the entire staff will see the equivalent of four unpaid weeks per year in furloughs, increased caseloads and a hiring freeze — and the submission to the Louisiana Public Defender Board of a plan to cut services to the people of New Orleans. We are already stretched thin: Our office represents 85 percent of the people charged with crimes in Orleans Parish but has an annual budget about a third the size of the district attorney's. The American Bar Association recommends that public defenders not work on more than 150 felony cases a year. In 2014, I handled double that.

The United States accounts for less than 5 percent of the world's population but almost 25 percent of the global prison population. The vast majority of people in prison are indigent: The Justice Department has estimated that 60 to 90 percent of criminal defendants nationwide cannot afford their own attorneys and that in 2007, U.S. public defender offices received more than 5.5 million cases.

Opinions newsletter

Thought-provoking opinions and commentary, in your inbox daily.

Public defenders are the only ones who stand up for the vast majority of people charged with crimes in America, and we try to help our clients achieve justice in an often unfeeling legal system that disproportionately ensnares poor people and minorities. But the constitutional guarantee of effective representation for all has fallen short. The funding crisis is nationwide, and it is dire. When people ask how to push back against police misconduct, how to decrease the costs of mass incarceration and how to ensure fairer treatment of our nation's most disenfranchised citizens, part of the answer lies in fully funding public defender's offices and enabling us to represent our clients in a meaningful manner.

I went to law school to be a public defender. My frustration with our office's persistent underfunding is not that it forces me to work long hours, represent numerous clients or make far less money than I would at a private law firm. It is that when we are constantly required to do more with less, our clients suffer.

Because we don't have enough lawyers on staff, the week I passed the bar in 2013, I began representing people facing mandatory life sentences on felony charges. In Louisiana, people with as few as two prior nonviolent felony convictions can face mandatory life imprisonment on charges as minor as possession of a syringe containing heroin residue or, until recently, possession of a single joint. Defendants who cannot afford to make bond can sit in jail for 60 days while the district attorney decides whether to arraign them. An unconstitutionally high caseload means that I often see my new clients only once in those two months. It means that I miss filing important motions, that I am unable to properly prepare for every trial, that I have serious conversations about plea bargains with my clients in open court because I did not spend enough time conducting confidential visits with them in jail. I plead some of my clients to felony convictions on the day I meet them. If I don't follow up to make sure clients are released when they should be, they can sit in jail for unnecessary weeks and months.

Local constraints exacerbate these problems. Saying it lacks resources to provide adequate mental health treatment in its jails, the Orleans Parish Sheriff's Office has moved our clients with high mental health needs to a prison more than an hour away. Limited visitation hours make it almost impossible to see clients there on days we need to be in court. And recent attrition, coupled with the hiring freeze, has rendered many lawyers overwhelmed by cases transferred to them on top of their existing ones. One attorney whose transferred client was jailed on a bail-jumping charge did not have a chance to look at the file for close to a month, when the client's next court date approached. At that point, he realized that the client had never been served to appear for the court date on which he allegedly jumped bail. The attorney immediately and successfully moved for the judge to release the client. By then, though, "he had a newborn baby he didn't see, because I didn't look at the case for a month," the attorney said.

For other clients, my office considers how serious their cases are before deciding how many resources to devote to them. We have only nine investigators to handle more than 18,000 felony and misdemeanor cases each year. One investigator describes being so overwhelmed that he is often unable to canvass for relevant surveillance footage until it has already been deleted. Another investigator said that recently, in a span of a week and a half, she was assigned three cases carrying sentences of mandatory life without parole. A year ago, she would have received one such assignment a month. Those cases all had preliminary examinations — the only pre-indictment hearing at which the client's attorney can cross-examine police officers — in the same week. Working around the clock, the investigator completed full investigations for two of those cases. For the third she was able only to knock on one witness's door twice.

We similarly have to ration our social work and client welfare services. Cutbacks mean we are limited in our ability to gather detailed information about our clients' personal circumstances and histories to present to prosecutors, which could lead to more individualized plea agreements. We are also hobbled in our capacity to make sure critical services are delivered to our clients in jail.

Unfortunately, budget cuts and a spiraling workload are not unique to Orleans Parish. Funding problems threaten poor people's right to counsel across America.

In June, the American Civil Liberties Union sued Idaho, claiming that the state has failed to fund or improve its broken public defense system and has deprived indigent residents of their Sixth Amendment right to adequate legal representation. Indigent defendants in most counties there have no lawyers at their first court appearances, where bail is set and pleas of guilty or not guilty are entered, according to the lawsuit. Many counties also pay attorneys who accept public defense contracts a flat fee, regardless of the number or seriousness of the cases each lawyer handles. Some public defenders in Idaho carry caseloads that are double national standards. And because public defenders are often allowed to continue their own private practices, there is little incentive for them to spend much time on their appointed clients, or to pay for investigations or expert witnesses in those cases, a common problem everywhere.

None of that is constitutionally adequate, says Jason Williamson, one of the ACLU's lead attorneys in the Idaho lawsuit. "You need to do more than have a pulse," he says. "You need to actually litigate these cases."

Some public defender's offices have contemplated the drastic option of turning down appointments. In Louisiana, for example, offices may start putting lower-priority clients — people who are out of jail or have less-complicated cases — on a waiting list for representation, says James Dixon, the state public defender. That would mean defendants would have to come to court without lawyers to argue, file motions, or conduct hearings or trials for them, effectively bringing their cases to a halt.

Courts have mostly supported this option. In 2013, the Florida Supreme Court ruled that public defender's offices can apply to turn down future appointments when their caseloads rise so high that they cannot constitutionally represent all their clients. At the time, public defenders in Miami were handling 400 felony cases each, and some often had up to 50 cases set for trial in a week. Missouri's Supreme Court in 2012 also upheld the ability of public defenders in that state to decline appointments if they were too far over capacity. A few months later, most Missouri public defender's offices stopped accepting cases for one to two months, according to State Public Defender Michael Barrett. If the courts did not appoint private lawyers to take on cases for free, overflow defendants had no representation at all until the public defenders were able to start accepting appointments again.

In Louisiana, one of our biggest problems is unstable funding: This is the only state in America that tries to fund most public defense services with fees associated with traffic tickets, parish by parish. But other states with steadier funding are seeing even the status quo come under attack. Since 1992, Tennessee counties have been required to raise public defenders' budgets by 75 percent of any increase in prosecutors' budgets. This year, a bill requested by the state's district attorneys would repeal that law. "It's an issue of fairness," says Mark Stephens, the Knox County district public defender. "It frustrates me that they can't understand that they need money and we need money."

Ultimately, it's easy to forget what we're talking about when we talk about the criminal justice system. I've been asked by my family members, my friends and my hairdresser why I represent criminals. The answer is that I, and other public defenders, don't represent criminals. We represent poor people who are facing criminal charges — charges on which they are presumed innocent until proven guilty in court. We represent members of our communities who have a right to real and meaningful legal representation, even if they are poor. My clients, like the millions of other people in the United States who are currently represented by public defenders, deserve better.

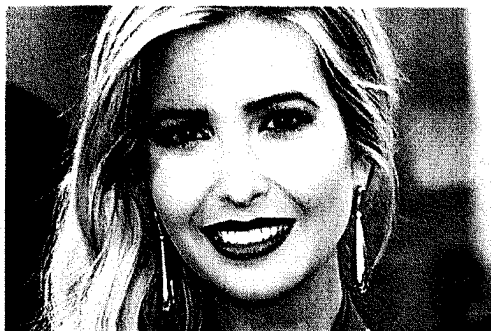
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Tina Peng is a staff attorney at the Orleans Public Defenders.

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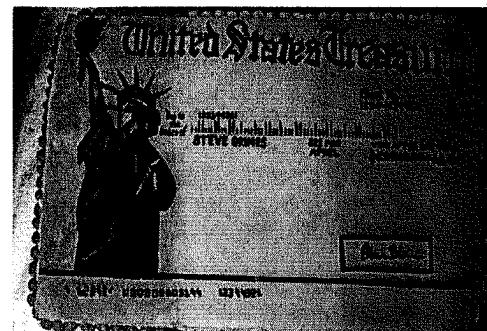
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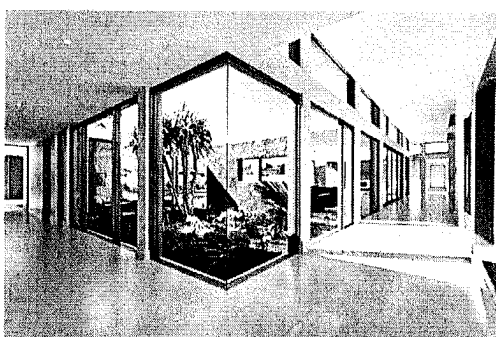
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Orleans public defenders' bombshell: No new cases for us, please



Terwyn Bunton, chief of the Orleans Parish Public Defenders office, is shown in this Nov. 12 file photo discussing his office's budget woes with the New Orleans City Council. Bunton testified again Friday (Nov. 20) in a hearing called by criminal courts Judge Arthur Hunter, asking that his office not be assigned new cases until its workload is reduced. *Ken Daley, NOLA.com | The Times-Picayune*



By **Ken Daley, NOLA.com | The Times-Picayune**

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on November 20, 2015 at 4:18 PM, updated February 19, 2016 at 11:25 AM

Claiming that its staff is too undermanned and overworked to provide constitutionally adequate legal defense to indigent clients, the Orleans Parish Public Defenders office on Friday (Nov. 20) **asked a judge to stop appointing new criminal cases** to its lawyers "as soon as possible."

Deputy District Defender Jee Park made the bombshell request before Judge Arthur Hunter, who convened a hearing to examine the public defenders' plight. Park said her office would request the moratorium on new cases not only in Hunter's Section K, but also throughout the other 11 sections of New Orleans' criminal district courthouse. The office estimates that its lawyers represent 85 percent of felony criminal defendants in Orleans Parish.

"The remedy we seek is that new cases in Section K stop being assigned to public defenders," Park told Hunter. "We will be seeking this remedy in other sections as well. The reason we are asking for this prospective relief is that our attorneys are laboring under excessive caseloads and we do not have enough investigators to provide our clients with the constitutional, effective representation that our clients deserve.

"Until we get those resources, we cannot accept any new cases."

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Park said public defenders should stop being assigned new casework "as soon as possible."

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Derwyn Bunton, chief of the Orleans Public Defenders since January 2009, testified that \$700,000 in state budget cuts, local funding shortfalls, and staff attrition left unchecked during a recently imposed hiring freeze has left his office unable to perform its work to standards demanded by the US Constitution and the state bar's Rules of Professional Conduct.

Two Orleans Parish inmates accused of attacking deputies

"You need to be able to handle the work that is given to you," Bunton said. "At current funding levels, that is just impossible for us."

Man convicted of second-degree murder in 15-year-old's killing in 7th Ward

A spokesman for District Attorney Leon Cannizzaro said the office would not comment on the public defenders' request.

After 23 years behind bars, Robert Jones' charges in 1992 crime spree dropped by DA

Hunter is not expected to rule on the request until after hearing testimony Monday from New York attorney and law professor Barry Scheck, founder of the Innocence Project and a former member of O. J. Simpson's legal defense team. Scheck is scheduled to testify via Skype to conclude the two-day hearing, which was called to determine counsel for four of the parish's poorest criminal defendants.

Councilman Williams accuses DA Cannizzaro of 'tantrum'

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Hunter appeared surprised by the request for an open-ended court order against new public defender appointments from his courtroom. He suggested to Bunton and Park that they might instead need to refuse cases when assigned. While both the judge and public attorneys seemed in agreement about the need for a reduced caseload, neither side seemed eager to be assigned responsibility for the potential chaos that could ensue.

"I've done my part," Hunter said in apparent reference to staging the hearing. "Now it's up to you to do your part. I don't want to do your part, because I like to stay in my lane."

Bunton said, "If there is a judicial remedy, then our refusal (to accept new cases) becomes less adversarial, to a degree. It's a much different posture for us in that situation than in us refusing a court order (to represent a client). If we're in this position and have to reduce the amount of work we take in, it is a better situation for us not to be fighting with our bench."

Ellen Yaroshefsky, a legal ethics professor at New York's Cardozo School of Law and executive director of the Jacob Burns Ethics Center, told Hunter that the defects within the Orleans Parish legal establishment were so severe, pervasive and systemic that only judiciary intervention could help.

"I'm very troubled by the situation this public defenders office is in," Yaroshefsky testified. "To call this a 'justice system' is really misnomer. ... I believe this entire office is operating as a conflict of interest. The lawyers here are compromising some clients in order to represent others. They make a decision to triage, and triage is a conflict of interest. This is a problem now that is a judicial problem, and I believe needs to be dealt with on that level."

Yaroshefsky said Orleans public defenders are buckling under caseloads two to three times heavier than the nationally recognize standard to provide constitutional and ethically adequate legal defense. Bunton said unchecked attrition has withered his staff to eight investigators and 53 licensed lawyers, including 34 "line attorneys." The office handled nearly 10,000 misdemeanor and 8,000 felony cases in the last fiscal year, he said, using lawyers working an average of 60-65 hours per week.

Bunton and Louisiana State Public Defender James "Jay" Dixon repeated testimony they gave Nov. 12 at a New Orleans City Council budget hearing, saying the office's \$6 million operating budget was about half that of DA Cannizzaro's office, which has more than 80 attorneys and around 30 investigators helping prepare cases.

"I'm not saying the district attorney doesn't need what he has," Bunton told Hunter. "I'm just saying I need more for my office."

Dannizzaro **also lobbied the city council for a funding increase**, saying his office has seen an exodus of nearly 25 percent of his most experienced prosecutors in the past year, mostly to higher-paying jobs with fewer hours in neighboring parishes. Dannizzaro's request was denied.

But after Bunton warned of a costly **10-day furlough** planned for his staff in 2016, the mayor and city council **passed a budget Thursday** that provided an additional \$250,000 in emergency funding Bunton sought. He admitted Friday that allocation **effectively took furloughs off the table.** But he had given the city no warning that his office also wanted to stop taking on new cases.

Yaroshefsky told Hunter that is exactly what the public defenders must do. Otherwise, she said, the courthouse at Tulane and Broad risks becoming nothing more than "a plea mill," where defendants find no recourse but to enter guilty pleas at arraignments "without even the most basic level of investigation and counsel" by their public attorneys.


"My recommendation is precisely what they're requesting here, which is not to take further cases," she told Hunter. "You're not operating a justice system here. You're operating a processing system."

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Orleans Public Defenders Office still short of money despite extra cash from city

BY JOHN SIMERMAN jsimerman@theadvocate.com NOV 24, 2015 - 3:25 PM

An eleventh-hour cash boost from the city may have staved off planned furloughs for public defenders in New Orleans, but that didn't stop Chief Public Defender Derwyn Bunton's office from asking a judge on Friday to stop assigning new indigent defendants to the office.

The unusual cry for caseload mercy came at the start of a hearing that Criminal District Court Judge Arthur Hunter called to raise public awareness of the local impact of a statewide budget crunch for public defenders that has left Bunton's office resorting to crowdfunding to try to make ends meet.

They're still not meeting, Bunton and several friendly witnesses testified.

Story Continued Below

"They're not shirking their responsibilities," Deputy District Defender Jee Park said of the office's staff of 53 attorneys. "There just is not enough time in the day to adequately meet the demands of excessive caseloads."

At issue in Friday's hearing, which was tied to no particular case, was whether Bunton's office can provide constitutionally adequate service for its clients, Hunter said.

Bunton said his office has lost six front-line lawyers since late June, when he announced an austerity plan for an office that handles some 20,000 cases a year, including nearly 8,000 felonies.

This week, Bunton <http://theadvocate.com/news/neworleans/neworleansnews/14004653-123/furloughs-announced-for-orleans-public>>announced his office would furlough all employees for 10 days from February to June to help cover a \$1 million budget shortfall. A \$250,000 injection from the city Thursday has halted those planned furloughs.

New Orleans is far from alone in feeling a pinch, said State Public Defender James Dixon Jr., whose office doles out about \$33.7 million a year in state-allocated funds to public defenders and contract attorneys statewide.

Dixon testified that the defenders offices in eight of Louisiana's 42 judicial districts are operating under formal service restrictions, curtailing key parts of their normal work. Among them are the offices in populous East Baton Rouge and Caddo parishes, he said.

The New Orleans office is among eight that are on the brink of curtailing services, Dixon testified.

Unlike in past years, when the state board had extra money from financially flush districts to help out strapped offices, there are no extra funds this year, he said. The result: State funding for Bunton's office fell from \$2.5 million to \$1.8 million this year.

A state boost this year is "unlikely," Dixon said. "Even if we do, it is not nearly enough to do any serious good."

The state funds make up only a portion of Bunton's budget, which totals \$6.2 million. The city this year kicked in about \$1.5 million, including a \$400,000 boost, while the rest largely comes from fines and fees levied on criminal defendants, mostly in Traffic Court, where the fact that police are issuing fewer tickets has meant shrinking revenue.

Bunton has long lamented what he describes as an unpredictable "user-pay" system. On Friday, he noted that his office pales in both staffing and budget compared with District Attorney Leon Cannizzaro's office, which gets about \$12 million a year, including \$6.5 million from the city.

"I'm not saying the DA doesn't need what he has," Bunton said. "I just need more than what I have."

Hunter called the hearing in September after reading a Washington Post editorial in which a young lawyer in Bunton's office, Tina Peng, lamented a behemoth caseload. Peng wrote that she found herself having some clients plead guilty to felonies on the day she met them.

One legal ethics professor who testified Friday described indigent defense in New Orleans as a systemic failure by any measure, including caseloads.

"To call this a justice system is really a misnomer," said Ellen Yaroshefsky, of Cardozo Law School in New York. "If we're going to accept a system where we're just processing people and keeping people in jails and prisons without providing counsel, we're certainly letting down the profession and letting down the public."

Hunter has been known to make dramatic gestures about funding for public defenders. In 2012, the veteran judge ordered some notable names in New Orleans political and social circles — who also happen to be lawyers — to defend dozens of criminal defendants. At the time, he said he was acting in response to a "constitutional emergency."

Whatever Hunter does this time, he acknowledged it could apply only to his court section, one of a dozen in the courthouse.

On Friday, he repeatedly posed the same question to Bunton: Why not simply refuse to take on new cases?

"If you're making a declaration to every judge in this building — 'I'm not accepting any more indigent defense cases based on constitutional obligations' — once that happens, it belongs to the judges, what they're going to do with that particular defendant," Hunter said. "You don't have to ask me not to appoint any (more defendants) to you."

Park suggested that such a move could force unpleasant showdowns with judges who might order the office to take those cases anyway.

Hunter continued the hearing until Monday, when he plans to hear testimony from attorney Barry Scheck, director of the New York-based Innocence Project.

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Of its total budget, LPDB has dedicated nearly 50%, or \$16,435,314 as supplemental funding support for the individual districts across the state in a program called the District Assistance Fund (DAF). Specifically, the DAF helps to fund the forty-two local Public Defender Offices which serve each of the forty-two Judicial District Courts, the four Juvenile Courts, more than fifty City Courts and numerous specialty courts such as Mental Health Courts, Drug Courts and Child Support Courts.

The DAF is divided among each of the public defender offices based on each district's need for funding assistance in order to provide the necessary legal services to those citizens in need of legal services who cannot afford them. While each district receives funding from local sources such as a portion of local court fees and fines, for example, and also has a required reserve spend-down, these local funds fall short of covering all the costs of operating a local Public Defender Office in nearly every district. The DAF is used to cover these shortfalls after accounting for the fiscal impact of the local funding and reserve spend-downs.

Historically, the DAF monies have been disbursed semi-annually (July and January) based on a mathematical formula applied consistently across the state to determine the total funding (both state and local) that each district needs ideally. Because the system is known to be quite under-funded, these ideal total needs will not likely be met. However, the statewide ideal grand total is calculated and the appropriate portion of that grand total each district needs is also calculated. Regardless of the actual amount allocated for the DAF, each district will receive its appropriate portion of the funds which distributes the statewide under-funding equally and fairly.

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Legal battle over public defense funding in Louisiana heats up in Orleans Parish courthouse

Indigent defendants caught in middle

BY JOHN SIMERMAN jsimerman@theadvocate.com FEB 3, 2016 - 10:59 AM

A shortfall in funding to pay for the lawyers who would typically represent poor defendants is beginning to wreak havoc at New Orleans' criminal courthouse.

Scores of criminal defendants have sat in jail without lawyers since Chief Public Defender Derwyn Bunton's office last month began turning away serious new felony cases and withdrawing from others.

On Tuesday, a prominent local attorney assigned by a judge to handle one of those cases argued that routinely saddling private attorneys with that work violates the state and federal constitutions, amounting to an illegal "taking" of their property.

Story Continued Below

Mark Cunningham, a partner in the Jones Walker law firm and president of the Louisiana Bar Association, asked to withdraw from the case of an accused armed robber, Donald Gamble. Criminal District Court Judge Arthur Hunter had assigned Cunningham to represent Gamble pro bono after Bunton's office implemented its controversial austerity plan last month, turning away cases.

Cunningham also urged Hunter to halt Gamble's prosecution until funding could be found.

The move marked the latest maneuver aimed ultimately at pressuring or forcing the Legislature to strengthen state funding for indigent defense.

Last month, the American Civil Liberties Union of Louisiana brought a federal lawsuit against Bunton's office for declining to represent three defendants. The suit indirectly takes aim at a state legal aid system financed mostly by fines and fees levied on convicted defendants — mainly traffic scofflaws.

Statewide, fee revenue has withered by about 25 percent over the past five years, said Jay Dixon, president of the Louisiana Public Defender Board.

Hunter, who has championed the cause of indigent defense funding in the past, declined to let Cunningham out of the case but agreed to halt the prosecution while Cunningham appeals the ruling. In the meantime, Gamble, 27, will bide his time in the Orleans Parish jail.

At a hearing Tuesday, Cunningham acknowledged that lawyers have an ethical obligation to accept pro bono work but said his firm has done more than its share.

"What I see happening here in Louisiana is not the appointment of a private lawyer in isolated cases here and there. I see a systematic appointment of private attorneys throughout the state to address a crisis in the public defense system. In that regard, I think the courts are overstepping the bounds," Cunningham testified. "We don't tell engineers to go build bridges or roads for free. We don't tell doctors they have to subsidize the health care system for free."

Dixon, whose board doles out about \$34 million in state indigent defense funding, said judges in Caddo, Vernon, Bossier and other parishes also are appointing private attorneys.

In New Orleans, Bunton said his office has refused about 20 new felony cases since last month and withdrawn from more than 40 others as experienced public defenders leave his office amid steep cutbacks and a hiring freeze aimed at plugging a \$700,000 deficit. Bunton's budget now is about \$6.3 million.

Different judges have responded in different ways. Criminal District Judge Tracey Flemings-Davillier this week threatened to hold public defenders in contempt for refusing to accept appointments.

Bunton's office returned to her courtroom Tuesday morning to grudgingly enroll in those cases, averting a showdown. Dwayne Thomas, who faces attempted murder, illegal firearms possession and battery charges, got himself a new lawyer: Bunton himself.

His knight out on \$1,000 bond while facing a home invasion charge, said he's been without counsel since December, when his public defender left the office. He also got a new free lawyer.

"I've been waiting too long," said Knight, 38. "I'm really just tired. Every time you come, they ain't pushing the issue. I got kids I got to look after. It's messing everything up."

The fact that Tuesday's hearing in Hunter's courtroom took place on Groundhog Day wasn't lost on the attorneys. Montgomery's lawyer, Jim Boren, lamented a decades-long series of crises and drastic actions to force the state to pony up for public defense.

"We do not get the same reception that other people do when they go (to the Legislature) advocating for money," Boren said. "I don't know of any other way except for a court to have the courage and conviction to say, 'The system is broken.' It's not up to the bar association to solve the problem. It's up to the state to solve the problem."

Advocates are looking to U.S. District Judge James Brady of the Middle District of Louisiana, who is overseeing the ACLU suit, as the legal challenges play out.

Tulane law professor Pam Metzger, who represented numerous jailed defendants who were left without lawyers in the wake of Hurricane Katrina, recently was appointed to represent a half-dozen defendants in Hunter's courtroom — not in their criminal cases, but to fight for their right to due process.

Metzger said the funding crisis is not just weighing on the defendants or lawyers.

"It's putting the judges in this wholly untenable position. They're asked to sit and guarantee fair and impartial trials in a situation where everybody knows there's nothing fair about it," Metzger said. "What's different now is it's not just an Orleans Parish problem. It's not just a Katrina problem. It's a statewide constitutional failure."

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Lafourche chief public defender remains hopeful amid state budget cuts

Saturday

Posted Apr 2, 2016 at 12:01 AM

Updated Apr 2, 2016 at 11:45 PM

As Terrebonne Parish's public defenders' office struggles to stay open for those who cannot afford an attorney, its Lafourche counterpart tells a different story.

By Bridget MireStaff Writer

As Terrebonne Parish's public defenders' office struggles to stay open for those who cannot afford an attorney, its Lafourche counterpart tells a different story.

Mark Plaisance, Lafourche's chief public defender, predicts his office will remain secure through this fiscal year, which ends June 30, and the next. Unlike Terrebonne's chief public defender, he hasn't yet laid off attorneys, refused cases or put defendants on a waiting list.

"Now, if those (budget) cuts are realized at the two-thirds mark that they're indicated, after next fiscal year, we're closed," Plaisance said. "But unlike others who are going to close sooner than us, we could at least go through the fiscal year. We've had a few dollars in savings over the years that we can tap into - not a lot, but enough to kind of tide us over a little bit."

He attributes the financial stability largely to discretion from previous managers, including state District Judge Christopher Boudreaux, the chief public defender before him. Boudreaux declined to comment for this story.

'TRUMPS' OTHER MATTERS

A spotlight has fallen on public defense as several offices, including in New Orleans, Baton Rouge and Lafayette, have put cases on hold because of budget woes.

"It's not good for the whole judicial system," Plaisance said. "It's not good for the citizenry because there are people that perhaps need to be incarcerated that are going to be released. It's not good for the victims that don't get closure. It's not good for the defendants who want to resolve their matters or those who are really innocent, who have to sit and wait with something hanging over their head. A lot of different groups and organizations and parts of government are suffering. This is one that's constitutionally mandated, and not only by the state Constitution but the federal Constitution, so it kind of trumps a lot of other things."

The Louisiana Public Defender Board gets about \$33 million each year from the state and distributes that to local offices based on factors such as caseloads.

Lafourche's public defenders' office handled 4,982 cases last calendar year, according to a Louisiana Public Defender Board report. About 62 percent of its \$824,298 budget came from local sources.

Terrebonne's public defenders' office handled 4,944 cases last calendar year, with about 68 percent of its approximately \$1.4 million budget coming from local sources. The Louisiana Public Defender Board predicts the office will be insolvent by the end of fiscal year 2016.

Though they handle roughly the same number of cases, Plaisance doesn't know exactly why his office and Terrebonne's are in different financial states. He said it could be a difference in the type of cases: Terrebonne had five people charged with first-degree murder on this year's docket, compared to one in Lafourche that Plaisance's office isn't representing.

'NECESSARY EXPENSE'

Plaisance has 11 public defenders, including three part-time conflict lawyers, who may be hired if a case involves multiple defendants, each requiring his or her own attorney. His current budget includes \$440,500 for salaries and \$200,800 for contract attorneys.

Unlike in Terrebonne, the Lafourche public defenders' office doesn't have its own investigators but hires them as necessary.

"I don't like to write checks, so I make darn sure it's a necessary expense before we even incur it," Plaisance said. "To say we've made cuts, not per se, but we're just not going to spend money where it's needless."

Plaisance said the local district judges recently started imposing public defender fees on people charged with crimes. Plaisance said he did the same thing while serving as Baker city judge.

"While they may have gotten themselves in trouble, they shouldn't expect to necessarily get something for nothing," he said. "It (also) made them a little more responsible for wanting to meet with their attorney to get their issues resolved rather than just blow it off. I understand people are indigent and need representation, but I also personally believe that in a lot of cases, people can contribute something toward their defense. They might not be able to go hire a private attorney, but they can pay something."

Lafourche Chief Judge John LeBlanc could not be reached for comment.

'MAKE IT THROUGH'

Local public defenders' offices get \$45 of fines paid by people found guilty of criminal and traffic violations.

Numbers weren't available from State Police Troop C or the Lafourche Parish Sheriff's Office, but the number of traffic tickets written by Thibodaux Police has fluctuated in the last four years. In 2012, there were 876; in 2013 there were 1,322; in 2014 there were 626; and in 2015 there were 738.

In addition to Troop C, Terrebonne's public defenders' office gets money from the parish Sheriff's Office. Terrebonne deputies wrote 1,790 traffic tickets in 2012; 2,270 in 2013; 2,145 in 2014; and 1,638 in 2015.

Thibodaux Police Chief Bryan Zeringue has said his officers have been writing more traffic tickets since he took office - something that will benefit the public defenders' office. Plaisance's office doesn't currently receive money from the municipal courts of Lockport and Golden Meadow.

According to the Louisiana Supreme Court, there was a 24 percent decrease in ticket filings in district courts throughout the state and a 31 percent decrease in city courts from 2009 to 2014.

Despite the bleak picture painted for many other offices, Plaisance remains optimistic for his.

"There are 33 other districts that, at the current projections, are going to shut down way before us," he said. "There are nine that are projected to make it through next fiscal year - we're one of the nine."

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Indigent Defense in New Orleans: Better Than Mere Recovery

Vol. 33 No. 4

By Stephen I. Singer

Stephen I. Singer is an assistant professor of clinical law at Loyola University College of Law in New Orleans and chief of trials in the Orleans Public Defender's Office.

Sometimes change is sudden, unsettling, and dramatic. Hurricane Katrina effected change with a vengeance. Water lapped at the criminal district courthouse steps and drowned the evidence room, prisoners saved from the floodwaters baked out on the 100-degree highway before getting lost in the system for months, the indigent defense structure, such as it was, blew away with the last of the hot winds.

At other times, change is slow, barely perceptible, and creeps along in painfully small increments. That is the case with the rebuilding of the indigent defense structure in New Orleans. If we are lucky, that system will be nothing like it was. To understand the profundity of something as simple as a public defender's office having its own office space, one has to understand a bit about how terribly broken the indigent defense system was before Katrina—mercifully—demolished it.

A Pre-Katrina Disaster

Every outside expert who has studied indigent defense in New Orleans has concluded that the system was a disaster—among the worst in the nation. The Department of Justice Bureau of Justice Administration described it as "court-based," catering primarily to the needs and convenience of the court and the individual criminal court judges rather than to those it was supposed to serve—its clients.

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The New Orleans Public Defender's Office was composed of forty-two attorneys who, save a few exceptions, were part time and were paid relatively small salaries. The public defenders maintained private practices that included private criminal cases in Orleans Parish. Because they were salaried, there was a perverse financial incentive to spend as little time as possible on their public cases so they could devote more time to private ones.

Cases were rarely investigated. Witnesses were rarely tracked down and interviewed. Public defenders infrequently visited their clients in jail or met with their families. Little, if any, time was spent preparing and filing motions or researching legal issues. Public defenders appeared in their designated courtrooms on their scheduled days, handled whatever matters were on the docket that day as quickly as possible, and then left to attend to their private practice or other matters.

Because the public defenders handled private criminal cases in the same courthouse as their public cases, there was an incentive to please the judges—or at least not anger them—and gain favorable treatment for their paying clients. This coincided nicely with the judges' and prosecution's interest in moving through the docket as fast as possible. Most days, most courtrooms were empty by lunchtime.

To encourage the speedy resolution of cases, individual public defenders were assigned by courtroom, not by cases or clients. Each handled whatever came through the courtroom doors on that day, attending to the needs of "his" or "her" judge, who referred to the defender as "my" public defender. Indeed, one district court judge famously paid one of the public defenders extra money out of court funds so that the defender would give up private practice and be "his" public defender full time. That judge no longer sits in the Orleans criminal district court. He was promoted to the intermediate appellate court.

This courtroom-based system of representation has had devastating consequences for indigent defendants in New Orleans. In Louisiana, the prosecution has forty-five days in the case of misdemeanors and sixty days in the case of felonies to file charges. The accused are usually held in jail during this time because they are too poor to post the draconian bonds set at the initial appearance. The horizontal structure of the New Orleans Public Defender's Office would leave an accused person unrepresented—hence, no investigation, few preliminary hearings, no bond reduction motions, no preservation of exculpatory evidence—for upward of two to three months. Only after formal charges were filed was a case allotted to one of twelve divisions of the Orleans Parish Criminal District Court. Only for arraignment, which may be

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up to another thirty days later, did the accused finally meet a public defender and obtain any sort of attorney for representation.

The primary source of funding for the office was, and still remains, fees assessed on every conviction, including municipal and traffic violations and bond forfeitures, creating a perverse interest in the public defender's office as a whole: its funding is based on bad outcomes for its clients.

To further intertwine the public defenders with the court, the "office" consisted of a single room in the courthouse where coats, briefcases, and umbrellas could be left. There was no privacy for attorneys to meet with clients, families, or witnesses, and the attorneys did not have their own computers, telephones, or desks. Of the four working computers, only two had Internet access, and the two phone lines did not have voice mail. The office consisted of a few file cabinets, several shared desks, and a single copier for the entire staff of forty-two attorneys.

The public defender's office is supervised by a board of directors appointed by the criminal district court judges. Before and immediately after Katrina, this board consisted of private criminal defense attorneys who regularly practiced before the judges who appointed them. Indeed, the chair of the board was the attorney for the police officers' foundation and routinely represented police officers accused of misconduct. The board exercised direct control over hiring and firing and the assignment of attorneys. Overall, the system sorely lacked independence from the judiciary and had no semblance of competent, client-centered representation.

The Immediate Post-Katrina Havoc

While Katrina clearly wreaked havoc on the lives of many who were jailed when the hurricane hit New Orleans, the foregoing description demonstrates that there was little to lose for the indigent defense system. After Katrina wiped out the primary source of funding for the office—fees on traffic tickets—the staff was reduced to six attorneys and one support person to handle more than 6,000 open cases. No one knows the actual number of open cases because the office had no case management system. Large numbers of cases never had even a paper case file, let alone an electronic one. Because the office itself was not flooded by Katrina, this shortcoming can be attributed to poor office practices.

Change and Resistance

In April 2006, the old board of directors was finally ousted and a new, more professional and independent board was installed. It is composed primarily of attorneys who do not practice before the criminal district court judges. The new board brought on a new management team to reform and rebuild the office in the summer of 2006. That team includes Ronald Sullivan as chief consultant,

Jonathan Rapping as training director, Christine Lehmann as special litigation counsel, and me as chief of trials.

The first change one will notice is that there actually *is* a physical public defender's office. The public defenders have leased an entire floor of an office building a half block from the courthouse and jail. The office has a reception area, a conference room for meetings and training, and private interview rooms. It has furniture donated by the Minnesota Bar Association. The attorneys have 'offices' with doors so that they can work and meet with clients, families, and witnesses in private. Each attorney has a desk, a telephone with a personal extension, and voicemail. Each has a laptop networked through individual docking stations their desks with an office-wide e-mail system, financed through a donation from the Louisiana State Bar. The District of Columbia Public Defender Service donated a state-of-the-art case management system, which is being installed. These seemingly ordinary aspects of any modern, functioning law office are nothing short of revolutionary for the New Orleans public defenders.

Another major change was the added requirement that all public defenders be full time and give up their private practice. Despite a salary increase, on par with the Orleans Parish District Attorney's Office, the change to full time caused an outcry from some public defenders, several of whom vacated their positions, as well as judges. Feeling the small breeze of change beginning, many judges objected, strongly preferring their dependent, part-time public defenders.

These judges played out their objections in the media and in court. The switch to full-time representation initially left some temporary gaps in representation, all of which were quickly filled. Suddenly and ironically, these judges were interested in the lack of representation for clients for whom they had shown little regard until this point. As a result, the judges have threatened to hold me in contempt over a half dozen times since I joined the office. They issued a contempt order and scheduled a contempt hearing against the top management and directors of the office for failure to assign and staff the office in the manner the judges desired. The judges backed down when confronted with negative press and a governing statute that prohibits them from participating in the management decisions of the office.

More recently, the chief judge of the Juvenile Court in New Orleans held me in contempt and incarcerated me at the Orleans Parish prison because he was dissatisfied with the way the court was being staffed and refused to discuss the status of reform in the public defender's office. I was released after several hours when the intermediate appellate court stayed the contempt ruling, which was later dismissed. The judge and I met, talked about the

pending reforms, and both subsequently appeared on the local news, speaking the same pro-reform message. Shortly thereafter, the office contracted its juvenile cases with a national, award-winning juvenile services organization.

Instead of relying upon an old guard, the office hired a new crop of energetic, committed young attorneys in the fall of 2006. Instead of being sent into courtrooms without any training, as their predecessors were, the newcomers were provided with intensive, weeklong training programs. The office plans to hire its second "class" of new attorneys this fall and is actively recruiting dedicated law students from around the country. This sort of nationwide recruitment is light years away from the old system of "appointments" among local friends.

In addition, the public defender's office is in the process of converting to a structure of vertical representation that provides continuous representation from first appearance, within twelve to twenty-four hours of arrest, through the conclusion of the case. The first step in this process is also meeting with judicial resistance. To make this conversion, the office must cover the huge backlog of cases in the sections, and it has relied upon an emergency pro hac vice rule passed for this purpose. The rule has allowed the office to create partnerships with the Public Defender's Offices in Minnesota, Philadelphia, and Washington, D.C.—all top-flight offices—which are sending two or three attorneys each for six-month sabbaticals to help represent indigent clients.

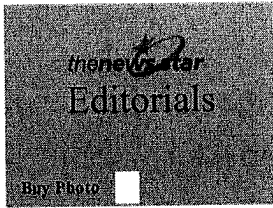
Again sniffing the winds of change, the chief judge refused to allow any out-of-state attorney to practice in his courtroom without a Louisiana lawyer literally by his side at all times. The rule does not require this, but change comes hard, and many of the judges will not go down without a fight.

Many of the judges have complained vociferously that the reform effort is a waste of money and that, against all reports, the criminal justice system in New Orleans worked just fine before Katrina and the public defender's office simply needs to return to the way it was. These judges have complained that money for proper office space, for computers and a modern telephone system, and for proper salaries for full-time attorneys are all a waste of resources. Yet, the current board and management team of the New Orleans Public Defender's Office are striving for more than recovery from a storm. We are fighting for real justice for real people for the very first time.

As published in *Human Rights*, Fall 2006, Vol. 33, No. 4, p. 9-11

Find cash for proper defense

8:55 p.m. CT March 18, 2015



(Photo: THE NEWS-STAR)

By now, the line is etched permanently in the memory. It was heard in every episode of "Law & Order" and countless other police shows on TV.

You have the right to an attorney. If you cannot afford an attorney, one will appointed to you.

It's part of the Miranda rights that protect us against overzealous police and prosecutors, as American as the premise that all are to be considered innocent until proven guilty beyond a reasonable doubt.

The reality is, in most cases, police get it right. The person arrested is guilty. And providing representation is costly to taxpayers. Approximately 90 percent of cases in the criminal justice system require a public

defender. Why bother?

Easy. The system can get it wrong. Look at all of the cases where DNA evidence has shown erroneous convictions. Imagine the chaos and the greater chance of error if competent legal representation wasn't provided.

The statues of Justice seen around courthouses show a woman blindfolded, not to turn an eye to systemic abuse but to assure fairness.

So it should concern everyone that more than 40 percent of Louisiana's public defender offices ran deficits in 2013.

The state Legislature appropriates \$33 million to the state Public Defender Board, which then doles out the money to the local offices: \$17 million is divided among the 42 local districts; \$13 million goes to nine nonprofit organizations — \$9 million to death penalty cases, and \$3 million accounts for the state board's budget.

The share for the 4th Judicial District makes up only 25 percent of its budget. And with the state's budget woes, those funds might be in jeopardy.

The other 75 percent comes from local funding based on traffic ticket fines or forfeited bail bonds. Recently, those funds, too, have been declining. The district has enough money to fund indigent defense through August 2016.

When that money runs out, desperate measures may be taken. In 1986, lack of funding resulted in attorneys — some with little criminal defense experience — being appointed by the courts to handle public defense, some without compensation. Pity the defendant who has to rely on counsel that is inexperienced coupled with a lack of motivation.

If the 4th District has to again rely on appointed attorneys, the docket certainly will slow down. That requires longer stays in jail in cases where bail is a problem, adding to the taxpayers' costs.

But a greater concern lies with the possibility cases could be reversed because adequate counsel could not be provided. The U.S. Supreme Court ruled defendants are entitled to adequate counsel, and if that cannot be provided a guilty verdict can be reversed. That serves no one. Retrial further ties up the courts, increases costs and plays with the dignity of the defendant.

A local criminal case policy board is looking at ways to improve finances to prevent a worst case scenario. It's imperative that 4th District Attorney Jerry Jones and the court do everything they can to improve the collection of fines, fees and assessments. Justice depends on it.

The editorials in this column represent the opinions of The News-Star's editorial board, composed of General Manager and Executive Editor Kathy Spurlock, Business and Politics Reporter Greg Hilburn and Education Reporter Barbara Leader.

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Orleans public defender wins, death penalty groups lose as state redirects indigent defense money

BY JOHN SIMERMAN | THE ADVOCATE JUL 4, 2016 - 12:56 PM

John Simerman

In New Orleans and across Louisiana, public defenders are starting off the new fiscal year on better footing.

Gov. John Bel Edwards and the Legislature held steady the total amount of funding the state kicks in for indigent defense, while voting to shift more of that \$32 million to the front lines.

But the shift has taken a toll on the agencies that represent defendants in capital cases, both at trial and in years of appeals after convictions. Two of those outfits, the Capital Post Conviction Project of Louisiana and the New Orleans-based Capital Defense Project of Southeast Louisiana, say their budgets have been cut in half, with each losing about \$1 million.

Story Continued Below

A bill that Edwards signed June 17 requires the Louisiana Public Defender Board to dole out at least 65 percent of its budget to local district defenders, an increase of nearly \$5 million from what the state board had been delivering to local defenders in recent years.

The biggest beneficiary is the Orleans Parish Public Defenders Office. It will see a nearly \$1.5 million increase in state money, bringing its total budget to \$7.9 million. That figure assumes funding from the city stays level at \$1.5 million, with a modest decline in revenue from fines and fees generated largely from traffic tickets.

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'It's just not working': Funding public defenders with user-pay system doesn't make sense, many officials say

A long slide in the number of traffic tickets written across Louisiana — the biggest revenue source for most public defender offices in the state — reached a crisis point last year. More than a dozen district defenders curtailed services, cut staff or turned away poor defendants, leaving more than 1,000 arrestees in Louisiana without attorneys.

Ultimately, the Legislature spared those offices a steep projected cut in the state's annual supplement to local funding, though advocates note that a largely "user-funded" system remains shaky, with reform elusive.

In Orleans Parish, Chief Public Defender Derwyn Bunton described "a burst of resources that's going to delay and mitigate some bad things."

The extra cash will mean an end to a hiring freeze and other stiff cutbacks that Bunton resorted to over the past year to grapple with a severe budget shortfall.

The added money will allow him to add perhaps eight lawyers to his depleted staff and to beef up contracts for private attorneys to handle cases in which his office has a conflict, Bunton said.

"The good news is we're getting an increase," Bunton said. "But because of the problems created over the last year, we'll be dealing with a backlog of wait-listed and some refused cases."

In January, Bunton's office began turning away scores of violent felony cases, citing an overworked staff and the loss of experienced attorneys in his office.

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Public Defenders Office
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In cutback mode, Orleans Public Defenders Office waives off new 'conflict' cases

The dire budget picture prompted one Orleans Parish judge to order the release of seven inmates accused of violent crimes, citing a lack of money to represent them — a ruling that has since been blocked on appeal.

As it stood Friday, 54 indigent defendants remained on waiting lists for lawyers in New Orleans, according to figures provided by Bunton's office. They have gone without lawyers for as long as five months, though most have been waiting for shorter periods.

That list has been whittled down from more than 400 at one point. Some ended up hiring private attorneys. For others, judges appointed pro bono lawyers to handle their cases. District Attorney Leon Cannizzaro's office refused charges in some cases, while Bunton's office has made room for others.

However, Bunton bristled at the notion that the dwindling roster of unrepresented defendants suggests the problem wasn't as bad as it looked.

"The size of the list should not be diminished by the ingenuity of desperation," Bunton said. "Just because you get a lawyer in six months and a day doesn't mean no harm happened. This is the Bill of Rights, not a line at Rouse's."

Chief State Public Defender Jay Dixon said most but not all local offices will benefit from the shift in state funding. But the statewide funding troubles are far from over, he said.

For one thing, he said, the money may not last the year.

It also doesn't account for some 300 cases in which a recent U.S. Supreme Court ruling demands new sentencing hearings for inmates who are serving life prison sentences without the possibility of parole for crimes committed while they were juveniles.

Just a few of those hearings could cripple smaller parish defenders' offices, he said. In New Orleans, some 70 juvenile lifers are awaiting new hearings at a cost that Dixon pegged at as much as \$50,000 apiece for cases that reach a full-blown hearing.

What remains as district defenders like Bunton try to dig out of a fiscal hole, is a local funding structure that relies mainly on traffic ticket revenue, which for various reasons has slid by some 30 percent since 2010, Dixon said.

"I'm grateful to the governor, who basically protected our budget, but we've been talking about the shortage in funding for years and we're still in the same place," Dixon said. "The number of tickets keeps going down. As long as local funding keeps dropping, it's putting lipstick on a pig."

Whether the Legislature intended it or not, the shift of money to local offices has spelled trouble for capital representation, which saw overall state funding drop from \$10 million to a little more than \$6 million.

The Capital Post-Conviction Project of Louisiana has scored some hard-fought victories in recent years. It helped secure the 2014 release of death row inmate Glenn Ford, then saw a 6-2 U.S. Supreme Court majority grant death row inmate Michael Wearry a new trial this year in a 1998 murder case.

But the new legislation has left the agency \$1 million short and forced it to reduce its staff from 22 to 12, said Gary Clements, the group's director.

"All I can tell you is we put in very high-quality work, and we see positive results," Clements said. "We see the population of death row decreasing. Prosecutors apparently don't seem to like that result."

Whether the organization will have to turn away some cases or delay others remains uncertain, he said. "We still have attorneys. We still have support staff. We're still open for business," he said.

Also taking a \$1 million hit was the Capital Defense Project of Southeast Louisiana, which handles capital cases at trial in various parishes that don't have qualified attorneys to handle them. Few such cases arise these days in Orleans Parish, but director Kerry Cuccia said the volume fluctuates.

His budget was reduced from \$2.1 million to \$1.1 million in the legislative restructuring, he said.

Cuccia said he heard proponents of the legislation argue that too much was being spent on capital defense, though he said, "I'm not sure that translated into a purposeful thing to reduce" funding for capital defense, rather than simply a bid to stanch the tide of red ink among local public defenders offices.

"The fiscal problems this Legislature and the governor had to face in this session were mammoth," he noted.

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Cuccia said the Legislature has taken some steps over the years to bolster funding for poor defendants, increasing the state's contribution and in 2012 approving a \$10 increase in the fee that convicts and traffic violators must pay to support indigent defense. But that increase hasn't done much to solve the problem.

"I would not say the Legislature kicked the can down the road," Cuccia said. "They tried to address it. The things they have done have not worked out to provide enough for what the demand is."

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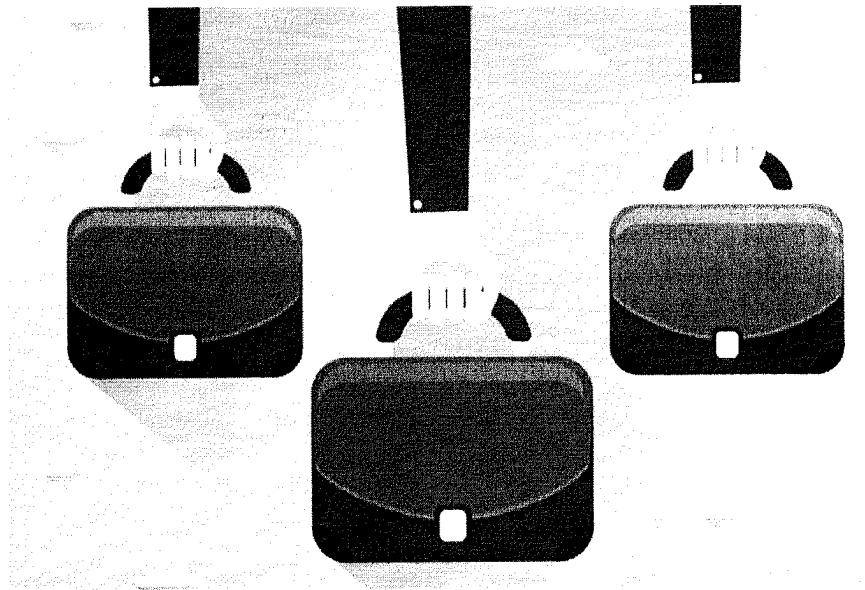
WEDNESDAY, MAY 25, 2016

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A public defense crisis in Louisiana: 33 of 42 public defenders' offices restricting client services due to funding shortfalls

POSTED BY [DELLA HASSELLE](#) ON WED, MAY 25, 2016 AT 3:49 PM

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Early last year, Louisiana prosecutors accused and a grand jury indicted local resident Darrian Franklin of second-degree murder after 35-year-old Trenton Gary was shot five times and left to die on the side of Behrman Highway.

In the coming months, Franklin may be released from Orleans Parish Prison. But it's not because a jury has found him to be innocent of the crime.

Rather, it's the symptom of what Orleans Public Defender Derwyn Bunton has called a "constitutional crisis" for lawyers representing those too poor to afford private attorneys.

Citing funding shortfalls, the local public defender's office in January stopped taking complex cases. As a result, Franklin and six other inmates accused of rape, armed robbery and other serious crimes sat for up to four months in jail without seeing a lawyer. In April, Criminal District Court Judge Arthur Hunter demanded their prosecution halt, and a higher court is considering their release.

Franklin's is one of more than 340 cases that have been refused so far this year in New Orleans. The problem extends statewide, as 33 out of 42 public defenders offices in Louisiana are refusing cases or placing clients on waitlists. Thousands are now sitting in jail, with no foreseeable legal assistance.

As the legal drama comes to a head, the indigent clients, defense lawyers, local judges and legislators all have been in the spotlight, many opining on how best to handle defenders' dwindling fiscal resources amid the state's \$600 million budget gap.

But there's another group – one that local defense attorneys and a member of the national Sixth Amendment Center says is adversarial – that has been outspoken about exactly what public defenders should do with their money: the [Louisiana District Attorney's Association](#).

E. Pete Adams, the association's executive director, has joined other prosecutors in lobbying members of the Louisiana legislature to pass [House Bill 1137](#), a measure sponsored by state Rep. Chairman Mark R. Albany, that would reduce the size of the [Louisiana Public Defender Board](#) and force it to allocate more money to local offices.

33 out of 42 public defenders offices in Louisiana are refusing cases or placing clients on waitlists.

That's because the defender budget crisis, he said, is a ploy by the state board to get money that isn't actually needed – therefore, better controlling the board would alleviate the backlog of unrepresented clients.

"We have been suspect for some time about the size and validity of alleged crisis in public defender fund," Adams told *Gambit*. "Our interest in this is clearly that the board appears to be manipulating funding to cause a restriction of services at a local level."

Some, including defense attorneys, have challenged this statement, and the motive behind it. Among questions being asked by defense attorneys and legal experts: Why are Louisiana's district attorneys allowed to be so involved in public defense funding in the first place?

John Burkhart, campaign manager for the Louisiana Campaign for Equal Justice, is among those raising eyebrows. His organization's stated goal is creating a stable, reliable and adequate system of funding for public defense in Louisiana.

Burkhart joins public defense attorneys in pointing to [a Louisiana statute amended in 2008](#), which requires that the state's public defense system remain "free from undue political and judicial interference and free of conflicts of interests." According to him, prosecutorial involvement in legislative discussion over defense funding creates a situation that's ripe for that very kind of clash.

"You don't see very many agencies testifying as to the fiscal needs of different agencies, so it's certainly unique in that respect," Burkhart said. "The public defense and district attorneys have adversarial roles in the courtroom. Taking that at large, there's certainly potential of appearance of conflict of interest."

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Today's funding controversy, and the potential conflict between Louisiana's district attorneys and the public defenders, has been going on for more than a decade.

When the levees broke in New Orleans in 2005, following Hurricane Katrina, there were nearly 5,000 local indigent detainees who needed evacuation. The Southern Center for Human Rights conducted an investigation about their status afterward, and discovered the vast majority of the defendants not only hadn't seen a lawyer since the storm, but hadn't had contact with one six months prior to Katrina's landfall.

Back then there was no state-established system for monitoring or funding public defense attorneys. Rather, a network of private attorneys had created a system called the Orleans Indigent Defender Program, in which they represented poor defendants part-time.

According to a report released in 2006, the defense lawyers were allowed to take on as many private cases as they wanted. As a result, their indigent defense work suffered. The center found they didn't



CHERYL GERBER

"Prosecutors will forever try to make sure public defenders bring knives to gunfights," says Orleans Public Defender Derwyn Bunton. "It is in their interest to do so."

In May, Adams wrote [an opinion piece](#) for *The New Orleans Advocate* likening the public defender's budgetary complaints to the story of "Chicken Little" — the fairy tale about the chicken who claimed the sky was falling. The board, Adams said, was spending too much money on staff and nonprofit legal organizations, and not enough on local defense.

"We believe the problem lies not with local public defender offices, many of which do an outstanding job of representing their clients, but in the Louisiana Public Defender Board, which has become a kind of middleman receiving and parceling out the state's \$33 million annual allocation," Adams wrote. "Before the board came into existence in 2007, public defender offices may have been underfunded, but they were not in crisis."

Adams and other prosecutors haven't just targeted the board in media campaigns. They've also shown up before the legislature to argue the merits of HB 1137.

The bill would reduce the Louisiana Public Defender's Board from 15 members to 11, removing some law professors that serve and allowing the makeup to include local public defenders. Four members of the board would be appointed from the governor, five from the state Supreme Court, one member from the House and one from the Senate.

The bill also calls for 65 percent of the state public defender board's \$33 million in direct state funding to go to local districts. Last year, the board doled out roughly 50 percent of funds to those attorneys.

On May 24, the bill passed the Senate by a vote of 33 yeas and 2 nays with minor amendments, and was ordered returned to the House.

During a hearing in the Senate Judiciary B committee, not a single defense attorney spoke in favor of HB 1137. In contrast, all five who spoke in favor of the bill were employed by a district attorney's office. Among them was Ricky Babin, District Attorney overseeing Ascension, Assumption and St. James parishes.

Like other testifying district attorneys, Babin recalled a time when the defense attorney of his district had reserves before the creation of the Louisiana Public Defender Board.

"When the money came to the local boards, we had no problems. We had no issues. We worked together," Babin testified. "I believe it would be way better served to have those funds brought back to the local area where we can decide, they can decide, the courts can decide how that money is raised and how we can supplement that money."

advocate for lower bonds, visit crime scenes, interview witnesses, do research or even prepare for trial.

In 2007, the legislature created the Louisiana Public Defender Board, a 15-member commission housed in the executive branch selected to promulgate indigent defense standards. Though trial-level services were still delivered with local autonomy, indigent defense as a whole became organized at the state level. As a result, districts started getting state money for public defense in addition to their local revenue. The central office also started contracting with non-profit public defender agencies for some appellate services and capital conflict representation.

In the years following Hurricane Katrina, the creation of the Louisiana Public Defender Board was called "one of the most substantial reforms" to be implemented statewide.

Fast-forward to 2016, however, and prosecutors are now challenging the merits of that board, and the efficiency with which its members dole out state funds to keep local defense up and running.

In May, Adams wrote [an opinion piece](#) for *The New Orleans Advocate* likening the public defender's budgetary complaints to the story of "Chicken Little" — the fairy tale about the chicken who claimed the sky was falling. The board, Adams said, was spending

"The public defense and district attorneys have adversarial roles in the courtroom. Taking that at large, there's certainly potential of appearance of conflict of interest." — John Burkhart, campaign manager for the Louisiana Campaign for Equal Justice

Several prosecutors took issue with capital defense funding, opining that the board inappropriately funds nonprofit legal organizations that represent the indigent on death row, who make up less than 1 percent of criminal defendants.

Of the \$33 million budget, about \$10 is now allocated for death penalty representation, juvenile services and other funds.

Local prosecutors aren't the only legal experts who have complained about the structure of the board, and about how its funds are dispersed.

Like Adams, former prosecutor and criminal defense attorney Joseph Raspanti criticizes the merits of the described public defense budgeting crisis. He says both the board and local defense offices, including Orleans Public Defenders, are "top heavy," and waste precious public dollars on attorneys who rarely enter the courtroom.

"A lot of people are getting a lot of money who don't try cases," Raspanti said. "They're stealing my money."

Other private defenders, as well as public defenders, have adamantly disagreed with the prosecutors' claims.

They include Baton Rouge-based criminal defense lawyer John DeGiulio, who [in another opinion piece](#) in *The New Orleans Advocate* defended the Louisiana Public Defender Board.

"Since the reform, public defenders have been asked to comply with caseload limitations that allow proper representation," DeGiulio said. "Most of them do not have retirement or health insurance, nor direct salary payments from the state, unlike assistant district attorneys. But the quality of representation has improved."

The real culprit, defense attorneys argue, is that the funding system as a whole is inadequate, as Louisiana is the only state in the nation that relies mostly on traffic tickets and forfeited bail bonds to cover public defense.

Latest statistics show that 33 percent of the board's revenue currently comes from the state. The rest is from fines and fees. As Bunton explains, public defender offices have no control over these revenue streams, their collection or disbursement.

"It's inadequate, unstable and unreliable," Bunton repeatedly has said.

In the past, Bunton has pointed to a 2006 American University report. It found that with more than 20,000 indigent clients a year, the Orleans Public Defenders office needs 70 lawyers and an \$8.2 million budget to "protect its clients' constitutional rights."

[A more recent tally](#) showed the office had about 50 lawyers and a \$6.2 million budget.

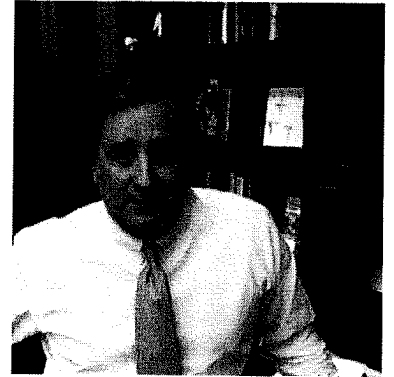
In late May, Bunton told *Gambit* that his office's fiscal challenges won't likely be resolved this legislative session.

He hopes that by the end of 2017, legislature will agree to substantial reform of Louisiana's "user pay" system. The alternative, he said, is a "coercive judicial intervention" on a federal level, possibly through a consent decree.

Dixon agrees, saying that supporters of HB 1137 have failed to articulate how it will help solve the overall budget problem.

"You will be removing years of experience, years of institutional knowledge, and replacing them with folks who know nothing about what we do," Dixon told the Senate in May.

[click to enlarge](#)



"A lot of people are getting a lot of money who don't try cases," says Joseph Raspanti, a former prosecutor and criminal defense attorney. "They're stealing my money."

Louisiana is the only state in the nation that relies mostly on traffic tickets and forfeited bail bonds to cover public defense.

In the meantime, legal groups from all sides are left debating the merits of the district attorneys' involvement in public defense funding the first place, with many wondering whether the issue would be more quickly resolved if the LDAA were not involved

According to Bunton, district attorneys have long "meddled" in the politics of defense funding. He points to 2009, when the district attorney's association lobbied against an effort to get public defense attorneys a \$20 court-cost supplement.

"Prosecutors will forever try to make sure public defenders bring knives to gunfights," Bunton said. "It is in their interest to do so."

This legislative session, Dixon acknowledges a concern over local restriction of indigent defense services, because it slows the docket and affects their ability to prosecute.

Dixon also argues, however, that district attorneys want to set policy on the board's finance of capital cases, because lawyers working there have been "far too effective" for the opposition's comfort. He points to recent data showing that since 1976, more than 80 percent of death sentences have been overturned in Louisiana.

click to enlarge



David Carroll, executive director of the [Sixth Amendment Center](#), says there's nothing wrong with two oppositional groups working together for comprehensive reform – but that's not what he sees happening here. "When you don't taken consensus approach, and you try to dictate how money is spent on an adversarial side, that's where you cross over into the unethical," Carroll said. "And I think that's what's happening in Louisiana."

Legal ethics lawyer and Loyola University New Orleans College of Law professor Dane Ciolino, on the other hand, has a different outlook. While he agrees that the defense attorneys and the district attorneys are adversarial forces in the courtroom and beyond, he thinks it's appropriate for an oppositional voice to lobby against certain aspects of public defense funding

"When you don't taken consensus approach, and you try to dictate how money is spent on an adversarial side, that's where you cross over into the unethical," says David Carroll, executive director of the Sixth Amendment Center. "And I think that's what's happening in Louisiana."

"In my opinion, there's nothing illegal or unethical about those lobbying efforts," Ciolino said of the district attorney's association. "One of the ways democracy works is that people with competing interests take facts and opinions to the legislature in attempt to get what they want

Ultimately, Ciolino concluded, the onus lay on lawmakers to consider the source of the information when making decisions about public defense funding, or any other issue to come before legislature

"It's called politics," he said with a laugh

Tags: [Dane Ciolino](#), [Derwyn Bunton](#), [Joe Raspanti](#), [David Carroll](#), [Orleans Public Defenders](#), [public defense](#), [Louisiana Public Defender Board](#), [Ricky Babin](#), [Criminal District Court Judge Arthur Hunter](#), [Sherman Mack](#), [Orleans Indigent Defender Program](#), [The New Orleans Advocate](#), [Image](#)



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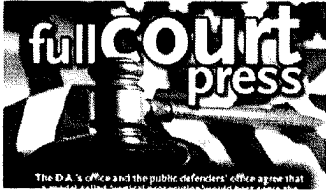
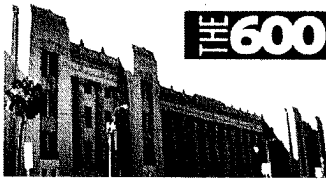
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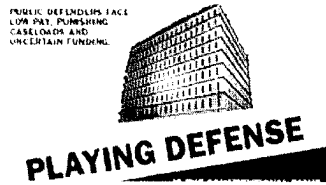


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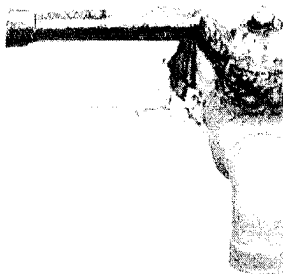
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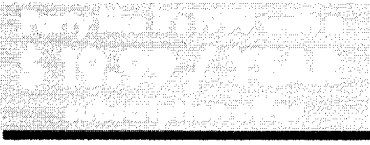
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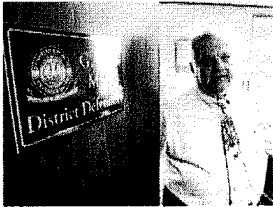


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Public defenders office seeks volunteer lawyers

Seth Dickerson, sdickerson@theadvertiser.com 5:20 p.m. ET March 2, 2016



(Photo: Leslie Westbrook/Daily Advertiser)

15th Judicial District Defender G. Paul Marx announced Wednesday that in the face of budget cuts to the office that have left him with a skeleton staff to defend indigent clients, he and his staff will work with the parish bar association to facilitate a volunteer lawyer program to help tackle the office's ever-growing pile of unassigned cases.

Marx, who oversees public defenders in Acadia, Lafayette and Vermilion parishes, said that he's open to getting pro-bono help with the tens of thousands of cases that pour into his office yearly. Less than 20 attorneys are left in the office to work on the 7,555 cases that were still pending as of Jan. 1, 2016 plus however many cases have come into the office since.

Judge Rick Michot started the conversation to have some lawyers work pro bono when he inserted a note into the bar association's newsletter last month, Marx said, where Michot he suggested he'd like to have private bar lawyers supplementing the work of the roughly 15 public defenders left in the office.

PUBLIC DEFENSE: [District defender: Layoffs could spell disaster for Acadiana's poor \(/story/news/2016/02/18/district-defender-says-office-staff-cuts-could-spell-disaster-acadianas-poor/80500428/\)](http://theadvertiser.com/story/news/2016/02/18/district-defender-says-office-staff-cuts-could-spell-disaster-acadianas-poor/80500428/)

He said he's already gotten calls from lawyers looking to pitch in, and that the American Bar Association and 15th JDC policies have made private bar counsel an important part of the defenders' office. At this time, Marx said, there are no plans to appoint volunteer lawyers to cases, as the Louisiana Bar Association passed a resolution stating that criminal defense work requires more than basic knowledge of the law, so it's important that the lawyers volunteering their time can handle the cases they choose to take.

"The obligations of counsel are no less for clients who can't afford an attorney, so I don't want to ask lawyers or clients to bear the failure of our funding by risking licensure as attorneys or a person's right to counsel," Marx said.

Defenders in the 15th Judicial District handled 12,264 new cases in 2015. Last year, state public defenders handled more than 241,000 cases.

"The Public Defender Act was created with this vital part of criminal justice at the core of what we do every day, and it is no different in this crisis," he said.

Read or Share this story: <http://www.theadvertiser.com/story/news/crime/2016/03/02/public-defenders-office-seeks-volunteer-lawyers/81221342/>

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DEFENDING THE INNOCENT

A strong public defender system is the best safeguard against innocent people being sent to prison for crimes they did not commit. In Louisiana, since aggressive efforts began in 1991, at least 25 men have been proved innocent after spending significant periods of time (between 4 and 30 years) in prison. Wrongful conviction is not isolated to one area of the state. Innocent people have been sent to prison from all corners of the state, from New Orleans to Houma to Lake Charles. While many factors caused these wrongful convictions, one common theme in almost every case is that the defendant did not receive a strong defense at trial and during his initial appeal. Innocent people, wrongfully convicted, spend decades in prisons while perpetrator remain free. Well-trained and adequately resourced public defenders would have prevented these convictions.



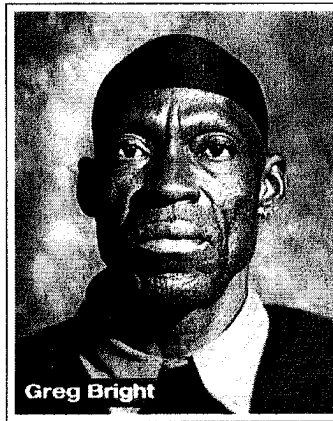
John Thompson

Wrongful convictions cost everyone. It is an unspeakable horror for an innocent person and their family, it deprives the victim of justice and closure, it falsely terminates the search for the real offender, it costs much more to correct the mistake than it does to administer justice fairly and accurately the first time around, and it erodes public confidence in the criminal justice system. If properly resourced, the public defender agency will help restore that trust by preventing wrongful convictions and promoting community safety. A strong public defender system improves the performance of the entire criminal justice system by being a worthy adversary at every stage of legal proceedings.

A strong public defender system protects indigent defendants against wrongful conviction, and raises the protection of innocent defendants across the board. Often poor defendants families do not want to rely on an over-stretched public defender, they pool together their savings for a cut-price, paid lawyer. However, these lawyers are often just as under-resourced as public defenders who it comes to serious charges. Without means to conduct investigation or hire experts, and insufficient time to prepare, the lack of meaningful funding for public defense leads to wrongful convictions even for those who do not have a public defender.

John "JT" Thompson was 22 years old in 1984 when he was wrongfully convicted of robbery and murder in Orleans Parish. He was represented by a public defender.

John's appeal raised numerous 'Ineffective Assistance of Counsel' issues relating to his defense at the trial level. After serving 18 years in prison, in May 2003, an Orleans Parish jury took only 35 minutes to acquit JT of all charges. In the 18 years he spent in prison between his arrest and conviction, 14 were spent on death row. He survived 8 execution dates, repeatedly coming within days of execution. In September 2009, a jury awarded JT \$14 million for his wrongful conviction. The civil penalty came after a finding that a systematic training failure in the District Attorney's Office contributed to his prosecutors' withholding of crucial evidence that could have kept JT out of prison.



Greg Bright

The biggest way an under-resourced attorney fails innocent defendants is by not being able to perform independent investigation. This means the State's case is not challenged, any alibi is not properly prepared and leads on the true perpetrator are not followed up. For example, Ryan Matthews and Travis Hayes were convicted of a murder that occurred when they were each seventeen (Ryan was sentenced to death and Travis to life without parole). They were both eventually cleared and freed, but if the defense had adequately investigated the case before trial then the juries that voted to convict would have heard full alibis, details of prior criminal conduct by the State's witnesses, convincing physical evidence that Travis's car could not have been the one used in the crime and, possibly even, the identity of the true perpetrator (Ryan's attorneys were passed on rumors about the real killer before trial but did not follow up, years later DNA testing of crime scene evidence proved the rumors true).

Under-resourced lawyers cannot effectively establish their clients' innocence. Travis Hayes attorney recalled his client's case, "I would have been able to do more if I had more resources, but the family struggled to pay the initial retainer, let alone the remaining fee. I had nothing to spend on investigation and no help in the case. I didn't want to get off the case because I believed in the kid, but for the money I got from them, I just couldn't provide an effective defense in a first-degree murder case."

Under-resourced public defender programs also cause wrongful convictions because innocent defendants are represented by attorneys who:

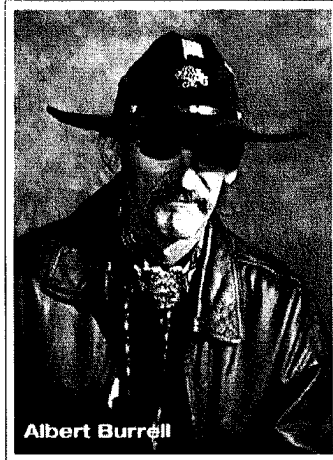
- Are not familiar enough with the facts of the case to present a coherent defense;
- Are inadequately prepared to challenge questionable forensic evidence;
- Are insufficiently trained to prevent the prosecution presenting inadmissible evidence and arguments.

This inevitably leads to injustice.

The need for strong indigent defense extends beyond trials. All defendants are entitled to an automatic appeal after conviction, but when the defendant is poor this appeal may be never filed or delayed by years. Even when the appeal is filed, key arguments are often

omitted or lifted verbatim from other briefs. Preparing an appeal that ensures a trial is properly reviewed is time consuming and specialized work, but such review is a vital curative safeguard against wrongful conviction and imprisonment.

Greg Bright served more than 27 years in Angola prison for a crime that he did not commit. He went to trial when he was 18 years old. His public defender conducted no investigation, failed to dispute the problematic testimony of the lone witness, and overall presented virtually no defense for the innocent Mr. Bright.



It is a simple fact that rich people are almost never sent to prison for crimes they did not commit. This is because they can afford a top-notch defense a defense that protects the defendant from wrongful accusation. When the public defender system lacks the resources, manpower and talent to provide high quality defense services, society run an incredible risk of convicting and sentencing an innocent person to prison - not because he is guilty, but because he is poor.

Albert Burrell and his co-defendant Michael Graham (a man he had never met until they were arrested for allegedly collaborating on the same crime) were not represented effectively by their court-appointed defenders. One of their attorneys has since been disbarred. Mr. Burrell and Mr. Graham were wrongfully convicted in Union Parish and spent more than 13 years on death row at Angola prison. They were released in 2000.

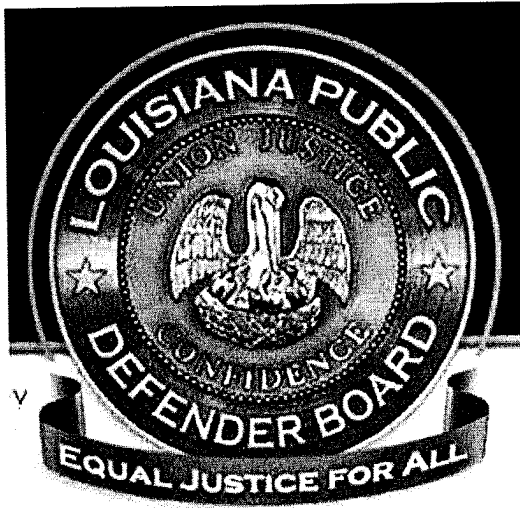
The Louisiana Public Defender Board provides funding for a portion of the Innocence Project New Orleans work in Louisiana. However, the majority of their funding is obtained through charitable foundations or private support.

Photographs of Mr. John Thompson, Mr. Greg Bright, and Mr. Albert Burrell used with their permission and consent of the artist, Jenny Bagert.

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LOUISIANA POLITICS & GOVERNMENT

Louisiana House rejects additional money for public defenders



The Louisiana House of Representatives chose not to give more money to public defenders in the state, in spite of the local public defenders' ongoing financial crisis.



By [Julia O'Donoghue, NOLA.com | The Times-Picayune](#)

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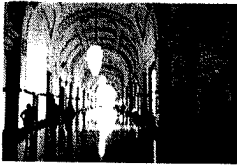
16 Comments

The Louisiana House of Representatives rejected a bid to give public defenders additional money in the state's next budget cycle. The measure failed **on a 30-54 vote** on Thursday (May 13).

Public defenders offices across the states are struggling with a lack of money. Fourteen public defender offices in Louisiana are in some type of restrictive status because they don't have enough funding to provide all their services.

This has caused serious concerns about whether civil liberties are being violated across the state, as people are being held in jail after being charged without being provided any legal representation. Lawsuits have been brought against public defenders for not providing adequate services.

Currently, the state public defenders board is slated to receive about \$30 million in the budget cycle that begins July 1. Gov. **John Bel Edwards** advocated for keeping the public defenders' funding the same as last year because of their ongoing financial troubles. Most other state agencies are taking a reduction, while Louisiana faces a \$600 million budget shortfall.



Louisiana public defenders won't be getting more money

But Rep. Cedric Glover, D-Shreveport, offered an alternative. On the House floor, he proposed taking \$6.3 million from the state Department of Corrections and giving that money to the public defenders. He said he thought the public defender funding situation had reached a crisis point.

Glover's amendment failed, in part, because he couldn't explain what type of cuts the Department of Corrections -- which oversees prisons -- might experience if the \$6.3 million was moved away that agency. The corrections department is already expected to take a cut next year, and there were concerns about how the prisons would deal with even more money being taken away.

Some state lawmakers also think the public defender board spends too much money on death penalty cases, at the expense of the local district offices. About 28 percent of the state public defender board's budget this year -- \$9.5 million -- was devoted to providing death penalty defense, according to Jay Dixon, the state's public defender.

The state public defender board is not supposed to be the primary source of funding for the local offices. The bulk of public defender money is supposed to come from court fees assessed on defendants when they plead guilty or lose a case. In reality, most of these fees come from people admitting to traffic violations.



The trials and travails of a N.O. public defender

One of the major reasons public defenders are having funding problems is that far fewer traffic tickets are being written in Louisiana than just a few years ago. It's not entirely clear why at this point. But local public defenders are having to rely more on the state board for financial support -- and the state board hasn't been able to keep up.

In New Orleans, the public defender is refusing to take certain types of felony cases, arguing its office doesn't have the staff and resources to handle them. That led a New Orleans judge to release seven defendants last month because not enough money was available to mount an adequate defense for them.

The situation is considered most dire in Acadiana, where 5,200 people are on a wait list for a lawyer from the local public defender's office. The 15th Judicial District in the Lafayette area has lost more than half of its staff and contract lawyers since February because of a lack of money.



OPD to begin refusing certain felony cases

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*Julia O'Donoghue is a state politics reporter based in **Baton Rouge**. She can be reached at jodonoghue@nola.com or on Twitter at [@jsodonoghue](https://twitter.com/jsodonoghue). Please consider following us on Facebook at **NOLA.com** and **NOLA.com-Baton Rouge**.*

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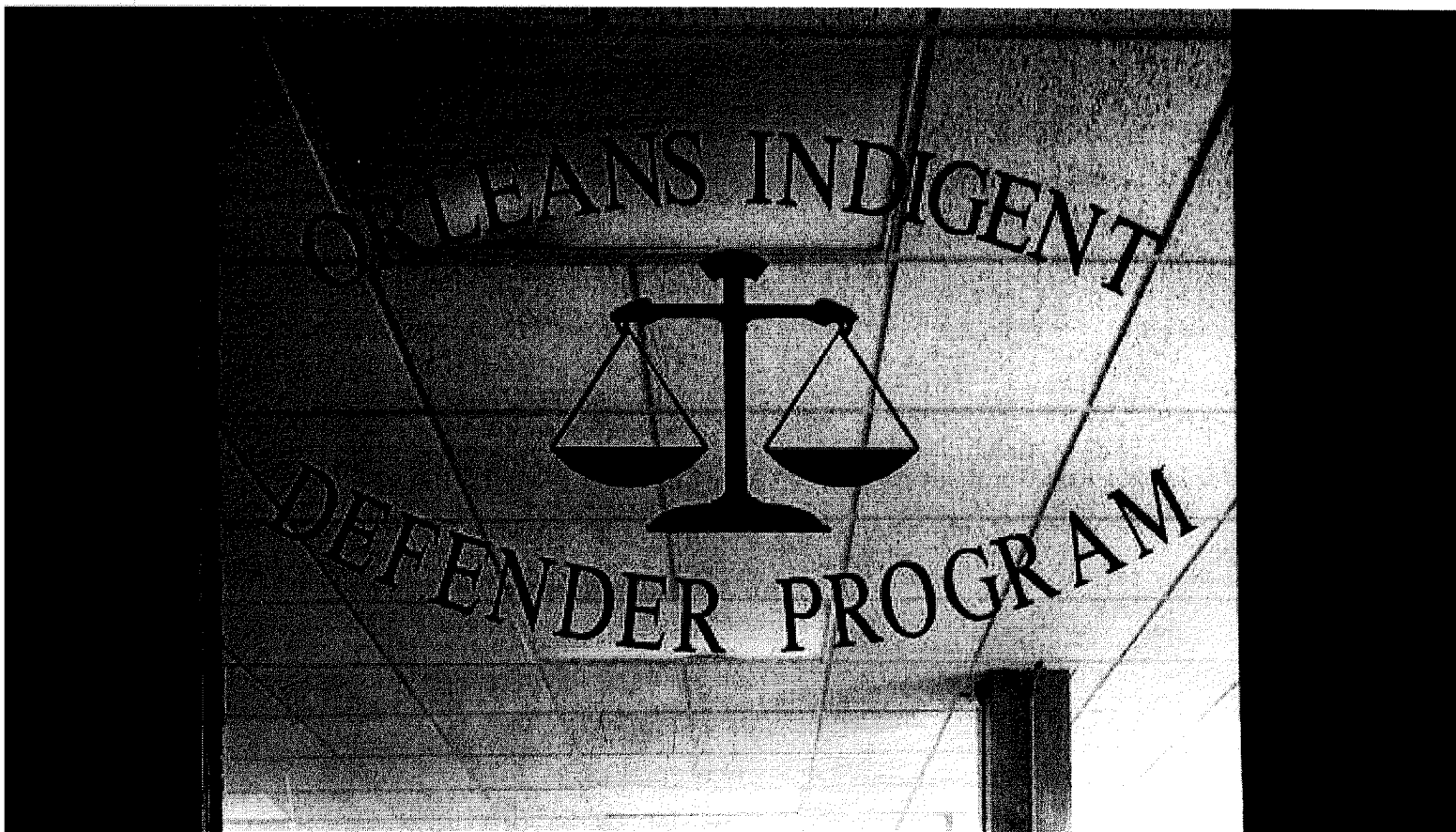
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AMERICAS (/TOPIC/AMERICAS)

Louisiana's Public Defender Crisis Is Leaving Thousands Stuck in Jail With No Legal Help



By Lauren Zanolli (/contributor/lauren-zanolli)

The entire public defender system in Plaquemines Parish, Louisiana, fits in a squat, white FEMA trailer — a remnant of the relief effort that followed the devastation of Hurricane Katrina.

The trailer is parked in a grassy lot along a commercial stretch about 30 minutes outside of New Orleans. The neon sign of a bail bond office flickers across the lot.

Like all public defenders, the Plaquemines Public Defenders Office, which is composed of two lawyers and an administrative assistant, is meant to represent defendants who cannot afford to hire a lawyer, fulfilling their constitutional right to legal counsel. In February the office announced that it was out of money and would be furloughing both lawyers and closing its doors, making it the first casualty of a public defender funding crisis that has been spreading across the state.

The Louisiana Public Defender Board (LPDB), which disperses state funding to local public defender offices, was ultimately able to provide \$80,000 to the Plaquemines office to cover payroll and office supplies only until July, when the current fiscal year ends. But the office still lacks money for outside resources like investigators and contract attorneys to cover cases where public defenders have a conflict of interest. Defendants on those cases are moved to a wait list, which currently numbers about five in a parish of 24,000.

The wait list is far longer in other areas of the state, and many are sitting in jail without access to a lawyer.

"I have clients calling saying, 'Hey, I heard you're not going to be in business anymore. What am I supposed to do?'" said Matthew Robnett, the chief public defender in Plaquemines. "I tell them, 'Hopefully we will be, but be thankful you're not in jail when you get on the wait list.'"

In Louisiana — which leads the United States in incarceration rates (<http://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR>) and has the second highest exoneration rate (http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2013_Report.pdf) per capita in the country, according to the National Registry of Exonerations — 85 percent of defendants qualify for a public defender. As of April, 33 out of 42 (<http://www.ksla.com/story/31740632/la-public-defender-funding-crisis-means-more-cuts-locally>) of its public defender offices are either refusing cases or maintaining a wait list in order to manage budget shortfalls, staff cuts, and impossibly high caseloads.

With the state scrambling to cover a \$600 million budget deficit (<http://theadvocate.com/news/legislature/15710145-123/with-possible-shutdown-looming-louisiana-legislators-take-up-task-of-task-of-solving-600m-shortfall->) left by former Governor Bobby Jindal, significant funding increases are unlikely, and many expect the crisis to worsen before it gets better.

Insufficient Funds

The predicament stems from Louisiana's unique "user pay" system for funding indigent legal services. It is the only state that relies on court fees, collected mainly from traffic tickets, to fund the majority of local public defender budgets. Public defenders get about two-thirds of their overall funding from local revenues, the LPDB estimates, leaving them constantly guessing what their annual budgets will be.

"The way we're funded is unstable and unreliable and inadequate," said Jay Dixon, state public defender at the LPDB. "That will always be the problem."

Related: Gitmo for the Poor: States Leave Impoverished Inmates in Legal Limbo

(<https://news.vice.com/article/gitmo-for-the-poor-states-leave-impoverished-inmates-in-legal-limbo>)

Revenue from traffic violations has steadily declined over the past decade, with financial reserves for local public defender offices dipping (<http://www.theneworleansadvocate.com/news/15012872-123/louisiana-at-a-crossroad-on-providing-poor-with-access-to-public-defenders-in-criminal-cases-funding>) from \$18 million in 2010 to \$6 million last year. As a downturn in the oil and gas industry exacerbates fiscal woes throughout Louisiana, state funds are increasingly hard to come by.

Public defender offices, many of them already overburdened and underfunded, have been hit hard. The office in the 15th Judicial District, which covers the parishes of Lafayette, Vermillion, and Acadia in southwestern Louisiana, lost more than half its staff from January to April of this year due to lack of funding. The diminished headcount means more cases that present a conflict of interest for the remaining staff, and there are about 5,200 (http://www.nola.com/politics/index.ssf/2016/04/public_defender_funding.html) on a wait list for a lawyer across those three parishes, including as many as 300 currently in jail.

'We're talking about the incarceration of poor black people. That's the crux of it.'

The Orleans Public Defenders Office in New Orleans, which handles 20,000 to 25,000 cases a year, stopped taking complex felony cases in January, prompting the American Civil Liberties Union to file a class action lawsuit against it and the state public defender board. A total of 348 cases have been refused there so far, and 106 cases remain on the wait list.

"Any kindergartner looking at our criminal justice system — particularly our system of public defense — can see it is unfair," the Orleans Public Defenders said (<http://www.opdla.org/news-and-events/media-coverage/294-aclu-lawsuit-a-chance-for-reform>) in response to the lawsuit. "While this lawsuit is not necessarily welcomed, OPD welcomes reform. It is our hope this lawsuit leads to lasting reform and a more fair, more just criminal justice system."

The repercussions of service restrictions are being felt in other ways.

In April, a judge in New Orleans ordered the release (<http://theadvocate.com/news/neworleans/neworleansnews/15567337-61/new-orleans-da-appeals-judges-order-to-release-seven-allegedly-violent-inmates-for-lack-of-funds>) of seven men on the public defender wait list who were held without access to an attorney for crimes that included rape, armed robbery, and murder, saying that lack of funding for their defense violated their right to due process. (He stayed the effect of his order pending appeal.) Last week, a group of civil rights attorneys filed lawsuits (http://www.nola.com/crime/index.ssf/2016/05/lawsuits_release_louisiana_def.html) on behalf of nine defendants in two Louisiana parishes that have been held in jail for months without access to an attorney.

Still, some have challenged the need for additional public defender funding.

"All it would take to turn this around is for the state board to dedicate more of their current budget to the local offices instead of keeping it at the state level," E. Pete Adams, executive director of the Louisiana District Attorneys Association, said of the LPDB, which uses state funding to handle capital punishment and appeals cases on behalf of local public defender offices. The LPDB received close to \$31 million in funding last year, and is on track to receive the same amount in the coming fiscal year.

Related: NYCLU: Justice in New York Is Available Only to Those Who Can Afford It (<https://news.vice.com/article/nyclu-justice-in-new-york-is-available-only-to-those-who-can-afford-it>)

But it's unclear that a redistribution of state funds would effectively plug the holes of a public defender system that is primarily dependent on local revenues.

The LPDB released a budget plan in late April that would increase allocations to local offices from around 50 percent of total state funding to up to 65 percent. That translates to cuts at the state level, likely to capital defense and appeals funds — a move that Dixon says will still impact local offices.

The increase in direct funding "should help stabilize many of the districts that are in trouble," he explained. "But it's going to cause other problems."

Local offices may have to start paying for appeals cases that are now covered by the state board, or may have to fund capital defense cases on their own, which Dixon said could force other districts into restricted services mode. Robnett said the cost of a death penalty case would "bankrupt" a small office like his.

"When you're rearranging insufficient funds, you still have insufficient funds," said Dixon.

Decreased Capacity

In New Orleans, the defendant wait list has been slowly increasing since January, when Chief Public Defender Derwyn Bunton announced that his office could not take on new complex felony cases without additional resources. Staff caseloads were up to 300 a year

(https://www.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken--its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html) per attorney, roughly twice the American Bar Association's recommended limit. The Orleans Public Defenders Office currently has 49 staff attorneys, including Bunton, and 10 investigators, down from nearly 80 attorneys and 20 investigators at the office's peak in 2011.

Over the past four years, the office's budget has declined from around \$9 million to \$6.2 million in 2015, which is about a third of the local district attorney's budget.

"It's not going anywhere," Bunton said of the wait list. "Even if funding comes we will be digging ourselves out of a hole.... We have to rehire and retrain to get our resources up to what we can handle."

'Part of your minimum right to counsel is more than just having a potted plant stand next to you in court. It's the ability to present an effective defense.'

The resource crunch in the New Orleans office has been made worse by mass inmate transfers from the local Orleans Justice Center to a facility hours away, Bunton said. Orleans Parish Sheriff Marlin Gusman began inmate transfers this year, which accelerated this month in response to a lawsuit (http://www.nola.com/crime/index.ssf/2016/04/marlin_gusman_opp_jail_court.html) by the Department of Justice charging that the conditions at the new \$150 million jail are "unconstitutional," citing rampant violence among inmates and "alarmingly high" suicide attempts.

Over the past few months, more than 1,000 (<http://www.theneworleansadvocate.com/news/15681153-148/gusman-to-ship-600-more-inmates-out-of-new-orleans-in-attempt-to-stem-problems-avoid-federal-takeover>) of the city's approximately 1,500 inmates have been transferred to facilities outside the parish. The bulk of them have been sent to a detention center in northeastern Louisiana, more than 250 miles from New Orleans.

"We don't have the resources at that sort of scale — we don't have the resources at all, and certainly not at 600 clients," said Bunton. "I can't afford to have staff lose a day to visit a client."

In New Orleans, as in many other places, flaws in the justice system affect black communities most acutely.

"We're talking about the incarceration of poor black people," said Nia Weeks, a lawyer who left the Orleans Public Defenders last year. "That's the crux of it."

In 2014, 87 percent (<http://www.nola.gov/getattachment/Criminal-Justice-Coordination/Reports/Orleans-Parish-Prison-Population-Projection-2015.pdf/>) of those in prison in New Orleans were black, compared to about 60 percent of the city's general population.

Those on the wait list have few options. Judges can appoint private attorneys to represent indigent defendants, but the Louisiana State Bar Association opposes (https://www.lsba.org/CJC/CJCResources_AttorneysAppointedIndigentDefendants.aspx) such appointments and lawyers have pushed back. Defendants can opt for self-representation or try to raise money to hire a private attorney.

Related: A Decade After Horror of Katrina, New Orleans Police Brutality Still Remains (<https://news.vice.com/article/a-decade-after-horror-of-katrina-new-orleans-police-brutality-still-remains>)

Without a decent lawyer, defendants are largely locked out from the client advocacy and mitigation work — such as evidence collection, sentencing negotiations with the district attorney, and bail reduction — that lawyers take on early in a case.

In the Plaquemines office, Robnett said he is unable to hire investigators to gather evidence on every case.

"I can't say for sure, but I might be more shaded to settle because we can't mount a good defense," he said. "Part of your minimum right to counsel is more than just having a potted plant stand next to you in court. It's the ability to present an effective defense."

Even things like incompetency claims for the mentally disabled or those with diminished capacity can slip through the cracks.

"To a layperson, you would think that if you can't understand what is going on, you should be considered 'incompetent.' Actually there is a whole process that has to happen," said Weeks. "A lot of people can't read or write," she went on. "Having an advocate there that understands all those things and can safeguard you... is really, really important."

Though Weeks is no longer a public defender, she noted that several former clients — all of whom qualify for a public defender — have come to her for legal aid since the crisis started rather than try their luck with the Orleans office.

Tina Peng, an attorney with the Orleans Public Defenders, wrote an op-ed (https://www.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken--its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html) in the *Washington Post* last year calling attention to the state's difficulty. A drop in her caseload has allowed her to begin taking a select number of clients off the wait list.

"One problem with the system here is when we let our clients suffer that much, it gives the message that their lives don't matter that much, that we don't value their constitutional rights," she said.

The ripple effects of a public defender system funded by court fees go well beyond the courtroom, advocates say.

"One of the consequences of a system that sort of bleeds money out of clients and client communities to operate itself is to really damage those communities trying to rebound," said Bunton. "These are largely African-American communities that have a decreased capacity to make a living."

"The years of chronic underfunding for the part of the system that is supposed to stand up and argue and be critical of programs and policies that expand this huge criminal justice net," he added. "That system has been down, if not plain out, for a long time."

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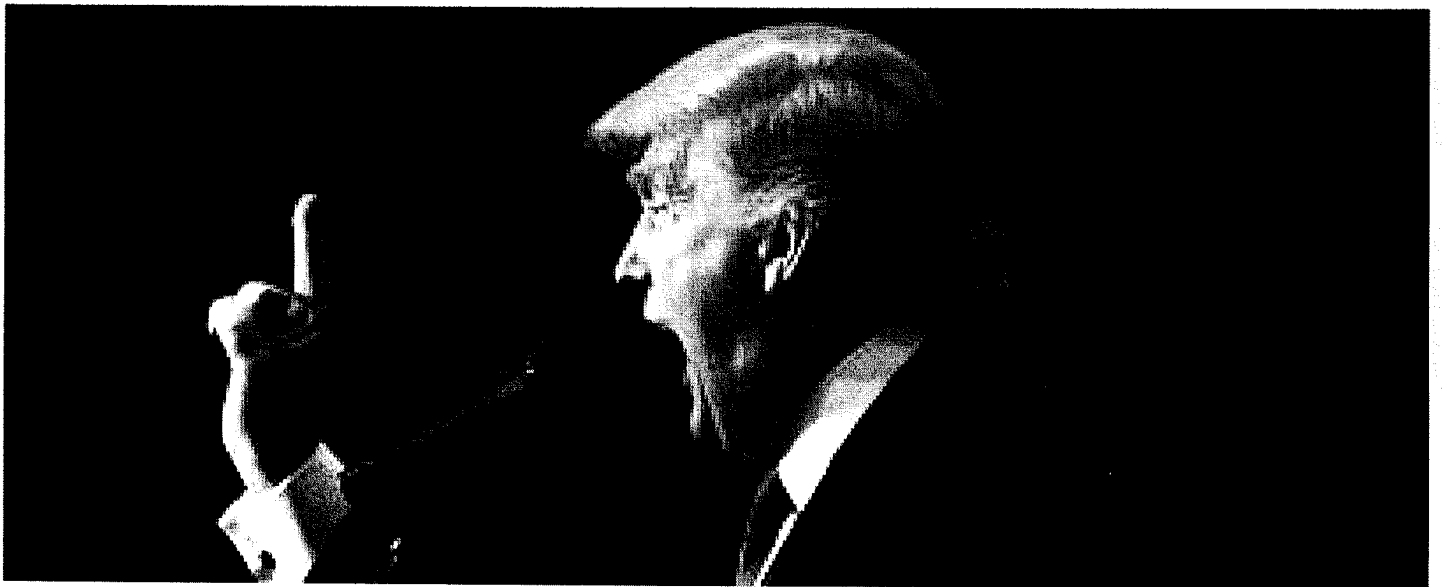
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why isn't that unconstitutional...if you can't provide them both a defender and a speedy trial they should be released.

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Oh those poor criminals! Maybe they regret getting caught up in crime now.

Message to people thinking of committing crime: DON'T.

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Thomas Pineo → CaptainGrumpy • 9 months ago

How does it goes again? Is in innocent until proven guilty or is it guilty until proven innocent. You know for the life of me i cannot remember. Can you help me out?

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aemoreira1981 → CaptainGrumpy • 9 months ago

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Lucy Zucker • 7 months ago

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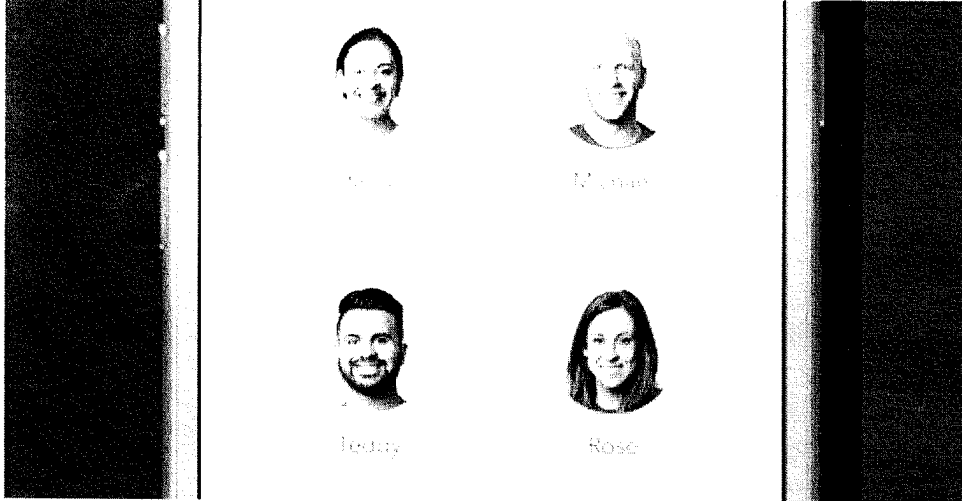


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I'm a public defender. It's impossible for me to do a good job representing my clients.

by Tina Peng September 3, 2015

NEW ORLEANS

The Orleans Public Defenders are facing a million-dollar deficit as a result of statewide budget cuts. For a small office like ours, that's devastating. To avoid layoffs, the entire staff will see the equivalent of four unpaid weeks per year in furloughs, increased caseloads and a hiring freeze — and the submission to the Louisiana Public Defender Board of a plan to cut services to the people of New Orleans. We are already stretched thin: Our office represents 85 percent of the people charged with crimes in Orleans Parish but has an annual budget about a third the size of the district attorney's. The American Bar Association recommends that public defenders not work on more than 150 felony cases a year. In 2014, I handled double that.

The United States accounts for less than 5 percent of the world's population but almost 25 percent of the global prison population. The vast majority of people in prison are indigent: The Justice Department has estimated that 60 to 90 percent of criminal defendants nationwide cannot afford their own attorneys and that in 2007, U.S. public defender offices received more than 5.5 million cases.

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Public defenders are the only ones who stand up for the vast majority of people charged with crimes in America, and we try to help our clients achieve justice in an often unfeeling legal system that disproportionately ensnares poor people and minorities. But the constitutional guarantee of effective representation for all has fallen short. The funding crisis is nationwide, and it is dire. When people ask how to push back against police misconduct, how to decrease the costs of mass incarceration and how to ensure fairer treatment of our nation's most disenfranchised citizens, part of the answer lies in fully funding public defender's offices and enabling us to represent our clients in a meaningful manner.

I went to law school to be a public defender. My frustration with our office's persistent underfunding is not that it forces me to work long hours, represent numerous clients or make far less money than I would at a private law firm. It is that when we are constantly required to do more with less, our clients suffer.

Because we don't have enough lawyers on staff, the week I passed the bar in 2013, I began representing people facing mandatory life sentences on felony charges. In Louisiana, people with as few as two prior nonviolent felony convictions can face mandatory life imprisonment on charges as minor as possession of a syringe containing heroin residue or, until recently, possession of a single joint. Defendants who cannot afford to make bond can sit in jail for 60 days while the district attorney decides whether to arraign them. An unconstitutionally high caseload means that I often see my new clients only once in those two months. It means that I miss filing important motions, that I am unable to properly prepare for every trial, that I have serious conversations about plea bargains with my clients in open court because I did not spend enough time conducting confidential visits with them in jail. I plead some of my clients to felony convictions on the day I meet them. If I don't follow up to make sure clients are released when they should be, they can sit in jail for unnecessary weeks and months.

Local constraints exacerbate these problems. Saying it lacks resources to provide adequate mental health treatment in its jails, the Orleans Parish Sheriff's Office has moved our clients with high mental health needs to a prison more than an hour away. Limited visitation hours make it almost impossible to see clients there on days we need to be in court. And recent attrition, coupled with the hiring freeze, has rendered many lawyers overwhelmed by cases transferred to them on top of their existing ones. One attorney whose transferred client was jailed on a bail-jumping charge did not have a chance to look at the file for close to a month, when the client's next court date approached. At that point, he realized that the client had never been served to appear for the court date on which he allegedly jumped bail. The attorney immediately and successfully moved for the judge to release the client. By then, though, "he had a newborn baby he didn't see, because I didn't look at the case for a month," the attorney said.

For other clients, my office considers how serious their cases are before deciding how many resources to devote to them. We have only nine investigators to handle more than 18,000 felony and misdemeanor cases each year. One investigator describes being so overwhelmed that he is often unable to canvass for relevant surveillance footage until it has already been deleted. Another investigator said that recently, in a span of a week and a half, she was assigned three cases carrying sentences of mandatory life without parole. A year ago, she would have received one such assignment a month. Those cases all had preliminary examinations — the only pre-indictment hearing at which the client's attorney can cross-examine police officers — in the same week. Working around the clock, the investigator completed full investigations for two of those cases. For the third she was able only to knock on one witness's door twice.

We similarly have to ration our social work and client welfare services. Cutbacks mean we are limited in our ability to gather detailed information about our clients' personal circumstances and histories to present to prosecutors, which could lead to more individualized plea agreements. We are also hobbled in our capacity to make sure critical services are delivered to our clients in jail.

Unfortunately, budget cuts and a spiraling workload are not unique to Orleans Parish. Funding problems threaten poor people's right to counsel across America.

In June, the American Civil Liberties Union sued Idaho, claiming that the state has failed to fund or improve its broken public defense system and has deprived indigent residents of their Sixth Amendment right to adequate legal representation. Indigent defendants in most counties there have no lawyers at their first court appearances, where bail is set and pleas of guilty or not guilty are entered, according to the lawsuit. Many counties also pay attorneys who accept public defense contracts a flat fee, regardless of the number or seriousness of the cases each lawyer handles. Some public defenders in Idaho carry caseloads that are double national standards. And because public defenders are often allowed to continue their own private practices, there is little incentive for them to spend much time on their appointed clients, or to pay for investigations or expert witnesses in those cases, a common problem everywhere.

None of that is constitutionally adequate, says Jason Williamson, one of the ACLU's lead attorneys in the Idaho lawsuit. "You need to do more than have a pulse," he says. "You need to actually litigate these cases."

Some public defender's offices have contemplated the drastic option of turning down appointments. In Louisiana, for example, offices may start putting lower-priority clients — people who are out of jail or have less-complicated cases — on a waiting list for representation, says James Dixon, the state public defender. That would mean defendants would have to come to court without lawyers to argue, file motions, or conduct hearings or trials for them, effectively bringing their cases to a halt.

Courts have mostly supported this option. In 2013, the Florida Supreme Court ruled that public defender's offices can apply to turn down future appointments when their caseloads rise so high that they cannot constitutionally represent all their clients. At the time, public defenders in Miami were handling 400 felony cases each, and some often had up to 50 cases set for trial in a week. Missouri's Supreme Court in 2012 also upheld the ability of public defenders in that state to decline appointments if they were too far over capacity. A few months later, most Missouri public defender's offices stopped accepting cases for one to two months, according to State Public Defender Michael Barrett. If the courts did not appoint private lawyers to take on cases for free, overflow defendants had no representation at all until the public defenders were able to start accepting appointments again.

In Louisiana, one of our biggest problems is unstable funding: This is the only state in America that tries to fund most public defense services with fees associated with traffic tickets, parish by parish. But other states with steadier funding are seeing even the status quo come under attack. Since 1992, Tennessee counties have been required to raise public defenders' budgets by 75 percent of any increase in prosecutors' budgets. This year, a bill requested by the state's district attorneys would repeal that law. "It's an issue of fairness," says Mark Stephens, the Knox County district public defender. "It frustrates me that they can't understand that they need money and we need money."

Ultimately, it's easy to forget what we're talking about when we talk about the criminal justice system. I've been asked by my family members, my friends and my hairdresser why I represent criminals. The answer is that I, and other public defenders, don't represent criminals. We represent poor people who are facing criminal charges — charges on which they are presumed innocent until proven guilty in court. We represent members of our communities who have a right to real and meaningful legal representation, even if they are poor. My clients, like the millions of other people in the United States who are currently represented by public defenders, deserve better.

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Tina Peng is a staff attorney at the Orleans Public Defenders.

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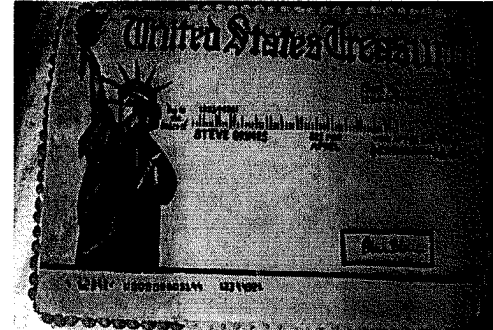
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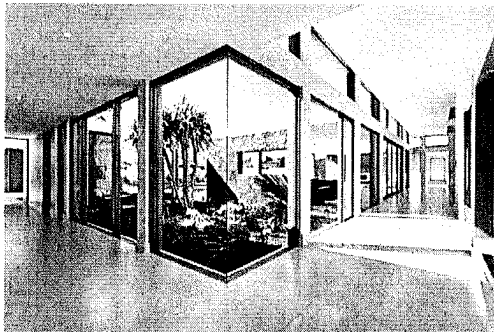
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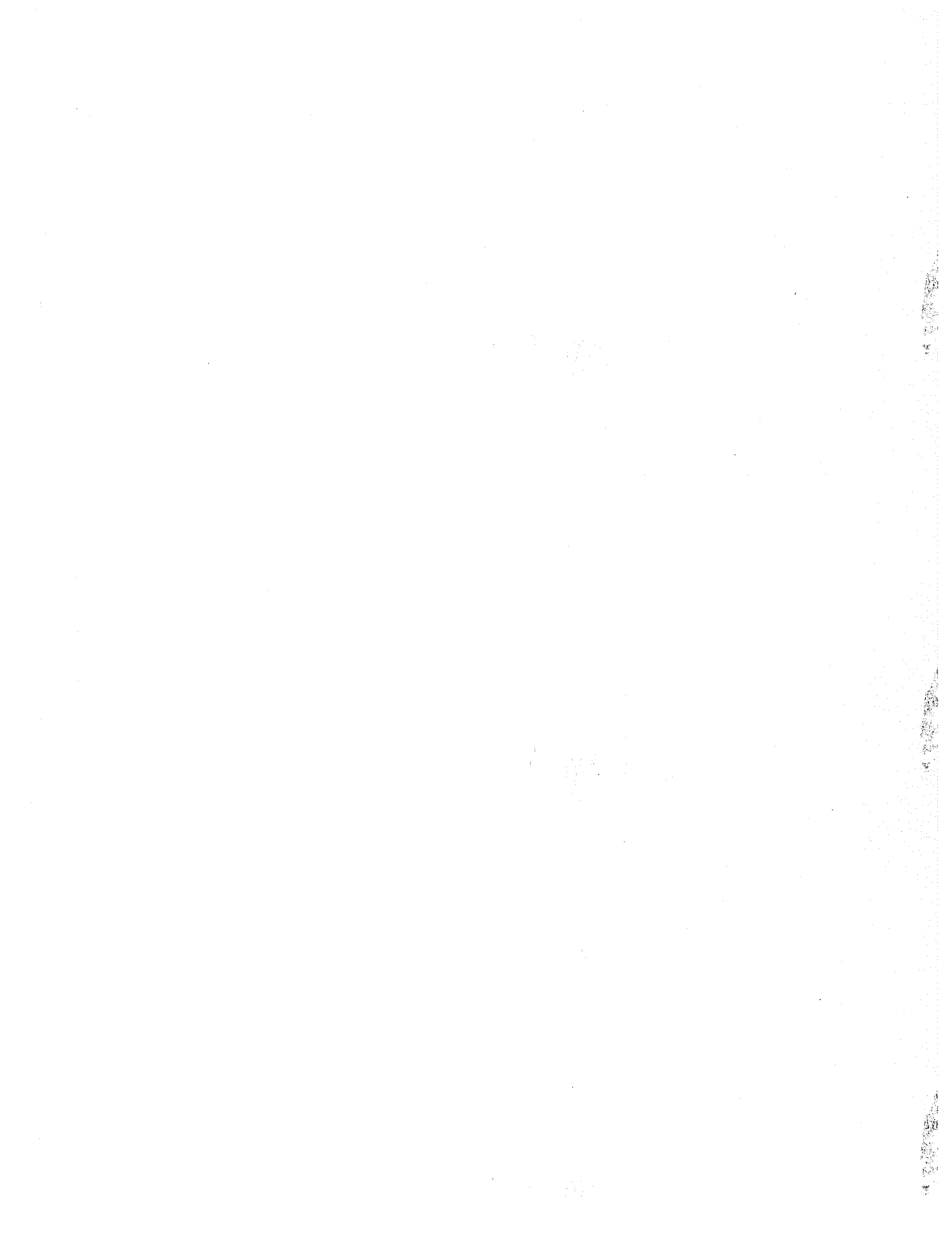
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Orleans Public Defenders Office still short of money despite extra cash from city

BY JOHN SIMERMAN jsimerman@theadvocate.com NOV 24, 2015 - 3:25 PM

An eleventh-hour cash boost from the city may have staved off planned furloughs for public defenders in New Orleans, but that didn't stop Chief Public Defender Derwyn Bunton's office from asking a judge on Friday to stop assigning new indigent defendants to the office.

The unusual cry for caseload mercy came at the start of a hearing that Criminal District Court Judge Arthur Hunter called to raise public awareness of the local impact of a statewide budget crunch for public defenders that has left Bunton's office resorting to crowdfunding to try to make ends meet.

They're still not meeting, Bunton and several friendly witnesses testified.

Story Continued Below

"They're not shirking their responsibilities," Deputy District Defender Jee Park said of the office's staff of 53 attorneys. "There just is not enough time in the day to adequately meet the demands of excessive caseloads."

At issue in Friday's hearing, which was tied to no particular case, was whether Bunton's office can provide constitutionally adequate service for its clients, Hunter said.

Bunton said his office has lost six front-line lawyers since late June, when he announced an austerity plan for an office that handles some 20,000 cases a year, including nearly 8,000 felonies.

This week, Bunton <http://theadvocate.com/news/neworleans/neworleansnews/14004653-123/furloughs-announced-for-orleans-public>>announced his office would furlough all employees for 10 days from February to June to help cover a \$1 million budget shortfall. A \$250,000 injection from the city Thursday has halted those planned furloughs.

New Orleans is far from alone in feeling a pinch, said State Public Defender James Dixon Jr., whose office doles out about \$33.7 million a year in state-allocated funds to public defenders and contract attorneys statewide.

Dixon testified that the defenders offices in eight of Louisiana's 42 judicial districts are operating under formal service restrictions, curtailing key parts of their normal work. Among them are the offices in populous East Baton Rouge and Caddo parishes, he said.

The New Orleans office is among eight that are on the brink of curtailing services, Dixon testified.

Unlike in past years, when the state board had extra money from financially flush districts to help out strapped offices, there are no extra funds this year, he said. The result: State funding for Bunton's office fell from \$2.5 million to \$1.8 million this year.

A state boost this year is "unlikely," Dixon said. "Even if we do, it is not nearly enough to do any serious good."

The state funds make up only a portion of Bunton's budget, which totals \$6.2 million. The city this year kicked in about \$1.5 million, including a \$400,000 boost, while the rest largely comes from fines and fees levied on criminal defendants, mostly in Traffic Court, where the fact that police are issuing fewer tickets has meant shrinking revenue.

Bunton has long lamented what he describes as an unpredictable "user-pay" system. On Friday, he noted that his office pales in both staffing and budget compared with District Attorney Leon Cannizzaro's office, which gets about \$12 million a year, including \$6.5 million from the city.

"I'm not saying the DA doesn't need what he has," Bunton said. "I just need more than what I have."

Hunter called the hearing in September after reading a Washington Post editorial in which a young lawyer in Bunton's office, Tina Peng, lamented a behemoth caseload. Peng wrote that she found herself having some clients plead guilty to felonies on the day she met them.

One legal ethics professor who testified Friday described indigent defense in New Orleans as a systemic failure by any measure, including caseloads.

"To call this a justice system is really a misnomer," said Ellen Yaroshefsky, of Cardozo Law School in New York. "If we're going to accept a system where we're just processing people and keeping people in jails and prisons without providing counsel, we're certainly letting down the profession and letting down the public."

Hunter has been known to make dramatic gestures about funding for public defenders. In 2012, the veteran judge ordered some notable names in New Orleans political and social circles — who also happen to be lawyers — to defend dozens of criminal defendants. At the time, he said he was acting in response to a "constitutional emergency."

Whatever Hunter does this time, he acknowledged it could apply only to his court section, one of a dozen in the courthouse.

On Friday, he repeatedly posed the same question to Bunton: Why not simply refuse to take on new cases?

"If you're making a declaration to every judge in this building — 'I'm not accepting any more indigent defense cases based on constitutional obligations' — once that happens, it belongs to the judges, what they're going to do with that particular defendant," Hunter said. "You don't have to ask me not to appoint any (more defendants) to you."

Park suggested that such a move could force unpleasant showdowns with judges who might order the office to take those cases anyway.

Hunter continued the hearing until Monday, when he plans to hear testimony from attorney Barry Scheck, director of the New York-based Innocence Project.

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FEATURE

This Boy's Life

At 16, Taurus Buchanan threw one deadly punch—and was sent away for life. Will the Supreme Court give him, and hundreds like him, a chance at freedom?



Taurus Buchanan at the Community Bible Baptist Church in Baton Rouge in 1988. His mother, Everlena, wrote "Taurus" on the photo before posting it on Facebook. COURTESY OF DEBORAH BUCHANAN

By COREY G. JOHNSON and KEN ARMSTRONG

Graphics by GABRIEL DANCE and TOM MEAGHER

Tony Clayton was 30 years old, and just two years out from passing the Louisiana bar, when he walked into court in February of 1994, prepared to try his first murder case. He was, in his words, a

“braggadocious kind of little young jit,” determined to prove himself with a case that would test even the most veteran of prosecutors.

The defendant, Taurus Buchanan, stood charged with second-degree murder—accused of throwing, at the age of 16, a single, deadly punch in a street fight among kids. If convicted, an automatic sentence would fate him to spend the rest of his life in prison, with no hope for parole. A section chief in the East Baton Rouge District Attorney’s Office had told Clayton that securing a murder conviction under these circumstances would be a tough task. But Clayton had told her, “Ah, man, I can convict. I can do it. Just give me the damn case.”

Clayton, who is African American, says he had been hired by the district attorney’s office in part because of his ability to connect with black jurors. He became so good in the courtroom he could inspire profane awe. “If Tony Clayton told jurors to eat shit out of his hand, they would do it,” one court clerk told us. To Clayton, a prosecutor was akin to a projectionist in an old movie theater. “That guy where the light’s coming from, he’s projecting an image on the screen. And that’s me. I’m projecting to those jurors how I want them to view my case.”

On the opening day of the trial, Clayton told the jury pool that young as Taurus was, a murder conviction would send him away, never again to be free. “Does that bother you at all to determine the fate of this young man?” Clayton asked a 19-year-old woman. “No, it doesn’t,” she said. “What about you?” Clayton asked another woman. “No, it wouldn’t,” she said.

Taurus Buchanan stood trial in the era of the “superpredator,” the label applied to violent juveniles in the mid-1990s, when states and the federal government passed one tough-on-crime law after another. Today, two decades later, a trio of rulings from the US Supreme Court has peeled back some of those laws, recognizing the folly of assigning equal culpability to adults and kids. In October, the court heard arguments in a fourth case, and how that ruling comes down could determine what happens to hundreds of lifers sent to prison when they were kids.

On a Thursday morning in July of 1993, Taurus Buchanan was getting ready for an evening flight. He ironed, folded, and packed his dress clothes, including a pair of olive-green pants and a green and black button-down shirt. Taurus and his father, Elton Mitchell, were heading out for a summer tour.

Mitchell played electronic keyboard with Willie Neal Johnson and the New Keynotes, a gospel band with upcoming concert dates in New York and the Midwest. Johnson had agreed to let Taurus tag

along, and some of the more experienced musicians were going to help Taurus develop his drumming skills.

It was Taurus' mother, Everlena Buchanan Lee, who'd bought him a drum set when he was little, and he kept the beat for the choir at Community Bible Baptist Church. ("I wasn't that good," he laughs now. "But nobody said it, because it was about God. It wasn't about whether I was good or not. It was about making a joyful noise unto the Lord.")

Buchanan Lee dated Mitchell in middle school and high school, and Taurus was born when she was 15. She'd eventually marry another man, and Taurus would live at his grandmother's house on East Baton Rouge's Kaufman Street. By the time Taurus was in middle school, Buchanan Lee says, her life had fallen into "Do my work, come back home, get a beating, get high, go to work, come back home." When Taurus was 14, she was charged in connection with an armed robbery after her husband held up a Circle K. Buchanan Lee pleaded guilty to accessory after the fact, and ended up with a suspended sentence and probation. Then she got divorced, and got clean. Taurus insisted she get a house close to him, on his street.



Buchanan, 13, with a family friend in June 1990. COURTESY DEBORAH BUCHANAN

The night before Taurus' trip, Buchanan Lee had wanted him to sleep at his father's, but Taurus refused. Because of his mother's past, and the rough neighborhood, Taurus, a muscular 150 pounds, had cast himself as the family protector, quick to use his fists. "If you stood in front of his mom's house or his grandmother's house and sold drugs, you had a fight on your hands," Buchanan Lee says.

"We always had fights," Taurus explains now. "Whatever school I went to, you was gonna fight... They were gonna push you, they were gonna bump you." It could be you were different, he says, or not from the area, or were talking to a girl someone else wanted to talk to. Fighting had its own language—crowding, wilding, getting into the mix—and its own rituals. "Before every fight," he says, "people would tie up their shoelaces and tighten their sneakers."

When some kids from a rival neighborhood started getting guns, Taurus figured he'd better do the same, so he paid a junkie \$10 for a gun with no firing pin. When Taurus got caught with it, the school contacted police, who released him to his family. He says a juvenile judge gave him probation. He now says that if he had spent some time locked up for any of it, even a night, "that would have gotten my mind right."

As Taurus packed, his cousins Mario Hutton and Colin Knox were in his living room watching television. Mario was 12, Colin, 15; the three were inseparable. "You saw me, you saw them," Taurus says. After a while, Mario and Colin wandered out and headed up the street. Soon enough, Taurus followed.

That same morning, about a mile away, on the other side of Scenic Highway, Jacques Brown finished a bowl of Frosted Flakes, then told his mom he was heading out to pick up work cutting a lawn. Jacques was one of eight kids in a family that didn't have much except "a lot of love," says his mother, Janice Brown. He hopped on a bicycle with a friend.

Jacques was 12 but, according to his aunt Joann Phillips, "looked like he was just 9 or 10. Jacques was skinny, skinny, skinny, nothing but bones." He was a good kid, she said. The Sunday before, when his family couldn't take him to church, he knocked on neighbors' doors until he found a ride.

The two friends crossed the highway, a north-south thoroughfare that to some in Baton Rouge served as a neighborhood boundary. As morning turned to afternoon, they made their way along Kaufman Street. That's when Colin Knox saw Jacques—and began tying up his shoelaces.

That year, Jacques and Colin had been in the fifth grade at the same elementary school, but had different teachers. The local kids often fought over turf: whose teacher was better, what side of the highway you belonged on. On the last day of school, Jacques and Colin got into it.

Now, on Kaufman Street, the insults moved from the stuff of playgrounds—"You look like a frog"—to more dangerous ground. "He called me a punk pussy-assed nigger, then I got mad and I called him a punk pussy-assed nigger back," Colin would later tell police.

Colin threw the first punch, and didn't let up. Mario joined in, neighbors looking on. Then Taurus waded in and landed one blow. Jacques crumpled, and never got up.

Accounts would vary on whether other kids in the neighborhood then piled on, beating Jacques while down. But it soon became clear how badly he was hurt. "I poured water on Jacques' face, on

his forehead, trying to wake him up," Taurus says. "I was like, 'Wake up, Jacques,'" but the boy's eyes rolled back. He saw some blood in Jacques' mouth, heard gurgling noises, and saw his body stiffen.

An ambulance took Jacques to the hospital; the cops picked up Taurus, Mario, and Colin. In the police car, Mario began to cry and Taurus wiped his tears. At the station, a policeman handcuffed Taurus to a bar on the wall. When officers unchained him to photograph the knuckles of his right hand, Taurus was shaking so forcefully that an officer had to hold his hand still. He was in an interview room with his mother when a detective walked in with news: Jacques Brown was dead.

Taurus and his cousins were booked and taken to juvenile detention, where they were sprayed for lice and given green prison uniforms. Mario told Taurus he was scared. "Man, I'm scared too," Taurus responded.

In 1994, the year Taurus Buchanan stood trial, a Chicago gang member named Robert "Yummy" Sandifer—11 years old, 4-foot-6, with a stunningly long criminal record—became a suspect in the shooting death of another child, 14-year-old Shavon Dean. As police searched for Robert, two other gang members—brothers, ages 16 and 14—took the 11-year-old to an underpass and murdered him.

Robert's story made the cover of *Time*, and other stories of youth violence mounted. Beyond the anecdotes, some researchers dug into numbers—looking at demographics and spiking crime rates—and claimed that the worst was yet to come.

In January 1996, a *Newsweek* headline summed up the nation's fears: "Superpredators Arrive: Should We Cage the New Breed of Vicious Kids?" At the forefront of the lock-'em-up movement was John DiIulio Jr., then a political scientist at Princeton. He foresaw a "ticking crime bomb" of tens of thousands of violent young thugs "on the horizon," "morally impoverished" kids for whom murder and rape came naturally.

"Let the government Leviathan lock them up and, when prudence dictates, throw away the key," wrote DiIulio in an academic journal; he saw little chance for youths to be rehabilitated "once they have crossed the prison gates."

Legislators heeded the call. Between 1992 and 1999, 49 states and the District of Columbia made it easier to try juveniles as adults. Some states removed consideration of youth altogether, replacing discretion with compulsory triggers. By 2012, there were 28 states across the nation that were handing out mandatory life-without-parole sentences to juveniles.

One was Louisiana, where Taurus exemplified how mandatory sentencing could render a defendant's youth meaningless. Once he was charged with second-degree murder, Taurus was automatically tried as an adult because he was over the age of 14. If convicted, he would automatically be sentenced to life without parole.

DATA ¹

[Read more](#) about how the law practice collected and vetted data on former juvenile offenders serving life without parole.

By 2015, more than 2,230 people in the United States were serving life without parole for crimes committed as juveniles, according to DATA ¹ compiled by the Phillips Black Project, a nonprofit law practice that collected information on all 50 states. In 2007, the Equal Justice Initiative, a nonprofit law organization based in Alabama, found that there were 73 cases in which kids were sent away for crimes they committed at age 13 or 14. One was sentenced to life for kidnapping, another for sexual battery, another for taking part in a robbery in which someone was shot but survived.

The Phillips Black data shows that, with 376, Pennsylvania currently has the most people serving juvenile life sentences. But Louisiana has a higher number of such inmates per capita than any other state. Of the 247 inmates in Louisiana, 199 are African American. In East Baton Rouge Parish, where Taurus stood trial, the racial disparity is even starker: Almost half of the parish population is white, but 32 of the 33 serving juvenile life-without-parole sentences are black.

The counties that lock up juveniles for life

The **NUMBER** of people sentenced as juveniles to life without parole is high in southern California, Michigan, and especially Philadelphia. The **PER 100,000** number reveals high rates throughout the midwest, particularly in Missouri and Louisiana.

10

50

150



Rank	County	Number
1	Philadelphia County, Pa.	214
2	Wayne County, Mich.	154
3	Los Angeles County, Calif.	112
4	Cook County, Ill.	65
5	Orleans Parish, La.	60
6	Oakland County, Mich.	50
7	St. Louis city, Mo.	41
8	Allegheny County, Pa.	34
9	East Baton Rouge Parish, La.	33
10	Jefferson Parish, La.	30

NOTES: Counties limited to those with more than 25,000 residents. Counties with no inmates not listed.
SOURCE: THE PHILLIPS BLACK PROJECT

Ask lawyers why they chose the law, and the answer often includes talk of justice, principle, or righting wrongs. Tony Clayton's reasons were more pragmatic. In a book he co-authored about another case, he explained his choice:

There is no altruistic reason why Tony decided to become a lawyer. He did it simply to impress a girl and, in the process, found his true calling. "Paula was in undergraduate school, and she liked a guy who was in law school," he explained. "This guy was nice looking and had a car. He was pushing me out. I knew if I wanted to get her, I had to go to law school."

Paula, whom Clayton married, later became a family law hearing officer, and the two shared views on juvenile crime that were in lockstep with the country's. Clayton told us about a personal incident: "The alarm had gone off in our house. And I had the gun and I was walking in looking. She tells me before I go in, 'If he's a kid, shoot him. If he's an adult, reason with him.'" What she meant, he explained, was "not that she's a cold-blooded vicious lady. She knows, just as I know, that a 15-year-old, 16-year-old, if I caught him in my house and he had a gun, he doesn't have a clue how to try to negotiate his way out of the house. He believes in leaving no witnesses. And he has no sense of what his consequences are."

When Clayton had been hired, he says, he told the district attorney that black jurors detest crime as much as anyone else. "You need to have black prosecutors who can relate to them—but they will convict quickly."

But when he set out to impanel a jury for Taurus' trial, Clayton most wanted conservative jurors, people angry and fearful about crime, people he suspected would appreciate tough measures to stamp it out. Allowed to remove people from the jury pool, he used seven of eight strikes on African Americans, leaving the box filled with 10 whites and two blacks.

The panel comprised seven men and five women, ranging in age from 20 to 77. They included a welder, forklift driver, painter, a university student, a manager at General Motors, a veteran of World War II. During jury selection, the man who became jury foreman said he believed there was heightened violence in East Baton Rouge Parish, which he linked to drugs and "more liberal thinking by individuals."

Clayton's star witness was Mary Rodgers, who lived on Kaufman Street and had seen Jacques Brown being beaten. Before Taurus entered the fray, she testified, the two other boys "kept on

hitting him, they kept on hitting him, they kept on hitting him,” while Jacques pleaded, “Leave me alone, leave me alone.” When Taurus showed up, Rodgers testified, “He say, ‘I’ll show you, this is how you do the bitch.’ Pow, he hit him in the left temple.” She even acted the scene out by lying down on the courtroom floor.

“Was Taurus bigger than the other guys?” Clayton asked.

“Yes, sir, and definite,” Rodgers said. “Hit him blind side,” she said of Taurus’ blow.

Clayton’s next witness was Mario Hutton. What happened to Jacques after Taurus threw that punch? Clayton asked. “He remind me of the *Wizard of Oz*, when the witch was melting,” the 12-year-old said.

Clayton’s final witness was a pathologist who described the blow Jacques received: “You don’t see the punch coming in and the muscles don’t have a chance to keep that head in place. And instead there is a hyperextension of that neck, and then that small artery coiling up and coming from below, upward into the brainstem, just lacerates—breaks and then bursts into bleeding.” Had Jacques seen the punch coming, the pathologist testified, “we wouldn’t be here.”

The defense’s case was short. Although Taurus didn’t testify, his attorney, Ron Johnson, emphasized all the blows that were landed by others. Wanting the jurors to feel how long it was before Taurus got into the fight, Johnson stood in court and watched the clock, waiting for two, then three minutes to pass.

In his closing argument, Clayton called Taurus a “cold-blooded murderer” and “Taurus the bull.”

“Do you think this is a little boy?” Clayton asked the jury. “This is a man.”

Johnson objected, saying, “Under Louisiana law, he’s not an adult,” but the judge overruled the objection.

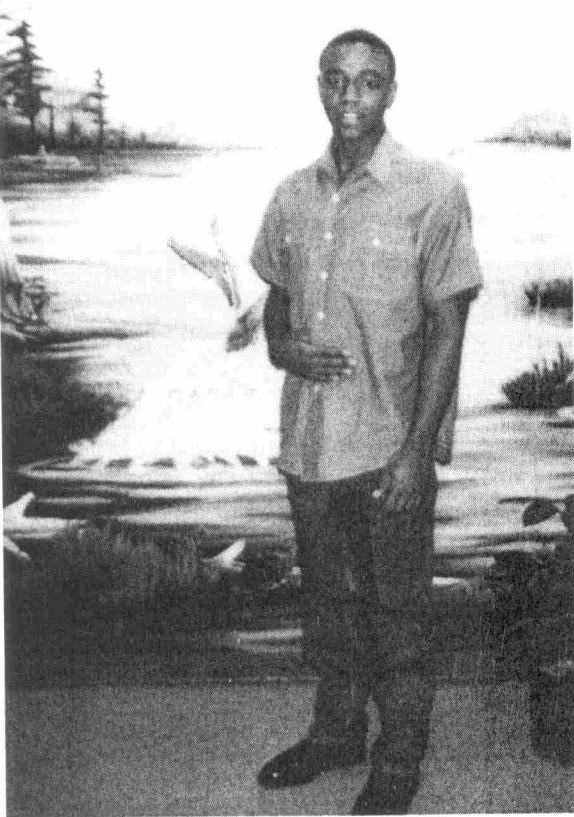
“There’s 150 pounds of all man that killed that little child, that killed that little kid, that killed that baby,” Clayton told the jury.

While Taurus faced a life sentence, Colin Knox pleaded to manslaughter and was sentenced to seven and a half years. Mario Hutton’s case remained in juvenile court, and he was put on probation.

The jury voted 10 to 2 to convict Taurus of second-degree murder—and in Louisiana, 10 votes were enough. The two who voted to acquit, both white, were among the oldest—one 73, the other 58. Taurus received a mandatory sentence of life without parole. He was one of at least 19 juveniles to receive that sentence in Louisiana in 1994 alone.

After he was sentenced, Taurus was held at the East Baton Rouge Parish Prison. There he had hot water, soup, urine, and feces thrown on him by hardened inmates. In May, three months later, he was transferred to the Louisiana State Penitentiary in Angola—America's largest maximum-security prison, an 18,000-acre outpost that is home to 6,280 inmates in a curl of the Mississippi River.

On the bus ride to Angola, a few returning inmates had warned him to watch for predators who might try to fight or rape him. So when Taurus walked to his cellblock in feet and arm shackles, his eyes picked up every movement around him. When he took his cell's top bunk, he says he was thinking, "Please don't let me get killed, or have to kill nobody."



Buchanan, then 19, at the Louisiana State Penitentiary in Angola.

COURTESY OF DEBORAH BUCHANAN

His first work assignments alternated between cutting grass with a hand-held blade and picking purple hull peas, okra, eggplants, and squash—all in the sweltering heat, under the watch of armed guards on horses. The labor raised painful blisters on his hands and feet. He eventually learned to urinate on the irritated skin at night for comfort.

When his mother and grandmother came to visit, he had what he calls a coming-clean moment. He talked about all his fighting; he told them he had even sold drugs. He told them: "I didn't turn out the way you probably expected me to turn out. I'm sorry, I wish I could do it better and do it

over.” He added, “I made a choice and I gotta live with it.” They held his hand, and hugged him. His grandmother told him, “Start living your life better right now.”

Taurus turned to his faith: “The word of God says I shall live and not die.” He read the Bible. He read magazines, be it *National Geographic* or *People*. He read his hometown newspaper. And he wrote letters to his family.

By age 20, he earned his GED and learned to cook. He later became certified in carpentry, and joined a program to deter juvenile crime, giving talks to middle and high schoolers and to Bible study groups and Boy Scout troops. His stack of certificates, more than 40 deep, includes two for anger management. By the time he was 29, Taurus earned Class A Trusty status, the highest classification at Angola. With it came certain privileges, like greeting outside guests. In 2010, he married a woman named Deborah whom he met when she came to visit two childhood friends. She saw Taurus working at the concessions counter, and noticed he was shy, with a nice smile.

From 1994—the year Buchanan was sentenced—to 2013, the number of homicides committed by juveniles nationwide fell by about 75 percent. Experts still debate why, but the prophesied horde of young, remorseless killers never emerged. In a 2001 interview with the *New York Times*, Dilulio described an epiphany he had during a Palm Sunday Mass: Instead of discarding troubled kids, we should wrap our arms around them. (Dilulio had also just become the first director of the White House Office of Faith Based and Community Initiatives, under President George W. Bush.) He came to embrace church programs, not prisons, as an aid for wayward teens.

During those same decades, neuroscientists had been researching the development of the adolescent brain, and numerous studies soon confirmed what most parents already knew: Compared to adults, the average teenager is more impulsive, volatile, and vulnerable to peer pressure—and less aware of long-term consequences. This research also showed that the adolescent brain is plastic—it can, and does, change.

Eleven years after Buchanan was sentenced, the Supreme Court, citing the “evolving standards of decency that mark the progress of a maturing society,” issued the first in a string of landmark decisions that recognized that juveniles were less responsible for their actions than adults.

In a 2005 ruling, the court banned use of the death penalty for crimes committed by juveniles. Writing for the majority, Justice Anthony Kennedy noted the link between adolescence and reckless behavior: “From a moral standpoint it would be misguided to equate the failings of a

minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

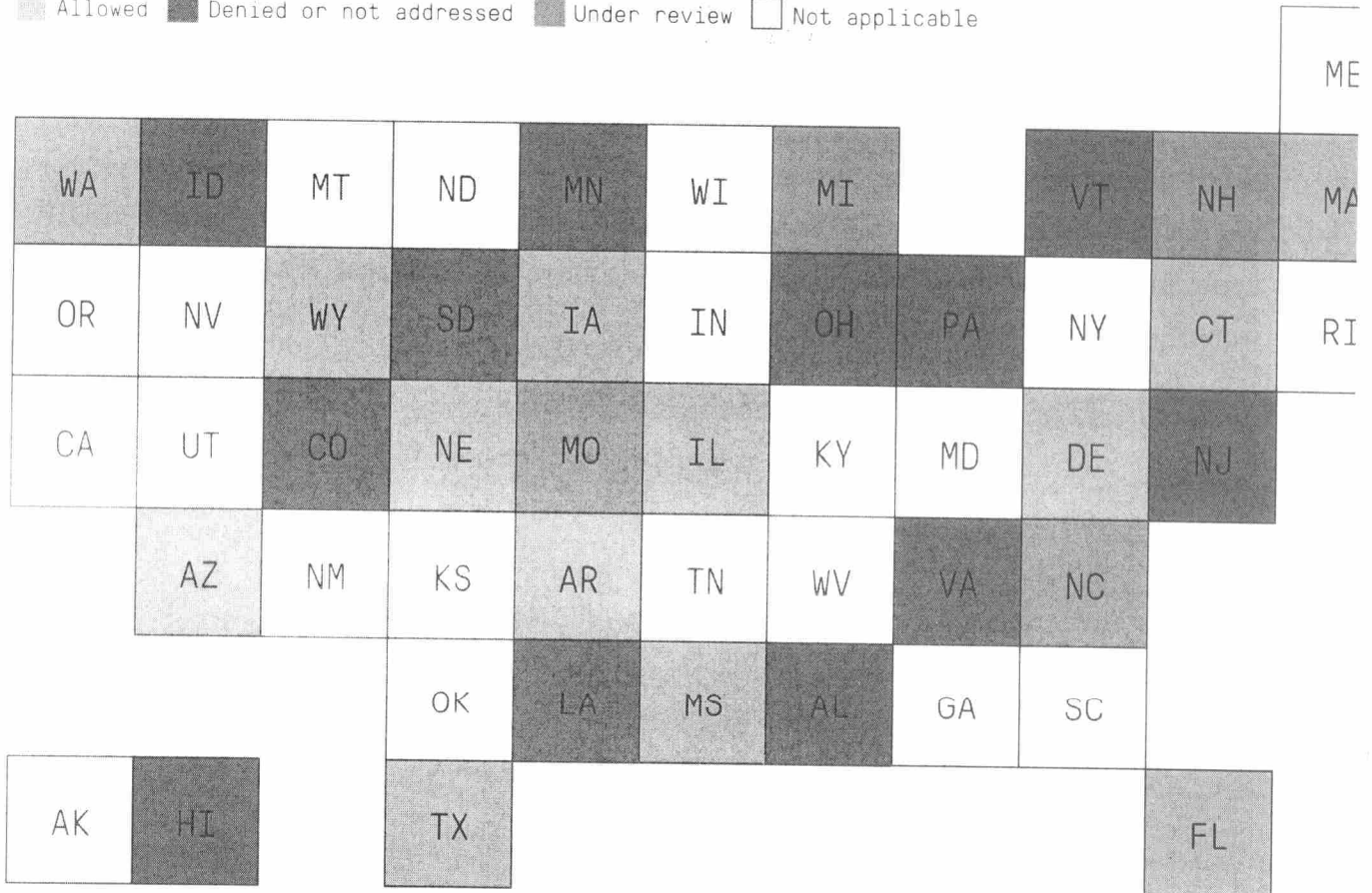
Five years later, the Supreme Court prohibited sentencing kids to life without parole for cases that didn't involve a homicide. And in 2012, in *Miller v. Alabama*, the court extended that ban to mandatory life-without-parole sentences for homicides. One of the petitioners, Evan Miller, was 14 years old when he and a friend killed a neighbor by beating him with a baseball bat and setting his trailer on fire. Growing up with an alcoholic mother and abusive stepfather, Miller had tried four times to kill himself, the first attempt coming when he was only six.

By the time of the *Miller* ruling, Buchanan had spent 18 years, 11 months, and 10 days behind bars. But not all states treated the ruling as retroactive. In Louisiana, the state Supreme Court refused to apply *Miller* to those sentenced in years past, saying the ruling, while new, did not constitute a watershed change "essential to fundamental fairness."

To resentence or not to resentence?

...the state's parole board, which parole for...
 ...the state's parole board, which parole for...
 ...the state's parole board, which parole for...

Allowed
 Denied or not addressed
 Under review
 Not applicable



SOURCE: THE PHILLIPS BLACK PROJECT

West of Louisiana, across the Sabine River, Texas went the other way, reopening its cases. So, to the east, across the Pearl River, did Mississippi. As Jacques Brown died on the wrong side of a highway, Taurus Buchanan serves life on the wrong side of a river.

On a June evening in 2005, Angola hosted a boxing tournament, with inmates from five prisons squaring off in front of an audience that included nine state lawmakers and three members of the state parole board.

Buchanan, now 28, was there as a server, bringing food and drinks to the special guests. As he went table to table, he recognized one visitor: Tony Clayton.

Buchanan didn't know what to do. "I didn't want to cause alarm," he says. "I said, 'Well, here goes everything.' I walked over there and I said, 'Excuse me, sir, Mr. Clayton, would you like some water or a soda?'" Clayton looked up—and told Buchanan he looked familiar.

"Yes, sir, I'm Taurus Buchanan." He then repeated, "Would you like a water or would you like a soda?"

"Man, forget that," Clayton said. "I have something I want to tell you."

In the 11 years since he'd tried Buchanan, Clayton had been a successful prosecutor and civil litigator, and he'd served a brief stint as a district court judge. For many years his attitude was, "You did the crime, you got the *full* time." But Clayton also had travails; a doctor whom one of his clients was suing said Clayton threatened him with a criminal investigation in order to leverage a civil settlement. Clayton was arrested and booked, charged with criminal extortion. The case fell apart, but it gave Clayton a glimpse of what it was like to be targeted. "It taught me that even I, as a prosecutor, can be subject to people wrongfully coming after you," he says.



Tony Clayton in October. DAYMON
GARDNER FOR MOTHER JONES

Then in 2004, he prosecuted a serial killer, Derrick Todd Lee, whose DNA was linked to the murders of seven Louisiana women. Lee was convicted of second-degree murder and sentenced to life without parole—the same as Buchanan. Clayton learned, he said, "what murder truly is," and

found himself believing that life without parole should be reserved for the Derrick Todd Lees, not the Taurus Buchanans.

That night at the tournament, Clayton told Buchanan that if anybody deserved a second chance, he did. He said that if Buchanan should ever get any kind of hearing, he would speak in his favor.

Clayton says that when he ran into Buchanan that evening, the sight of a mature, respectful, measured young man reinforced the doubts he had been harboring for a long time: "He's a different man than the kid that I saw." If he had it to do over, Clayton says, he would present a plea deal for manslaughter. "I would offer him 21 years—and let him do 7," he says. "I should not have prosecuted Taurus for murder. I think I went too far. If the state of Louisiana lets him out, I would fall on my knees and thank God."

Buchanan's life sentence also rests uneasy with at least two of the jurors who voted to convict. Leigh Gilly was a 22-year-old college student when he served on the jury. Now in his 40s, he has four kids—one the same age as Buchanan when he threw that punch. "I've thought more and more that he shouldn't be in prison for life probably because he was so young," Gilly says. "At 16, we just aren't who we're going to be."

Briley Reed was also 22 when Buchanan stood trial. He was one of the jury's two African Americans, both of whom voted to convict. "After the decision was made, I still thought about it all the time. It took me a while to get it out of my system, because it was still haunting me," Reed says. He, too, wishes Buchanan had a chance at parole. "Because he served his time," Reed says.

The most recent of the cases before the Supreme Court may, in fact, force Louisiana to reconsider Buchanan's sentence. In 2015, the Supreme Court heard a case—out of Louisiana—on whether states can be compelled to apply the *Miller* ruling, which declared mandatory life-without-parole sentences for juveniles unconstitutional, retroactively.

During oral argument in October, Michael Dreeben, a deputy solicitor general appearing on behalf of the Justice Department, told the court that not only have some states—the majority, he added—reopened their cases, but so has the federal government. And in the federal cases, he said, "those defendants have almost uniformly received sentences that are terms of years significantly shorter than [life]."

The justices' decision will likely come down in 2016. Henry Montgomery, the case's petitioner, was convicted and sentenced in East Baton Rouge Parish when he was 17. He is now 69.

http://www.theadvocate.com/new_orleans/news/article_2d883565-8cb2-5da8-9c27-ba3680de24c3.html

Legal battle over public defense funding in Louisiana heats up in Orleans Parish courthouse

Indigent defendants caught in middle

BY JOHN SIMERMAN jsimerman@theadvocate.com FEB 3, 2016 - 10:59 AM

A shortfall in funding to pay for the lawyers who would typically represent poor defendants is beginning to wreak havoc at New Orleans' criminal courthouse.

Scores of criminal defendants have sat in jail without lawyers since Chief Public Defender Derwyn Bunton's office last month began turning away serious new felony cases and withdrawing from others.

On Tuesday, a prominent local attorney assigned by a judge to handle one of those cases argued that routinely saddling private attorneys with that work violates the state and federal constitutions, amounting to an illegal "taking" of their property.

Story Continued Below

Mark Cunningham, a partner in the Jones Walker law firm and president of the Louisiana Bar Association, asked to withdraw from the case of an accused armed robber, Donald Gamble. Criminal District Court Judge Arthur Hunter had assigned Cunningham to represent Gamble pro bono after Bunton's office implemented its controversial austerity plan last month, turning away cases.

Cunningham also urged Hunter to halt Gamble's prosecution until funding could be found.

The move marked the latest maneuver aimed ultimately at pressuring or forcing the Legislature to strengthen state funding for indigent defense.

Last month, the American Civil Liberties Union of Louisiana brought a federal lawsuit against Bunton's office for declining to represent three defendants. The suit indirectly takes aim at a state legal aid system financed mostly by fines and fees levied on convicted defendants — mainly traffic scofflaws.

Statewide, fee revenue has withered by about 25 percent over the past five years, said Jay Dixon, president of the Louisiana Public Defender Board.

Hunter, who has championed the cause of indigent defense funding in the past, declined to let Cunningham out of the case but agreed to halt the prosecution while Cunningham appeals the ruling. In the meantime, Gamble, 27, will bide his time in the Orleans Parish jail.

At a hearing Tuesday, Cunningham acknowledged that lawyers have an ethical obligation to accept pro bono work but said his firm has done more than its share.

"What I see happening here in Louisiana is not the appointment of a private lawyer in isolated cases here and there. I see a systematic appointment of private attorneys throughout the state to address a crisis in the public defense system. In that regard, I think the courts are overstepping the bounds," Cunningham testified. "We don't tell engineers to go build bridges or roads for free. We don't tell doctors they have to subsidize the health care system for free."

Dixon, whose board doles out about \$34 million in state indigent defense funding, said judges in Caddo, Vernon, Bossier and other parishes also are appointing private attorneys.

In New Orleans, Bunton said his office has refused about 20 new felony cases since last month and withdrawn from more than 40 others as experienced public defenders leave his office amid steep cutbacks and a hiring freeze aimed at plugging a \$700,000 deficit. Bunton's budget now is about \$6.3 million.

Different judges have responded in different ways. Criminal District Judge Tracey Flemings-Davillier this week threatened to hold public defenders in contempt for refusing to accept appointments.

Bunton's office returned to her courtroom Tuesday morning to grudgingly enroll in those cases, averting a showdown. Dwayne Thomas, who faces attempted murder, illegal firearms possession and battery charges, got himself a new lawyer: Bunton himself.

His knight out on \$1,000 bond while facing a home invasion charge, said he's been without counsel since December, when his public defender left the office. He also got a new free lawyer.

"I've been waiting too long," said Knight, 38. "I'm really just tired. Every time you come, they ain't pushing the issue. I got kids I got to look after. It's messing everything up."

The fact that Tuesday's hearing in Hunter's courtroom took place on Groundhog Day wasn't lost on the attorneys. Montgomery's lawyer, Jim Boren, lamented a decades-long series of crises and drastic actions to force the state to pony up for public defense.

"We do not get the same reception that other people do when they go (to the Legislature) advocating for money," Boren said. "I don't know of any other way except for a court to have the courage and conviction to say, 'The system is broken.' It's not up to the bar association to solve the problem. It's up to the state to solve the problem."

Advocates are looking to U.S. District Judge James Brady of the Middle District of Louisiana, who is overseeing the ACLU suit, as the legal challenges play out.

Tulane law professor Pam Metzger, who represented numerous jailed defendants who were left without lawyers in the wake of Hurricane Katrina, recently was appointed to represent a half-dozen defendants in Hunter's courtroom — not in their criminal cases, but to fight for their right to due process.

Metzger said the funding crisis is not just weighing on the defendants or lawyers.

"It's putting the judges in this wholly untenable position. They're asked to sit and guarantee fair and impartial trials in a situation where everybody knows there's nothing fair about it," Metzger said. "What's different now is it's not just an Orleans Parish problem. It's not just a Katrina problem. It's a statewide constitutional failure."

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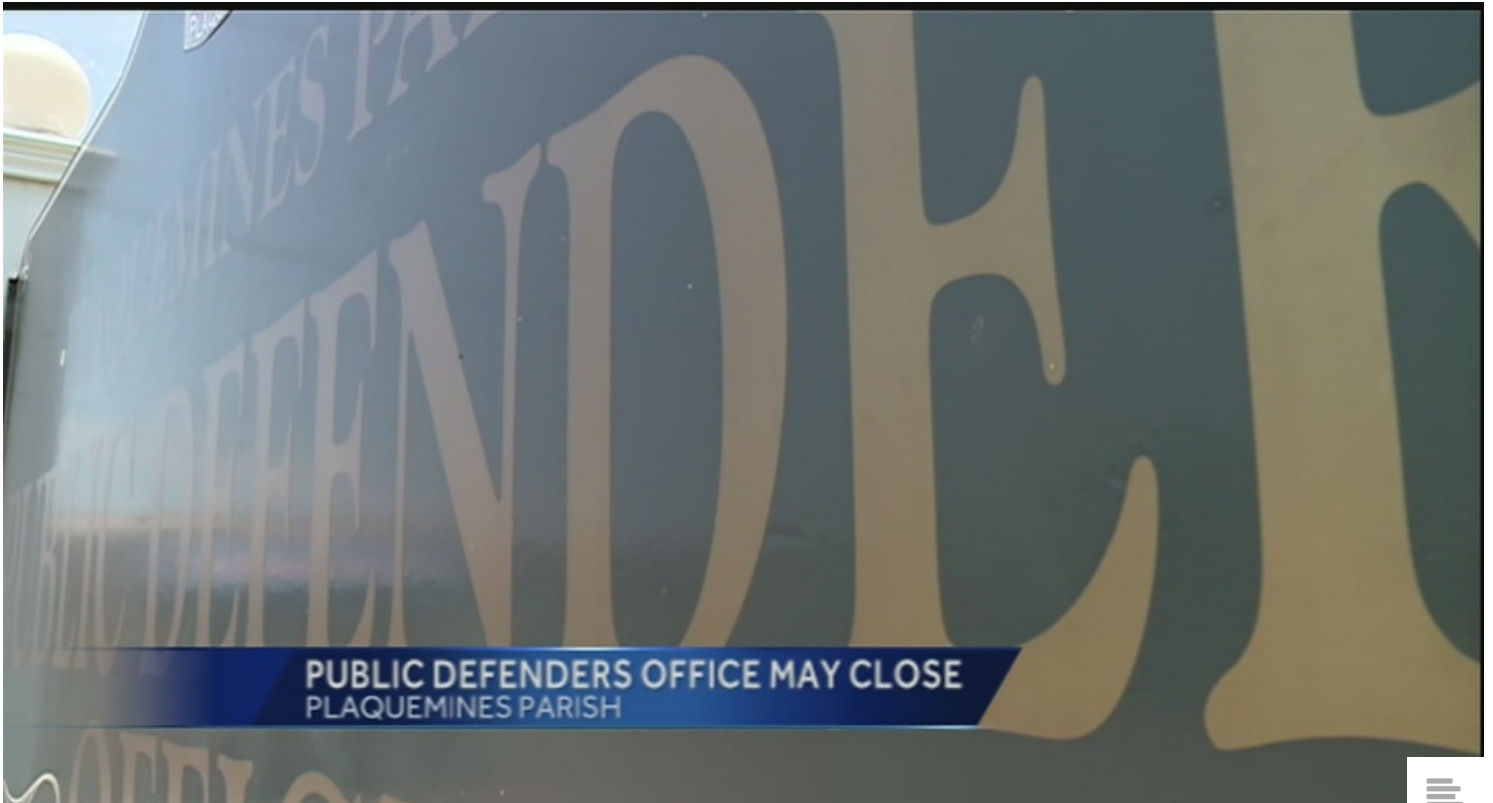
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Inadequate state funding could force the Plaquemines Parish Public Defenders Office to shut down this week.



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Orleans Public Defender's Office fundraising campaign garners national attention

District Defender Matt Robnett penned a letter to the state last week to lay out how grave the situation is in Plaquemines Parish. He said from 2012 to 2015, revenues dropped by half while the number of cases the office received continued to increase.

To keep doors open, last September the office started making staffing cutbacks and limiting the number and types of new cases the office would take on. But while it made changes, state funding did not change.

Robnett said if the office doesn't see more money come its way by Wednesday (Feb. 17), the office will face some serious changes: furloughs for all employees start, the office will close until money become available, attorneys will have to withdraw from cases handled by the

office and attorneys will have to file motions to stop prosecution in cases being handled by the office.

"As a result of the closure of the Public Defenders Office due to inadequate funding, hundreds of the indigent accused of Plaquemines Parish, as well as dozens of juveniles and their parents, will be left without representation. Unless funding is found to secure the constitutionally guaranteed representation that these people are entitled to, prosecution of these cases will not be able to proceed, and much of criminal and juvenile dockets will grind to a halt," Robnett said. "One glaring result of this will be people sitting in jail, pretrial, with no lawyer and no movement on their cases. At some point this scenario also becomes a clear constitutional violation, the courts will be left in a position of having to decide whether to release those persons in custody whose cases have not been able to proceed."

Similar funding issues forced the Orleans Parish Public Defenders Office to stop taking on new cases a few months back. This sparked the ACLU to file a lawsuit against that office. The ACLU



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Northshore ROTC instructor accused of having sexual relationships with two students

Updated: 1:49 PM CST Jan 23, 2017



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Juan Sanchez

Digital Editor

MANDEVILLE, La. —

A Northshore ROTC instructor is accused of having sexual relations with two different teenage girls, the Mandeville Police Department said.



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Hosea McGhee, 48, was rebooked over the weekend on two charges each of felony carnal knowledge of a juvenile and indecent behavior with a juvenile.

Investigators said McGhee was first arrested Friday when the Police Department received reports that McGhee, a Reserve Officers' Training Corps instructor at Mandeville High School, was having inappropriate relationships with students.

Officers obtained a search warrant for McGhee's phone and found several inappropriate text messages to at least one juvenile, police said. He was taken to the St. Tammany Parish Jail and booked on a count of computer-aided solicitation of a minor.

Investigators said on Monday that after further investigation, detectives found probable cause to believe that McGhee has had sexual relationships on several occasions with two students who are 15 and 16.

Most of the sexual encounters took place on school grounds, officials said.

Additional information will not be released about the investigations. Detectives do not believe that there are additional victims.

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The upcoming chapter in the Skywalker saga has a title

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"Star Wars" is such a phenomenon that it's big news even when the title of the next movie in the series is revealed.



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The next chapter in the Skywalker saga is no longer known as "Episode VIII," but "[The Last Jedi](#)." It is the follow-up to 2015's mega-hit "The Force Awakens."

Directed by Rian Johnson and featuring a larger role by original trilogy star Mark Hamill, who made a brief appearance at the end of "Force Awakens," the film will be released December 15.

It also brings back "Force Awakens" stars Daisy Ridley, John Boyega and Adam Driver. Carrie Fisher will also be in the "The Last Jedi," though it's unknown how the Princess Leia actress' death last month will affect the films going forward.

Speculation over just who the last Jedi is immediately ran rampant on social media. "The Force Awakens" chronicled Daisy Ridley's Rey discovering her powers with the Force, but ended

ominously with a withdrawn Luke Skywalker on a remote island. If there's to be just one Jedi left, Luke's days could be numbered.

This isn't hard to understand, people. Luke is the last Jedi alive. Rey is untrained. Ergo, the film title refers to Luke. Boom [#TheLastJedi](#)

— Jonathan Read (@Jread123) [January 23, 2017](#)

THE LAST JEDI LEAK [#TheLastJedi](#) pic.twitter.com/xg1cHgQm80

— toxicrancoon562 (@toxicdragon562) [January 23, 2017](#)

Johnson has previously said "The Last Jedi" will start right where "The Force Awakens" left off.



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Plaquemines Parish gets \$30,000 from state for public defenders who were furloughed earlier this week

Funds enough for another month of work

BY CHAD CALDER ccalder@theadvocate.com FEB 20, 2016 - 3:39 PM

The Plaquemines Parish Public Defenders Office will get a \$30,000 infusion from the state, enough to put the two attorneys furloughed earlier this week back to work through the end of March.

Public Defender Matthew Robnett said he got word late Thursday that the Louisiana Public Defender Board managed to scrape together the money by canceling some contracts. But he said it's only a stopgap measure — albeit a welcome one — amid a funding crisis affecting indigent defender offices across the state.

"It's a Band-Aid, at best, and a very short-term Band-Aid," Robnett said, two days after he and fellow attorney Clarke Beljean, the only lawyers in his office, were furloughed through June 30, the end of the fiscal year.

Story Continued Below

"I think we'll find ourselves in the same situation a month from now if we don't find help from somewhere else," he said.

Plaquemines is one of many public defender offices across the state hard hit by declining revenue, much of which comes from traffic tickets and court fees. With a decline in speeding and other tickets, many offices, including the one in New Orleans, have been forced to lay off or furlough lawyers or otherwise restrict services.

What lies ahead in the troubled districts is unknown. Indigent defendants could spend more time in jail while their cases stagnate, and judges will be forced to appoint pro bono attorneys to represent some defendants.

The American Civil Liberties Union has filed a lawsuit that is expected to challenge the state's funding system, which critics say is inadequate to provide the accused with their constitutionally guaranteed right to legal representation.

"The board worked really hard (to find the \$30,000) because they knew what a disaster it would be to close down completely," said Robnett, who already had to cut back his office's work at drug court and stop contracting out cases where a conflict of interest barred his office from representation.

Robnett and Beljean found out Wednesday there was enough money in the budget to keep the office manager on through June to serve as a resource to help any pro bono attorneys and to maintain the files of people still in jail.

Robnett had not yet had a chance to file motions to withdraw from his cases. Beljean had, but Robnett said he has notified the court they can stay active for now.

Word of the anticipated furloughs came Tuesday when \$50,000 the state board had set aside for Plaquemines evaporated, along with almost \$500,000 the board was forced to cut due to the state's budget crisis.

And with next year's fiscal outlook even worse for the state and the Louisiana Public Defender Board, Robnett said he still thinks his office's best bet is a new local source of funding.

Robnett has been in conversation with District Attorney Charles Ballet and the judges at the 25th Judicial District Court, and Beljean will appeal to the Plaquemines Parish Council for help.

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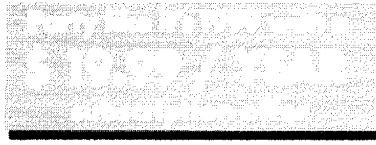
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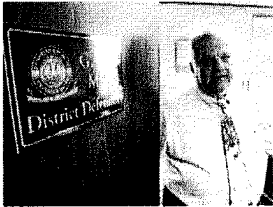


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Public defenders office seeks volunteer lawyers

Seth Dickerson, sdickerson@theadvertiser.com 5:20 p.m. ET March 2, 2016



(Photo: Leslie Westbrook/Daily Advertiser)

15th Judicial District Defender G. Paul Marx announced Wednesday that in the face of budget cuts to the office that have left him with a skeleton staff to defend indigent clients, he and his staff will work with the parish bar association to facilitate a volunteer lawyer program to help tackle the office's ever-growing pile of unassigned cases.

Marx, who oversees public defenders in Acadia, Lafayette and Vermilion parishes, said that he's open to getting pro-bono help with the tens of thousands of cases that pour into his office yearly. Less than 20 attorneys are left in the office to work on the 7,555 cases that were still pending as of Jan. 1, 2016 plus however many cases have come into the office since.

Judge Rick Michot started the conversation to have some lawyers work pro bono when he inserted a note into the bar association's newsletter last month, Marx said, where Michot he suggested he'd like to have private bar lawyers supplementing the work of the roughly 15 public defenders left in the office.

PUBLIC DEFENSE: [District defender: Layoffs could spell disaster for Acadiana's poor \(/story/news/2016/02/18/district-defender-says-office-staff-cuts-could-spell-disaster-acadianas-poor/80500428/\)](http://theadvertiser.com/story/news/2016/02/18/district-defender-says-office-staff-cuts-could-spell-disaster-acadianas-poor/80500428/)

He said he's already gotten calls from lawyers looking to pitch in, and that the American Bar Association and 15th JDC policies have made private bar counsel an important part of the defenders' office. At this time, Marx said, there are no plans to appoint volunteer lawyers to cases, as the Louisiana Bar Association passed a resolution stating that criminal defense work requires more than basic knowledge of the law, so it's important that the lawyers volunteering their time can handle the cases they choose to take.

"The obligations of counsel are no less for clients who can't afford an attorney, so I don't want to ask lawyers or clients to bear the failure of our funding by risking licensure as attorneys or a person's right to counsel," Marx said.

Defenders in the 15th Judicial District handled 12,264 new cases in 2015. Last year, state public defenders handled more than 241,000 cases.

"The Public Defender Act was created with this vital part of criminal justice at the core of what we do every day, and it is no different in this crisis," he said.

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U.S.

In Louisiana, the Poor Lack Legal Defense

By CAMPBELL ROBERTSON MARCH 19, 2016

ABBEVILLE, La. — It was arraignment morning at the Vermilion Parish courthouse, the monthly catalog of bad decisions, hot tempers, hard hearts and hard luck. Natasha George, who until recently was one of 10 lawyers defending the poor of the parish, stood before the full gallery of defendants.

“I’m the public defender in Vermilion Parish, right now the only public defender,” she said. “Due to a lack of funding for our district and our office, today we will be taking applications for our service but you will be put on a wait list.”

Over the next hour, a steady stream of people left the courthouse and headed out into the rain, nearly all holding a sheet of paper explaining that as the poor and accused of Vermilion Parish they were, for now, on their own.

“This will just be hanging over my head for who knows how long,” said Leroy Maturin, a 33-year-old drain installer who was facing a felony drug possession charge, and because he had no lawyer, had no court date scheduled for the foreseeable future.

The constitutional obligation to provide criminal defense for the poor has been endangered by funding problems across the country, but nowhere else is a system in statewide free fall like Louisiana’s, where public defenders represent more than eight out of 10 criminal defendants. Offices throughout the state have been forced to lay off lawyers, leaving those who remain with caseloads well into the hundreds. In seven of the state’s 42 judicial districts, poor defendants are already being put on wait lists; here in the 15th, the list is over 2,300 names long and growing.

A system that less than a decade ago was set on a course of long-needed improvement is succumbing to years of draining resources, just as the state is facing a fiscal crisis that could make things much worse. Judges throughout the state have ordered private lawyers to represent people for free, prompting objections from members of the private bar. Some lawyers being conscripted are tax and real estate lawyers without any background in courtrooms or criminal law: “No prior experience is necessary,” wrote a district judge in Lafayette in a recent plea for volunteers.

Here in the state with the country’s highest incarceration rate, hundreds of those without counsel are sitting in prison, including more than 60 people in New Orleans whose cases have either been put on a wait list or refused altogether by the local public defender’s office.

With felony caseloads already far above the professional standard, the public defender concluded that turning down cases was the only ethical option. In January, the American Civil Liberties Union sued over this in federal court.

With the state in deep fiscal distress, and with higher education and health care funding already slashed, further cuts to the public defenders are possible, and perhaps likely.

“Obviously, it’s an obligation that they have to be adequately funded,” said E. Pete Adams, the executive director of the Louisiana District Attorneys Association. “But it’s also an obligation to fund a lot of other things in this state that are right now in jeopardy.”

Even if state funding remains stable, however, more than half of the public defender offices could be under austerity plans by the fall, turning away clients and laying off lawyers.

“It is in shambles,” wrote District Court Judge Jerome Winsberg in a recent ruling, in which he sought private lawyers to represent several jailed defendants. “Things were not good before, but they are in a terrible place now.”

What is particularly unfortunate, said Jay Dixon, the chief executive of the Louisiana Public Defender Board, is that the system was steadily turning in the right direction.

For decades, local boards set up to administer indigent defense were virtually autonomous and appointed by local judges; in one parish, the board consisted of an embalmer, a real-estate developer and a nightclub owner.

A 2007 law created a state board with central oversight and statewide guidelines were imposed; since then, the caseloads of public defenders had been dropping from over three times the national standard to a little more than twice. But the law did not fully fix the funding structure, making a crisis a matter of time.

“We have essentially been managing a financial collapse,” Mr. Dixon said.

While the board distributes a central fund to the various districts, that state money is simply meant to supplement what for nearly all the districts is the main source of revenue: traffic tickets and local court fees.

Louisiana is the only state where local ticket revenues account for a significant source of public defender revenue, said David Carroll, the executive director of the Sixth Amendment Center, a Boston-based advocacy group. That may be for good reason, he added: “There’s no correlation between what a parish raises in traffic tickets and what its indigent counsel needs are.”

The funding for a given public defender’s office can depend on whether there is a highway or a casino in the parish, whether there is a road construction project or a bad flood or even, Mr. Dixon said, a hotly contested sheriff’s election that is accompanied by a dip in traffic tickets.

There has been one consistent trend in recent years: a plunge in local court revenues statewide. The number of tickets filed in Louisiana courts dropped by more than a quarter between 2009 and 2014, canceling state efforts to raise more money. No one knows exactly why.

“The number of tickets being turned in has plummeted,” said Tony Tillman, the chief public defender in Vernon Parish. “We’re down 10-plus-thousand a month

from two years ago.”

Some suggest this is because of the police reallocating their resources. Others point to the use of diversion programs, in which a defendant can avoid jail by entering a counseling program or doing community service.

All of this highlights the contradiction at the heart of Louisiana’s public defense system. For those with little money, trends away from tickets and jail time may be a welcome development. But those same trends jeopardize a poor person’s ability to get a lawyer if he or she needs one.

“All of those are policies we’ve supported,” Derwyn Bunton, the Orleans Parish chief public defender, said of measures to reduce incarceration and punitive fees. “But because of the perverse incentives and the absurdity of our system, it’s hurt us here in the public defender’s office. It just makes you shake your head.”

Pointing out that court fees are paid only on conviction, Mr. Dixon added: “It’s even worse than that. Our revenue is partially dependent on our losing.”

These days, many people have not even had a chance to win or lose.

Josh Chevalier, 18, has been in the Lafayette Parish jail for three weeks on burglary charges, with no lawyer and no court date in sight.

“I thought you know, I was going to get questioned and get a summons and be put on an ankle monitor until I got an attorney,” Mr. Chevalier said in a phone interview.

But in a hearing that lasted a “minute or two at the most,” the judge set a \$52,000 bond and that was that. Since then a detective has interviewed him twice, he said, and the public defender’s office sent him a letter explaining that no lawyers were available. His mother is suffering from dementia, his father will not take his calls and his savings from a job at Dairy Queen are not nearly enough to make bail, not to speak of hiring a lawyer, he said.

Without a lawyer, he cannot make the case for a bail reduction. Without getting out of jail, he cannot go back to work. And so he waits.

“I was told that there wasn’t much that they could really do,” he said.

After the arraignment in Vermilion Parish, Branden Gaspard, an 18-year-old charged with a simple battery misdemeanor, was driven by his grandmother back to the tattered three-bedroom house they share.

Mr. Gaspard has led a complicated life. The son of a felon, he has been homeless and committed as a patient in a mental health hospital.

He thought he would explain himself to the judge and face a manageable penalty, but the judge told him he could be facing six months. So he added his name to the wait list.

“It’s a bunch of poor people,” Mr. Gaspard said. “Where the hell are they supposed to get their money?”

His grandmother, Sandra Breaux, listened quietly from her armchair. When Mr. Gaspard finished, she added: “I don’t understand this system.”

A version of this article appears in print on March 20, 2016, on Page A1 of the New York edition with the headline: In Louisiana, the Poor Lack Legal Defense.

http://www.theadvocate.com/acadiana/news/article_41fa76ce-2f4d-5f33-ae7a-571566a3aafc.html

Crisis in Public Defense forum scheduled Tuesday in Lafayette

Impacts to be discussed at forum

Advocate staff report **APR 7, 2016 - 4:47 PM**

Panelists representing the 15th Judicial District Court will discuss the impacts of budget shortfalls on the Public Defenders Office at a Tuesday forum held at the Lafayette Parish Sheriff's Office complex on Willow Street.

District Public Defender Paul Marx, District Attorney Keith Stutes and Criminal Court Judge Marilyn Castle will participate. Former federal prosecutor Donald Washington will moderate the forum, titled "Crisis in Public Defense."

Story Continued Below

After a number of public defenders were terminated because of budget shortfalls, with others facing indefinite furloughs, thousands of poor defendants may be left without representation, according to a Sheriff's Office news release announcing the forum.

"This will have other financial repercussions such as our cost of longer incarcerations for defendants," the release states. "Much of the progress made in the past few years to reform and improve the system is at stake."

Marx, the chief defender, has estimated more than 600 defendants will be in need of legal counsel by July after contracts were canceled for 26 criminal defense attorneys, and after nine attorneys and two social workers who were full-time employees resigned.

The six remaining full-time employees took a 20 percent salary cut, Marx has said.

The forum begins at 1 p.m. at 1825 W. Willow St.

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How being poor wrecks your chances of good legal representation

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By [Matt Hadro](#)

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Washington D.C., May 12, 2016 / 04:21 pm (CNA/EWTN News).- It's not a social justice issue that tops most Catholic's priorities, but it needs to be, legal experts are saying. The problem? How much money you have – or don't – makes every difference in how you're represented in court.

In January, the American Civil Liberties Union sued Louisiana's Orleans Parish public defender's office for putting clients, some of who were in jail, on a waiting list for legal counsel.

The office had to stop adding new clients because the public defenders were overworked and budget cuts to the parish prevented new hires.

Lauren Anderson, an attorney with the office who's worked in Orleans since 2013, was quite candid about the dire situation in her affidavit.

"I do not believe I am providing effective representation to the majority of my clients," she said. "Instead, I feel like a case processor, not an attorney."

"I spend my days pleading people guilty in the blind, not challenging the state's evidence in court or investigating the claims made by the police."



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Her "current caseload" at that time she submitted her report was over 120 felony cases, 78 misdemeanors, and 21 revocations.

Simply put, she was overbooked and had little to no time to properly treat her clients and argue their cases in court.

Anderson is not alone. Her colleagues made the same claims - they were handling hundreds of cases, some of their defendants were in jail and speaking to them was a time-consuming process, some were mentally ill and difficult to communicate with, and they didn't have the time or resources to properly investigate the cases.

In short, the system was broken.

Three other Louisiana parishes had "waiting lists" of defendants who need legal counsel, according to the ACLU. And it's a national problem, with similar cases happening across the country, thus proving disastrous for people, many of who are poor, who stand accused of a crime and need legal counsel.

"It's the insurmountable caseloads," Colette Tvedt, director of public defense training and reform at the National Association of Criminal Defense Lawyers, told CNA. "There's just been budget cuts to public defense nationwide."



In 1963 the Supreme Court ruled in Gideon v. Wainwright that, under the Sixth Amendment right to legal counsel, in serious criminal cases the state must provide attorneys for defendants who cannot afford one.

The Court stated that "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

Yet that promise of legal counsel for everyone is still largely unfulfilled today, legal experts say. In a 2013 speech on the 50th anniversary of the Gideon decision, Attorney General Eric Holder stated that "America's indigent defense systems exist in a state of crisis."

"It's really more of a scenario where states have never honored the Sixth Amendment right to counsel in a way that the Supreme Court

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adequate legal assistance, it is absolutely a social justice issue that Catholics should be concerned about, Mary Leary, another law professor at Catholic University, said.

"This speaks to the Catholic social justice issues of dignity and the common good," she told CNA. "And neither of those are advanced when we have ill-funded public defenders, or public defenders working under impossible conditions."

The number of criminals in the last 40 years has multiplied. In 1963 there were around 217,000 incarcerated in the U.S., and that number skyrocketed to around 2.3 million in 2013.

With more criminal cases, many of them involving poor defendants, came increased workloads for public defenders and other attorneys appointed by states for public defense. Attorneys are so busy they often have just a few minutes to meet with their client before trial, and usually counsel them to accept a plea deal offered by the state.

The American Bar Association, in its 2011 report "Securing Reasonable Caseloads: Ethics and Law in Public Defense," stated that "there is abundant evidence that those who furnish public defense services across the country have far too many cases, and this reality impacts the quality of their representation, often severely eroding the Sixth Amendment's guarantee of the right to counsel."

The ACLU has sued various districts around the country for failing to provide adequate public defense. In each case, the caseloads of attorneys were extremely high.

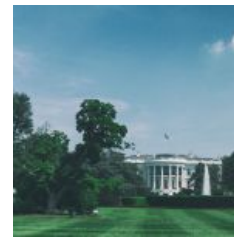
For instance, the ACLU sued the city of Mount Vernon in Washington state and won in district court in 2013; there, "each closed approximately 1,000 public defense cases per year in 2009, 2010, and 2011 and often spent less than an hour on each case," according to the court's ruling. Investigations, legal analysis, and confidential conversations with clients were practically non-existent, as well as any "adversarial testing of the government's case."

One of the attorneys "essentially said that trials were unnecessary because 'we all knew where we were going,'" the decision said.

And many of these criminal cases that end in guilty pleas may not just be "petty" charges.

Anderson, in her affidavit, stated that she is a "Level 3" attorney, "meaning the majority of my new clients are charged with burglary, gun possession, aggravated battery, or drug distribution." The gravity of their cases, and the fact that some are alleged repeat offenders, means "the vast majority of my clients are facing decades in prison if found guilty at trial," she said.

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budgets, according to a survey of 12 states by the Bureau of Justice

Statistics. There is "enormous disparity in terms of resources," Professor Drinan said, noting that "across the board, prosecutors tend to have more resources than defenders."

A major federal grant program by the Department of Justice – the Edward Byrne Memorial Justice Assistance Grant Program – allocated over 60 percent of the grant to law enforcement in 2012, the Brennan Center reported. In the portion of the remaining funds that went to prosecutors and public defenders, prosecutors got over seven times the amount that public defenders received in 2010.

Leary acknowledged there may be an overall disparity in funding but cautioned against the notion that all prosecutorial offices have access to the resources they need. There have been rape cases where a prosecutors' office in a big city couldn't perform vital DNA testing because the state wouldn't pay for it, she noted. "Those are real pressures that, to this day, exist," she said.

Public defender offices may face funding shortfalls because some states have transferred the budgets to individual counties who are unable to generate the revenue.

Derwyn Bunton, chief district defender for Orleans Public Defenders, reported over \$300,000 in projected revenue shortfall for the office in FY 2016. Additionally, the state was cutting over \$700,000 of funds for the office, and over half the office's revenue relied on "traffic tickets and fees imposed on defendants." The office's projected costs outpaced their projected budget in FY 2016 by almost a million dollars, he claimed.

In some states and localities, prosecutors already have law enforcement and state crime laboratories at their disposal in cases, although this is not the case everywhere Leary noted. Only nine percent of employees in state prosecutors' offices are investigators, according to 2007 numbers by the Bureau of Justice Statistics.

Prosecutors do have excessive caseloads too, Drinan said. "One of the key differences, though, is that the prosecutors have the power to make those cases go away," she added.

Public defender offices may not afford or have time for investigations, expert witnesses and the help of social workers to determine the mental state of their clients – basic necessities of forming a sound defense.

Anderson, in her affidavit, said she counsels most of her clients to plead guilty "without any investigation being done in the case." In a case going to trial, she most likely does not start working on it until the weekend before, doesn't see the police report until the trial, and doesn't visit the crime scene.



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work compensation rates per case are set by the state with a maximum amount for each case, meaning that if an attorney reaches that amount of compensation his or her hourly salary begins decreasing each extra hour they spend on a case.

In the 30 states that have set a compensation limit, the maximum is 65 dollars an hour with some states paying four dollars an hour, noted a 2013 report "Gideon at 50" by the National Association of Criminal Defense Lawyers. Some states have not increased their hourly maximums since the early 1990s, or 1986 in Alaska's case.

And overhead costs like for malpractice insurance mean that in some cases, public attorneys are actually losing money on a certain case.

"The dramatic underfunding and lack of oversight for our public defender services has placed people in a very, very precarious position when they find themselves charged with a crime," Tvedt stated to CNA.

When a defendant doesn't have legal counsel, he or she can accept a plea deal that seems amenable on the surface but carries hidden consequences. Jail time, even just a few days, can impact major things like one's employment and housing.

For a poor person without a lawyer or with an overworked public defender, pleading guilty to even a "minor infraction" can have serious "collateral consequences," Tvedt said. For example, if they plead guilty to driving with a suspended license and then drive to work or take their kids to school and are caught, the second offence can carry much higher fines. If they can't pay those fines, they could serve jail time.

"I have spent the last two years in court rooms all over the country doing court watching, and I have seen so many peoples' lives destroyed in 30 seconds by pleading guilty without a lawyer next to them," Tvedt said, or with a lawyer that's "too busy" to properly handle their client's case.

That was the exact case in Ferguson, Mo., where poor defendants without lawyers pleaded guilty to minor infractions that were issued at a very high rate in the local courts, she said.

"Waivers" of right to legal counsel can also be abused by judges who don't properly inform defendants of that right, or of the risks of forgoing counsel. Defendants can be poorly educated and completely ignorant of the justice system, yet a judge may simply ask them if they want to waive counsel without warning them of the significant risks that poses to their case, one report on misdemeanor courts by the NACJL said.



going to give you the public defender. You would have to go and hire one and I don't think you're going to do that. I think you and I are going to talk about this right here, right now, right?"

In other circumstances, courts will first hear cases of those who have hired lawyers before they hear the cases of those with public defenders, Leary said. That means that when the court's day is done there may be people who waited all day for their case to be heard but have to return the next day, or the day after that. For someone working multiple jobs with no vacation days, they might not be able to take extra days off or pay for child care to keep coming to court.

"In terms of the common good, then you might have a situation where the offender is, in fact, guilty, but is not held accountable, not because he was found innocent...but because the system was able to be worked by a defendant with money," Leary said. "It's a real problem from a public safety standpoint."

"The problem with our system is that it hurts the poor," she continued.

Ultimately, the whole legal system needs to be funded, not just public defense, she insisted, "so that everybody has their dignity – criminal defendants, witnesses, and victims. That everybody has their dignity."

"And only through that can we really get at a system that achieves justice."

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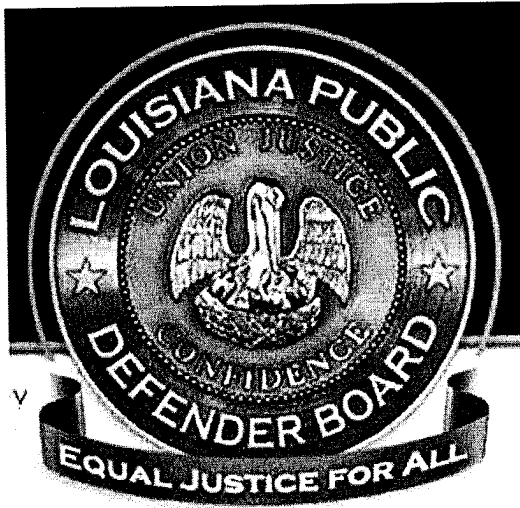
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LOUISIANA POLITICS & GOVERNMENT

Louisiana House rejects additional money for public defenders



The Louisiana House of Representatives chose not to give more money to public defenders in the state, in spite of the local public defenders' ongoing financial crisis.



By [Julia O'Donoghue, NOLA.com | The Times-Picayune](#)

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The Louisiana House of Representatives rejected a bid to give public defenders additional money in the state's next budget cycle. The measure failed **on a 30-54 vote** on Thursday (May 13).

Public defenders offices across the states are struggling with a lack of money. Fourteen public defender offices in Louisiana are in some type of restrictive status because they don't have enough funding to provide all their services.

This has caused serious concerns about whether civil liberties are being violated across the state, as people are being held in jail after being charged without being provided any legal representation. Lawsuits have been brought against public defenders for not providing adequate services.

Currently, the state public defenders board is slated to receive about \$30 million in the budget cycle that begins July 1. Gov. **John Bel Edwards** advocated for keeping the public defenders' funding the same as last year because of their ongoing financial troubles. Most other state agencies are taking a reduction, while Louisiana faces a \$600 million budget shortfall.



Louisiana public defenders won't be getting more money

But Rep. Cedric Glover, D-Shreveport, offered an alternative. On the House floor, he proposed taking \$6.3 million from the state Department of Corrections and giving that money to the public defenders. He said he thought the public defender funding situation had reached a crisis point.

Glover's amendment failed, in part, because he couldn't explain what type of cuts the Department of Corrections -- which oversees prisons -- might experience if the \$6.3 million was moved away that agency. The corrections department is already expected to take a cut next year, and there were concerns about how the prisons would deal with even more money being taken away.

Some state lawmakers also think the public defender board spends too much money on death penalty cases, at the expense of the local district offices. About 28 percent of the state public defender board's budget this year -- \$9.5 million -- was devoted to providing death penalty defense, according to Jay Dixon, the state's public defender.

The state public defender board is not supposed to be the primary source of funding for the local offices. The bulk of public defender money is supposed to come from court fees assessed on defendants when they plead guilty or lose a case. In reality, most of these fees come from people admitting to traffic violations.



The trials and travails of a N.O. public defender

One of the major reasons public defenders are having funding problems is that far fewer traffic tickets are being written in Louisiana than just a few years ago. It's not entirely clear why at this point. But local public defenders are having to rely more on the state board for financial support -- and the state board hasn't been able to keep up.

In New Orleans, the public defender is refusing to take certain types of felony cases, arguing its office doesn't have the staff and resources to handle them. That led a New Orleans judge to release seven defendants last month because not enough money was available to mount an adequate defense for them.

The situation is considered most dire in Acadiana, where 5,200 people are on a wait list for a lawyer from the local public defender's office. The 15th Judicial District in the Lafayette area has lost more than half of its staff and contract lawyers since February because of a lack of money.



OPD to begin refusing certain felony cases

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*Julia O'Donoghue is a state politics reporter based in **Baton Rouge**. She can be reached at jodonoghue@nola.com or on Twitter at [@jsodonoghue](https://twitter.com/jsodonoghue). Please consider following us on Facebook at **NOLA.com** and **NOLA.com-Baton Rouge**.*

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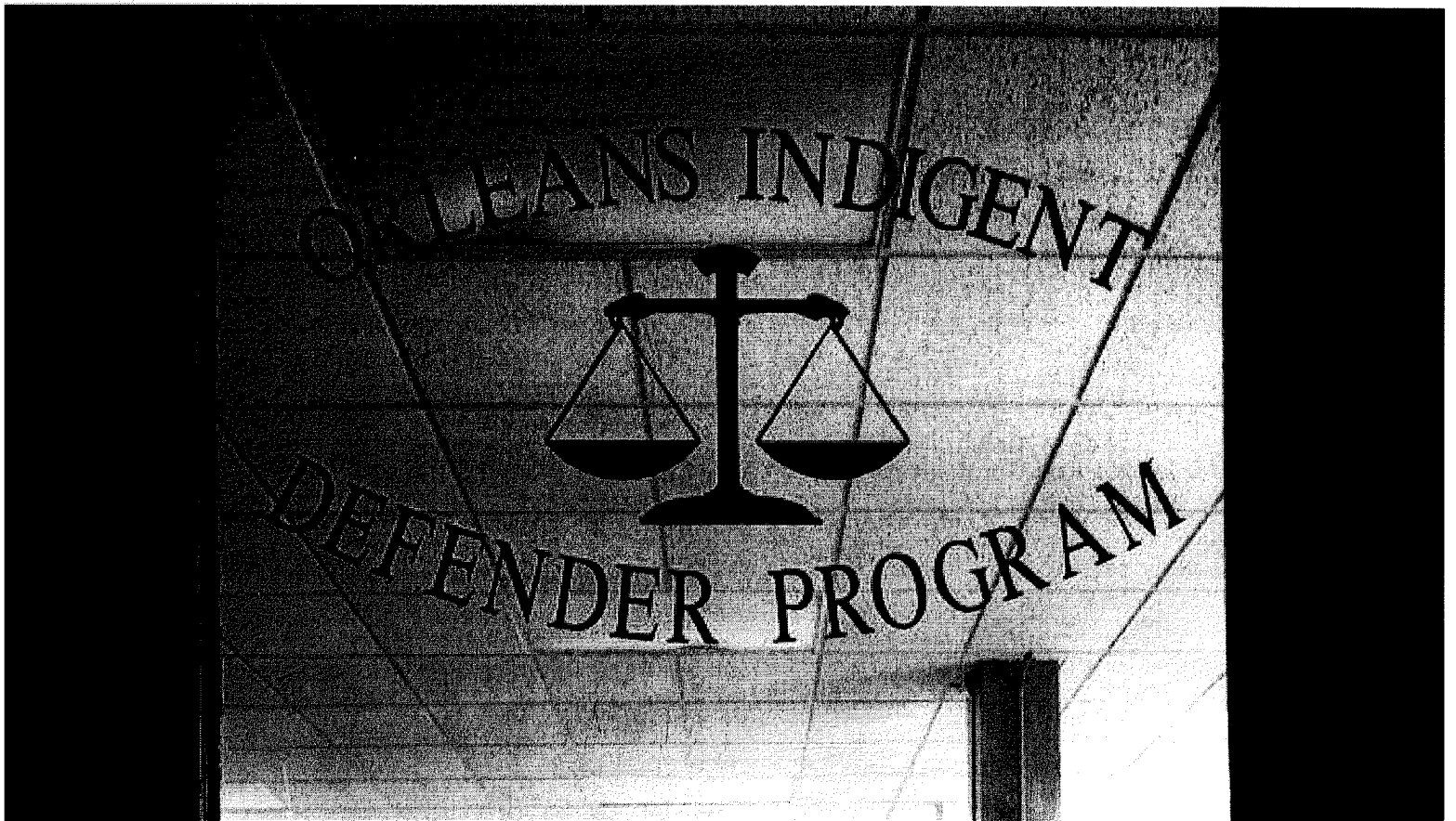
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Louisiana's Public Defender Crisis Is Leaving Thousands Stuck in Jail With No Legal Help



By Lauren Zanolli (/contributor/lauren-zanolli)

The entire public defender system in Plaquemines Parish, Louisiana, fits in a squat, white FEMA trailer — a remnant of the relief effort that followed the devastation of Hurricane Katrina.

The trailer is parked in a grassy lot along a commercial stretch about 30 minutes outside of New Orleans. The neon sign of a bail bond office flickers across the lot.

Like all public defenders, the Plaquemines Public Defenders Office, which is composed of two lawyers and an administrative assistant, is meant to represent defendants who cannot afford to hire a lawyer, fulfilling their constitutional right to legal counsel. In February the office announced that it was out of money and would be furloughing both lawyers and closing its doors, making it the first casualty of a public defender funding crisis that has been spreading across the state.

The Louisiana Public Defender Board (LPDB), which disperses state funding to local public defender offices, was ultimately able to provide \$80,000 to the Plaquemines office to cover payroll and office supplies only until July, when the current fiscal year ends. But the office still lacks money for outside resources like investigators and contract attorneys to cover cases where public defenders have a conflict of interest. Defendants on those cases are moved to a wait list, which currently numbers about five in a parish of 24,000.

The wait list is far longer in other areas of the state, and many are sitting in jail without access to a lawyer.

"I have clients calling saying, 'Hey, I heard you're not going to be in business anymore. What am I supposed to do?'" said Matthew Robnett, the chief public defender in Plaquemines. "I tell them, 'Hopefully we will be, but be thankful you're not in jail when you get on the wait list.'"

In Louisiana — which leads the United States in incarceration rates (<http://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR>) and has the second highest exoneration rate (http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2013_Report.pdf) per capita in the country, according to the National Registry of Exonerations — 85 percent of defendants qualify for a public defender. As of April, 33 out of 42 (<http://www.ksla.com/story/31740632/la-public-defender-funding-crisis-means-more-cuts-locally>) of its public defender offices are either refusing cases or maintaining a wait list in order to manage budget shortfalls, staff cuts, and impossibly high caseloads.

With the state scrambling to cover a \$600 million budget deficit

(<http://theadvocate.com/news/legislature/15710145-123/with-possible-shutdown-looming-louisiana-legislators-take-up-task-of-task-of-solving-600m-shortfall->) left by former Governor Bobby Jindal, significant funding increases are unlikely, and many expect the crisis to worsen before it gets better.

Insufficient Funds

The predicament stems from Louisiana's unique "user pay" system for funding indigent legal services. It is the only state that relies on court fees, collected mainly from traffic tickets, to fund the majority of local public defender budgets. Public defenders get about two-thirds of their overall funding from local revenues, the LPDB estimates, leaving them constantly guessing what their annual budgets will be.

"The way we're funded is unstable and unreliable and inadequate," said Jay Dixon, state public defender at the LPDB. "That will always be the problem."

Related: Gitmo for the Poor: States Leave Impoverished Inmates in Legal Limbo

(<https://news.vice.com/article/gitmo-for-the-poor-states-leave-impoverished-inmates-in-legal-limbo>)

Revenue from traffic violations has steadily declined over the past decade, with financial reserves for local public defender offices dipping (<http://www.theneworleansadvocate.com/news/15012872-123/louisiana-at-a-crossroad-on-providing-poor-with-access-to-public-defenders-in-criminal-cases-funding>) from \$18 million in 2010 to \$6 million last year. As a downturn in the oil and gas industry exacerbates fiscal woes throughout Louisiana, state funds are increasingly hard to come by.

Public defender offices, many of them already overburdened and underfunded, have been hit hard. The office in the 15th Judicial District, which covers the parishes of Lafayette, Vermillion, and Acadia in southwestern Louisiana, lost more than half its staff from January to April of this year due to lack of funding. The diminished headcount means more cases that present a conflict of interest for the remaining staff, and there are about 5,200 (http://www.nola.com/politics/index.ssf/2016/04/public_defender_funding.html) on a wait list for a lawyer across those three parishes, including as many as 300 currently in jail.

'We're talking about the incarceration of poor black people. That's the crux of it.'

The Orleans Public Defenders Office in New Orleans, which handles 20,000 to 25,000 cases a year, stopped taking complex felony cases in January, prompting the American Civil Liberties Union to file a class action lawsuit against it and the state public defender board. A total of 348 cases have been refused there so far, and 106 cases remain on the wait list.

"Any kindergartner looking at our criminal justice system — particularly our system of public defense — can see it is unfair," the Orleans Public Defenders said (<http://www.opdla.org/news-and-events/media-coverage/294-aclu-lawsuit-a-chance-for-reform>) in response to the lawsuit. "While this lawsuit is not necessarily welcomed, OPD welcomes reform. It is our hope this lawsuit leads to lasting reform and a more fair, more just criminal justice system."

The repercussions of service restrictions are being felt in other ways.

In April, a judge in New Orleans ordered the release (<http://theadvocate.com/news/neworleans/neworleansnews/15567337-61/new-orleans-da-appeals-judges-order-to-release-seven-allegedly-violent-inmates-for-lack-of-funds>) of seven men on the public defender wait list who were held without access to an attorney for crimes that included rape, armed robbery, and murder, saying that lack of funding for their defense violated their right to due process. (He stayed the effect of his order pending appeal.) Last week, a group of civil rights attorneys filed lawsuits (http://www.nola.com/crime/index.ssf/2016/05/lawsuits_release_louisiana_def.html) on behalf of nine defendants in two Louisiana parishes that have been held in jail for months without access to an attorney.

Still, some have challenged the need for additional public defender funding.

"All it would take to turn this around is for the state board to dedicate more of their current budget to the local offices instead of keeping it at the state level," E. Pete Adams, executive director of the Louisiana District Attorneys Association, said of the LPDB, which uses state funding to handle capital punishment and appeals cases on behalf of local public defender offices. The LPDB received close to \$31 million in funding last year, and is on track to receive the same amount in the coming fiscal year.

Related: NYCLU: Justice in New York Is Available Only to Those Who Can Afford It (<https://news.vice.com/article/nyclu-justice-in-new-york-is-available-only-to-those-who-can-afford-it>)

But it's unclear that a redistribution of state funds would effectively plug the holes of a public defender system that is primarily dependent on local revenues.

The LPDB released a budget plan in late April that would increase allocations to local offices from around 50 percent of total state funding to up to 65 percent. That translates to cuts at the state level, likely to capital defense and appeals funds — a move that Dixon says will still impact local offices.

The increase in direct funding "should help stabilize many of the districts that are in trouble," he explained. "But it's going to cause other problems."

Local offices may have to start paying for appeals cases that are now covered by the state board, or may have to fund capital defense cases on their own, which Dixon said could force other districts into restricted services mode. Robnett said the cost of a death penalty case would "bankrupt" a small office like his.

"When you're rearranging insufficient funds, you still have insufficient funds," said Dixon.

Decreased Capacity

In New Orleans, the defendant wait list has been slowly increasing since January, when Chief Public Defender Derwyn Bunton announced that his office could not take on new complex felony cases without additional resources. Staff caseloads were up to 300 a year

(https://www.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken--its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html) per attorney, roughly twice the American Bar Association's recommended limit. The Orleans Public Defenders Office currently has 49 staff attorneys, including Bunton, and 10 investigators, down from nearly 80 attorneys and 20 investigators at the office's peak in 2011.

Over the past four years, the office's budget has declined from around \$9 million to \$6.2 million in 2015, which is about a third of the local district attorney's budget.

"It's not going anywhere," Bunton said of the wait list. "Even if funding comes we will be digging ourselves out of a hole.... We have to rehire and retrain to get our resources up to what we can handle."

'Part of your minimum right to counsel is more than just having a potted plant stand next to you in court. It's the ability to present an effective defense.'

The resource crunch in the New Orleans office has been made worse by mass inmate transfers from the local Orleans Justice Center to a facility hours away, Bunton said. Orleans Parish Sheriff Marlin Gusman began inmate transfers this year, which accelerated this month in response to a lawsuit (http://www.nola.com/crime/index.ssf/2016/04/marlin_gusman_opp_jail_court.html) by the Department of Justice charging that the conditions at the new \$150 million jail are "unconstitutional," citing rampant violence among inmates and "alarmingly high" suicide attempts.

Over the past few months, more than 1,000 (<http://www.theneworleansadvocate.com/news/15681153-148/gusman-to-ship-600-more-inmates-out-of-new-orleans-in-attempt-to-stem-problems-avoid-federal-takeover>) of the city's approximately 1,500 inmates have been transferred to facilities outside the parish. The bulk of them have been sent to a detention center in northeastern Louisiana, more than 250 miles from New Orleans.

"We don't have the resources at that sort of scale — we don't have the resources at all, and certainly not at 600 clients," said Bunton. "I can't afford to have staff lose a day to visit a client."

In New Orleans, as in many other places, flaws in the justice system affect black communities most acutely.

"We're talking about the incarceration of poor black people," said Nia Weeks, a lawyer who left the Orleans Public Defenders last year. "That's the crux of it."

In 2014, 87 percent (<http://www.nola.gov/getattachment/Criminal-Justice-Coordination/Reports/Orleans-Parish-Prison-Population-Projection-2015.pdf/>) of those in prison in New Orleans were black, compared to about 60 percent of the city's general population.

Those on the wait list have few options. Judges can appoint private attorneys to represent indigent defendants, but the Louisiana State Bar Association opposes (https://www.lsba.org/CJC/CJCResources_AttorneysAppointedIndigentDefendants.aspx) such appointments and lawyers have pushed back. Defendants can opt for self-representation or try to raise money to hire a private attorney.

Related: A Decade After Horror of Katrina, New Orleans Police Brutality Still Remains (<https://news.vice.com/article/a-decade-after-horror-of-katrina-new-orleans-police-brutality-still-remains>)

Without a decent lawyer, defendants are largely locked out from the client advocacy and mitigation work — such as evidence collection, sentencing negotiations with the district attorney, and bail reduction — that lawyers take on early in a case.

In the Plaquemines office, Robnett said he is unable to hire investigators to gather evidence on every case.

"I can't say for sure, but I might be more shaded to settle because we can't mount a good defense," he said. "Part of your minimum right to counsel is more than just having a potted plant stand next to you in court. It's the ability to present an effective defense."

Even things like incompetency claims for the mentally disabled or those with diminished capacity can slip through the cracks.

"To a layperson, you would think that if you can't understand what is going on, you should be considered 'incompetent.' Actually there is a whole process that has to happen," said Weeks. "A lot of people can't read or write," she went on. "Having an advocate there that understands all those things and can safeguard you... is really, really important."

Though Weeks is no longer a public defender, she noted that several former clients — all of whom qualify for a public defender — have come to her for legal aid since the crisis started rather than try their luck with the Orleans office.

Tina Peng, an attorney with the Orleans Public Defenders, wrote an op-ed (https://www.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken--its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html) in the *Washington Post* last year calling attention to the state's difficulty. A drop in her caseload has allowed her to begin taking a select number of clients off the wait list.

"One problem with the system here is when we let our clients suffer that much, it gives the message that their lives don't matter that much, that we don't value their constitutional rights," she said.

The ripple effects of a public defender system funded by court fees go well beyond the courtroom, advocates say.

"One of the consequences of a system that sort of bleeds money out of clients and client communities to operate itself is to really damage those communities trying to rebound," said Bunton. "These are largely African-American communities that have a decreased capacity to make a living."

"The years of chronic underfunding for the part of the system that is supposed to stand up and argue and be critical of programs and policies that expand this huge criminal justice net," he added. "That system has been down, if not plain out, for a long time."

Follow Lauren Zanolli on Twitter: @LaurenZanolli (<https://twitter.com/LaurenZanolli>)

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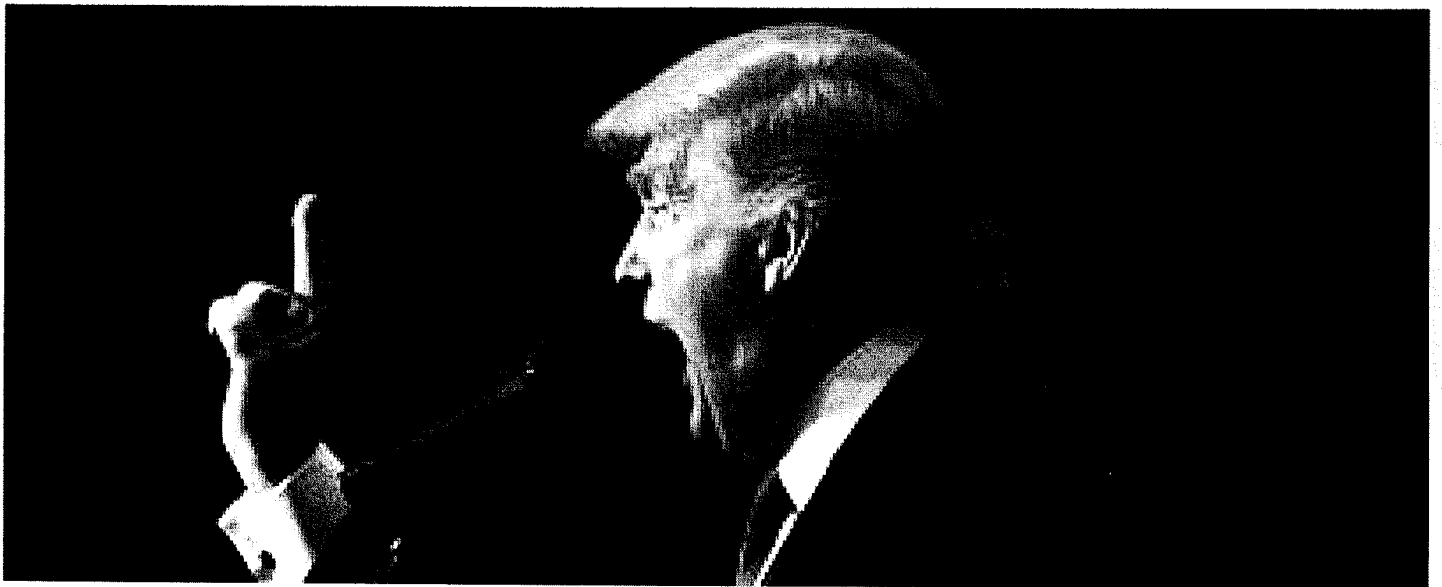
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cfj003 • 9 months ago

why isn't that unconstitutional...if you can't provide them both a defender and a speedy trial they should be released.

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CaptainGrumpy • 9 months ago

Oh those poor criminals! Maybe they regret getting caught up in crime now.

Message to people thinking of committing crime: DON'T.

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Thomas Pineo → CaptainGrumpy • 9 months ago

How does it goes again? Is in innocent until proven guilty or is it guilty until proven innocent. You know for the life of me i cannot remember. Can you help me out?

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aemoreira1981 → CaptainGrumpy • 9 months ago

Did you read the part about Louisiana having the highest **exoneratation** rate in the country? That presents another major problem...people are in jail who shouldn't be.

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Lucy Zucker • 7 months ago

I watched an interesting interview that talked about the impact of the lack of resources on the right to an attorney law with Seymour James from The Legal Aid Society <https://www.talkandlaw.com/talk>

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BuckOfama • 8 months ago

NHI crimes should not be prosecuted, since most are beneficial to society.

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And the wealthy self-interested politicians didn't care

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THESE LOW LIFES ARE PARASITES, WHO CARES.....

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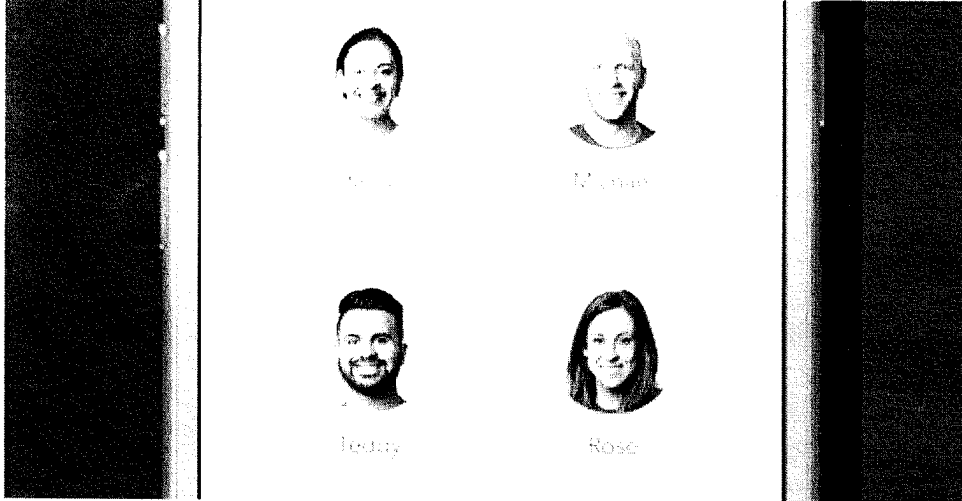
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A public defense crisis in Louisiana: 33 of 42 public defenders' offices restricting client services due to funding shortfalls

POSTED BY [DELLA HASSELLE](#) ON WED, MAY 25, 2016 AT 3:49 PM

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Early last year, Louisiana prosecutors accused and a grand jury indicted local resident Darrian Franklin of second-degree murder after 35-year-old Trenton Gary was shot five times and left to die on the side of Behrman Highway.

In the coming months, Franklin may be released from Orleans Parish Prison. But it's not because a jury has found him to be innocent of the crime.

Rather, it's the symptom of what Orleans Public Defender Derwyn Bunton has called a "constitutional crisis" for lawyers representing those too poor to afford private attorneys.

Citing funding shortfalls, the local public defender's office in January stopped taking complex cases. As a result, Franklin and six other inmates accused of rape, armed robbery and other serious crimes sat for up to four months in jail without seeing a lawyer. In April, Criminal District Court Judge Arthur Hunter demanded their prosecution halt, and a higher court is considering their release.

Franklin's is one of more than 340 cases that have been refused so far this year in New Orleans. The problem extends statewide, as 33 out of 42 public defenders offices in Louisiana are refusing cases or placing clients on waitlists. Thousands are now sitting in jail, with no foreseeable legal assistance.

As the legal drama comes to a head, the indigent clients, defense lawyers, local judges and legislators all have been in the spotlight, many opining on how best to handle defenders' dwindling fiscal resources amid the state's \$600 million budget gap.

But there's another group — one that local defense attorneys and a member of the national Sixth Amendment Center says is adversarial — that has been outspoken about exactly what public defenders should do with their money: the [Louisiana District Attorney's Association](#).

E. Pete Adams, the association's executive director, has joined other prosecutors in lobbying members of the Louisiana Legislature to pass [House Bill 1137](#), a measure sponsored by state Rep. Sherman Mack, R-Albany, that would reduce the size of the [Louisiana Public Defender Board](#) and force it to allocate more money to local offices.

33 out of 42 public defenders offices in Louisiana are refusing cases or placing clients on waitlists.

That's because the defender budget crisis, he said, is a ploy by the state board to get money that isn't actually needed — therefore, better controlling the board would alleviate the backlog of unrepresented clients.

"We have been suspect for some time about the size and validity of alleged crisis in public defender fund," Adams told *Gambit*. "Our interest in this is clearly that the board appears to be manipulating funding to cause a restriction of services at a local level."

Some, including defense attorneys, have challenged this statement, and the motive behind it. Among questions being asked by defense attorneys and legal experts: Why are Louisiana's district attorneys allowed to be so involved in public defense funding in the first place?

John Burkhart, campaign manager for the Louisiana Campaign for Equal Justice, is among those raising eyebrows. His organization's stated goal is creating a stable, reliable and adequate system of funding for public defense in Louisiana.

Burkhart joins public defense attorneys in pointing to [a Louisiana statute amended in 2008](#), which requires that the state's public defense system remain "free from undue political and judicial interference and free of conflicts of interests." According to him, prosecutorial involvement in legislative discussion over defense funding creates a situation that's ripe for that very kind of clash.

"You don't see very many agencies testifying as to the fiscal needs of different agencies, so it's certainly unique in that respect," Burkhart said. "The public defense and district attorneys have adversarial roles in the courtroom. Taking that at large, there's certainly potential of appearance of conflict of interest."

—

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Today's funding controversy, and the potential conflict between Louisiana's district attorneys and the public defenders, has been going on for more than a decade.

When the levees broke in New Orleans in 2005, following Hurricane Katrina, there were nearly 5,000 local indigent detainees who needed evacuation. The Southern Center for Human Rights conducted an investigation about their status afterward, and discovered the vast majority of the defendants not only hadn't seen a lawyer since the storm, but hadn't had contact with one six months prior to Katrina's landfall.

Back then there was no state-established system for monitoring or funding public defense attorneys. Rather, a network of private attorneys had created a system called the Orleans Indigent Defender Program, in which they represented poor defendants part-time.

According to a report released in 2006, the defense lawyers were allowed to take on as many private cases as they wanted. As a result, their indigent defense work suffered. The center found they didn't



CHERYL GERBER

“Prosecutors will forever try to make sure public defenders bring knives to gunfights,” says Orleans Public Defender Derwyn Bunton. “It is in their interest to do so.”

too much money on staff and nonprofit legal organizations, and not enough on local defense.

“We believe the problem lies not with local public defender offices, many of which do an outstanding job of representing their clients, but in the Louisiana Public Defender Board, which has become a kind of middleman receiving and parceling out the state’s \$33 million annual allocation,” Adams wrote. “Before the board came into existence in 2007, public defender offices may have been underfunded, but they were not in crisis.”

Adams and other prosecutors haven’t just targeted the board in media campaigns. They’ve also shown up before the legislature to argue the merits of HB 1137.

The bill would reduce the Louisiana Public Defender’s Board from 15 members to 11, removing some law professors that serve and allowing the makeup to include local public defenders. Four members of the board would be appointed from the governor, five from the state Supreme Court, one member from the House and one from the Senate.

The bill also calls for 65 percent of the state public defender board’s \$33 million in direct state funding to go to local districts. Last year, the board doled out roughly 50 percent of funds to those attorneys.

On May 24, the bill passed the Senate by a vote of 33 yeas and 2 nays with minor amendments, and was ordered returned to the House.

During a hearing in the Senate Judiciary B committee, not a single defense attorney spoke in favor of HB 1137. In contrast, all five who spoke in favor of the bill were employed by a district attorney’s office. Among them was Ricky Babin, District Attorney overseeing Ascension, Assumption and St. James parishes.

Like other testifying district attorneys, Babin recalled a time when the defense attorney of his district had reserves, before the creation of the Louisiana Public Defender Board.

“When the money came to the local boards, we had no problems. We had no issues. We worked together,” Babin testified. “I believe it would be way better served to have those funds brought back to the local area where we can decide, they can decide, the courts can decide how that money is raised and how we can supplement that money.”

advocate for lower bonds, visit crime scenes, interview witnesses, do research or even prepare for trial.

In 2007, the legislature created the Louisiana Public Defender Board, a 15-member commission housed in the executive branch selected to promulgate indigent defense standards. Though trial-level services were still delivered with local autonomy, indigent defense as a whole became organized at the state level. As a result, districts started getting state money for public defense, in addition to their local revenue. The central office also started contracting with non-profit public defender agencies for some appellate services and capital conflict representation.

In the years following Hurricane Katrina, the creation of the Louisiana Public Defender Board was called “one the most substantial reforms” to be implemented statewide.

Fast-forward to 2016, however, and prosecutors are now challenging the merits of that board, and the efficiency with which its members dole out state funds to keep local defense up and running.

In May, Adams wrote [an opinion piece](#) for *The New Orleans Advocate* likening the public defender’s budgetary complaints to the story of “Chicken Little” – the fairy tale about the chicken who claimed the sky was falling. The board, Adams said, was spending

“The public defense and district attorneys have adversarial roles in the courtroom. Taking that at large, there’s certainly potential of appearance of conflict of interest.” – John Burkhart, campaign manager for the Louisiana Campaign for Equal Justice

Several prosecutors took issue with capital defense funding, opining that the board inappropriately funds nonprofit legal organizations that represent the indigent on death row, who make up less than 1 percent of criminal defendants.

Of the \$33 million budget, about \$10 is now allocated for death penalty representation, juvenile services and other funds.

Local prosecutors aren't the only legal experts who have complained about the structure of the board, and about how its funds are dispersed.

Like Adams, former prosecutor and criminal defense attorney Joseph Raspanti criticizes the merits of the described public defense budgeting crisis. He says both the board and local defense offices, including Orleans Public Defenders, are "top heavy," and waste precious public dollars on attorneys who rarely enter the courtroom.

"A lot of people are getting a lot of money who don't try cases," Raspanti said. "They're stealing my money."

—

Other private defenders, as well as public defenders, have adamantly disagreed with the prosecutors' claims.

They include Baton Rouge-based criminal defense lawyer John DeGiulio, who [in another opinion piece](#) in *The New Orleans Advocate* defended the Louisiana Public Defender Board .

"Since the reform, public defenders have been asked to comply with caseload limitations that allow proper representation," DeGiulio said. "Most of them do not have retirement or health insurance, nor direct salary payments from the state, unlike assistant district attorneys. But the quality of representation has improved."

The real culprit, defense attorneys argue, is that the funding system as a whole is inadequate, as Louisiana is the only state in the nation that relies mostly on traffic tickets and forfeited bail bonds to cover public defense.

Latest statistics show that 33 percent of the board's revenue currently comes from the state. The rest is from fines and fees. As Bunton explains, public defender offices have no control over these revenue streams, their collection or disbursement.

"It's inadequate, unstable and unreliable," Bunton repeatedly has said.

In the past, Bunton has pointed to a 2006 American University report. It found that with more than 20,000 indigent clients a year, the Orleans Public Defenders office needs 70 lawyers and an \$8.2 million budget to "protects its clients' constitutional rights."

[A more recent tally](#) showed the office had about 50 lawyers and a \$6.2 million budget.

—

In late May, Bunton told *Cambit* that his office's fiscal challenges won't likely be resolved this legislative session.

He hopes that by the end of 2017, legislature will agree to substantial reform of Louisiana's "user pay" system. The alternative, he said, is a "coercive judicial intervention" on a federal level, possibly through a consent decree.

Dixon agrees, saying that supporters of HB 1137 have failed to articulate how it will help solve the overall budget problem.

"You will be removing years of experience, years of institutional knowledge, and replacing them with folks who know nothing about what we do," Dixon told the Senate in May.

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"A lot of people are getting a lot of money who don't try cases," says Joseph Raspanti, a former prosecutor and criminal defense attorney. "They're stealing my money."

Louisiana is the only state in the nation that relies mostly on traffic tickets and forfeited bail bonds to cover public defense.

In the meantime, legal groups from all sides are left debating the merits of the district attorneys' involvement in public defense funding the first place, with many wondering whether the issue would be more quickly resolved if the LDAA were not involved.

According to Bunton, district attorneys have long "meddled" in the politics of defense funding. He points to 2009, when the district attorney's association lobbied against an effort to get public defense attorneys a \$20 court-cost supplement.

"Prosecutors will forever try to make sure public defenders bring knives to gunfights," Bunton said. "It is in their interest to do so."

This legislative session, Dixon acknowledges a concern over local restriction of indigent defense services, because it slows the docket and affects their ability to prosecute.

Dixon also argues, however, that district attorneys want to set policy on the board's finance of capital cases, because lawyers working them have been "far too effective" for the opposition's comfort. He points to recent data showing that since 1976, more than 80 percent of death sentences have been overturned in Louisiana.



David Carroll, executive director of the [Sixth Amendment Center](#), says there's nothing wrong with two oppositional groups working together for comprehensive reform — but that's not what he sees happening here. "When you don't taken consensus approach, and you try to dictate how money is spent on an adversarial side, that's where you cross over into the unethical," Carroll said. "And I think that's what's happening in Louisiana."

Legal ethics lawyer and Loyola University New Orleans College of Law professor Dane Ciolino, on the other hand, has a different outlook. While he agrees that the defense attorneys and the district attorneys are adversarial forces in the courtroom and beyond, he thinks it's appropriate for an oppositional voice to lobby against certain aspects of public defense funding.

"When you don't taken consensus approach, and you try to dictate how money is spent on an adversarial side, that's where you cross over into the unethical," says David Carroll, executive director of the Sixth Amendment Center. "And I think that's what's happening in Louisiana."

"In my opinion, there's nothing illegal or unethical about those lobbying efforts," Ciolino said of the district attorney's association. "One of the ways democracy works is that people with competing interests take facts and opinions to the legislature in attempt to get what they want."

Ultimately, Ciolino concluded, the onus lay on lawmakers to consider the source of the information when making decisions about public defense funding, or any other issue to come before legislature.

"It's called politics," he said with a laugh.

Tags: [Dane Ciolino](#), [Derwyn Bunton](#), [Joe Raspanti](#), [David Carroll](#), [Orleans Public Defenders](#), [public defense](#), [Louisiana Public Defender Board](#), [Ricky Babin](#), [Criminal District Court Judge Arthur Hunter](#), [Sherman Mack](#), [Orleans Indigent Defender Program](#), [The New Orleans Advocate](#), [Image](#)

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Why free lawyers shouldn't come cheap

A PATH TO PROGRESS The US criminal justice system tilts against public defenders. But some states are trying to fix the imbalance.

By Henry Gass, Staff writer | JUNE 18, 2016

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MICHAEL BONFIGLI/SPECIAL TO THE CHRISTIAN SCIENCE MONITOR | View Caption

LEESBURG, VA. — Ryan Ruzic has just about reached the point in his public defender career where he's supposed to stop being a public defender.

With nearly five years' experience he's one of the veteran lawyers in his office, but he's now supposed to be at a breaking point. The well of energy and youthful idealism that fueled working long hours for low pay against better-resourced opposition typically runs dry at this point, and the realities of supporting a family and paying off student debt usually drive young public defenders to the greener pastures of private practice right when they're mastering their jobs.

He hasn't reached that point yet, and he hopes he never will.



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“I could absolutely see myself doing public defense for the rest of my career,” he says. “It’s an upward climb ... but I want a job that feels like it matters, and I want a job that I enjoy doing, and this job gives me both those things.”

Mr. Ruzic is a portrait of much that is right with the American legal system. But he is also a symbol of how it has become, in the eyes of many officials and experts, badly out of balance, potentially breeding mistakes and putting public safety at risk.

In Loudoun County, Va., where Ruzic works as an assistant public defender, the police department gets \$84 million, county prosecutors get \$3.3 million, and public defenders get \$2.1 million. Put another way, 98 percent of the criminal justice spending in the county is arrayed against Ruzic.

And this is in one of the better-resourced jurisdictions in the country.

No one is saying police and prosecutors get too much money, here or elsewhere. They’re scrambling to do the best they can with limited resources, too.

But there’s also little dispute that police and prosecutors – with their comparative financial advantage – are producing a workload that public defender offices are straining to cope with.

At any given moment, Ruzic has between 100 and 125 open cases. Each month usually brings 20 to 30 new clients, one or two jury trials, and one bout of major burnout. Some public defenders have twice that caseload. Some prosecutors make twice his salary.

The stress is inherent in the American view of justice. Those trying to put people in jail get the money, says Stephen Saltzburg, a professor at The George Washington University Law School in Washington.

“Most people would rather pay for prosecutors and police to do their jobs than they would to spend money on defense, even though the reality is if they were ever arrested and charged with a crime, they would conclude that no amount of money was too much to ensure them a fair trial,” he says.



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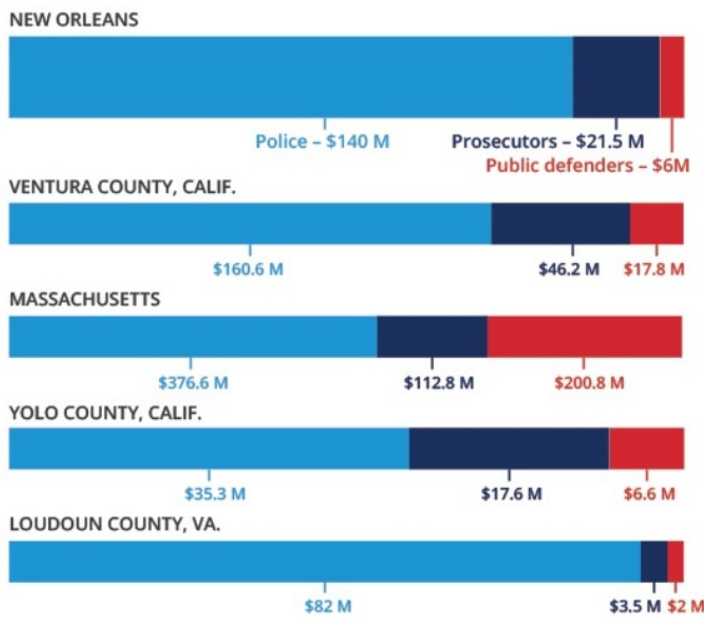
Moreover, the United States has more laws and makes more arrests than most other countries, he adds, but the funding isn't there to handle the workload.

Indeed, many of those nations often have a heavier emphasis on rehabilitation.

“Most countries give people treatment. We aren't willing to do that until they commit a crime,” he adds. “We've been relying on the criminal justice system and punishment to deal with social problems.”

The public defense systems that represent more than 80 percent of those charged with felonies are overworked and underfunded to the point of a national crisis, said former Attorney General Eric Holder in 2013.

The relative shares of funding spent on police, prosecutors, and public defenders vary widely from locality to locality.



JAKE TURCOTTE/THE CHRISTIAN SCIENCE MONITOR

Take New Orleans. In January, Chief Defender Derwyn Bunton ordered a work stoppage on certain felony cases, citing staffing shortages, budget cuts, and staggering caseloads.

Orleans Public Defenders has a \$6 million budget and about 82 full-time employees. The Orleans Parish District Attorney's Office has a \$14.5 million budget and 210 employees. The New Orleans Police Department receives \$140 million.

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Mr. Bunton says these disparities are not unrelated to the fact that New Orleans has the highest incarceration rate in the country, and that Louisiana has one of the highest rates of proven wrongful conviction in the country.

“You have a DA’s office whose budget on paper is twice yours ... and then they’re partnering with a \$140 million police force and federal partners to generate work,” he says. “We can’t handle the work generated by other actors in the system.”

Needed: 122.8 defenders

Some states have attempted to address the disparity issues, though they have seen mixed results.

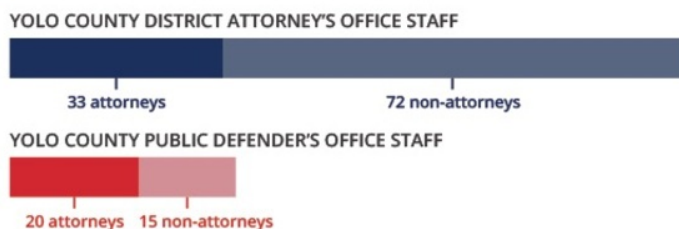
Since 1992, Tennessee has mandated that any increase in local funding for a district attorney general must be accompanied by an increase of 75 percent of that amount for the public defender office. Yet a 2007 study found that “indigent prosecution funding was two-and-a-half times greater than indigent defense funding,” and that both offices were understaffed.

To meet proper caseload standards, the report found, district attorneys needed an additional 22 lawyers, while public defenders needed an additional 122.8.

In Yolo County, Calif., the public defender office has its own agreement with the county administrator’s office: For every three criminal prosecutor positions the district attorney adds, the county will fund two new public defender positions.

“I feel very lucky,” says Tracie Olson, the Yolo County public defender. “The parity ratio is a recognition of the fact that resources need to be as equalized as possible.”

These funding decisions often result in prosecutors having more resources than public defenders, which can translate to higher workloads.



Yolo County illustrates the importance of a commitment to parity. At the other end of California, in Ventura County, the county's public defender is resigned to the fact that his office will never achieve resource parity.

Steve Lipson doesn't think his office is underfunded, but the local district attorney's office has more than double the funding and staff.

"If you've been in this business for any amount of time, it's a given to accept that the playing field is not balanced," says Mr. Lipson. "You have two options: You can rail against it and complain, or you can suck it up and do your best."

\$210,000 of student debt

In Loudoun County, rather than try to increase the number of people on staff, the chief public defender, Lorie O'Donnell, is eyeing pay parity with the commonwealth's attorneys – a more achievable, but equally seismic goal.

"When it comes to buying a house or starting a family we lose them, just because the salary's not there," she says, referring to experienced lawyers. "Right now, just when they're getting great, they go out into private practice."

This is why Barry Zweig felt he had to quit as a public defender in Loudoun County in 2001.

It was an accumulation of factors, he describes: He was making the same kinds of arguments so often that judges got tired of them, and he was tired of constantly losing cases, "getting beat up by the system," and working 45 minutes away from his son in day care.

"And at that point, after 4-1/2 years, I felt like I was underpaid," he adds. "When you have a built-in reason like, 'I have a child who's 45 minutes away,' it's easy to make that decision."

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Ryan Ruzic, an assistant public defender in Loudoun County, Va., is seen near a corkboard in his office where he pins thank-you notes from former clients. He usually has between 100 and 125 open cases. HENRY GASS/THE CHRISTIAN SCIENCE MONITOR

Ruzic is now in Mr. Zweig's position – four years in and sitting on \$210,000 of student debt. But he shakes it off.

“It's a decision you have to make, and I decided I'd rather do something that I really like doing for the rest of my life than not be in debt for the rest of my life,” he says.

For others it's not so easy. Public defenders in Massachusetts were the lowest paid in the country, according to a 2014 study by the Massachusetts Bar Association (MBA). Many worked part-time jobs to make ends meet.

District attorneys in the Bay State weren't much better off, with entry-level prosecutors getting paid less than courthouse custodians.

As in Virginia, public prosecutor and defender offices were serving as de facto training schools for lawyers headed to the private bar for higher pay and a softer caseload.

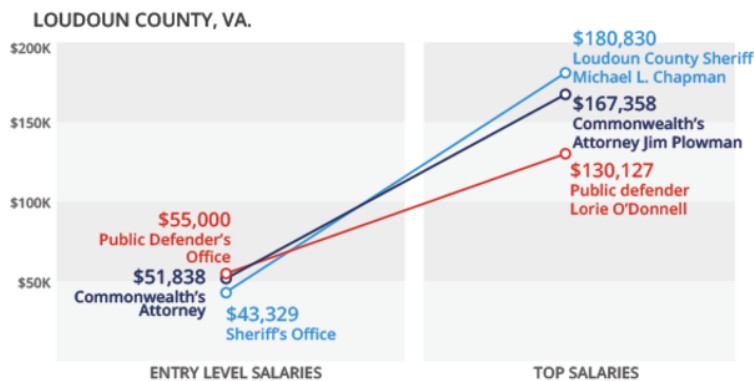
“They're losing a lot of talent out the door, and wasting a lot of energy and resources training people,” says Martin W. Healy, chief legal counsel of the MBA.

A budget approved by the state House of Representatives earmarks \$500,000 to raise salaries in the state's 11 district attorney's offices, something Mr. Healy describes as “a step in the right direction.” But he has many of the same concerns as Bunton.

“If those people aren’t staying to garner that experience, the whole system suffers,” he says. “Either someone is convicted or serving a sentence longer than they would have been if they had more seasoned counsel, or someone’s walked out of the courtroom doors that deserves to be penalized.”

Prosecutor offices have their own challenges, even if they enjoy a resource and salary advantage over their defense opponents.

While prosecutors and public defenders often start at similar salaries, public defenders stand to make less than their prosecutor counterparts over time.



SOURCE: LOUDOUN COUNTY, VA., COMMONWEALTH OF VIRGINIA GRAPHIC: JAKE TURCOTTE/STAFF

Prosecutors’ low pay makes the private bar just as alluring. And since prosecutors are tasked with investigating all possible cases – while defense lawyers are required only when charges are filed – they usually have higher caseloads.

Now, there is also growing pressure to make sure charges are appropriate. Last year saw a record 149 exonerations in the US, thanks in large part to more prosecutor offices actively looking for wrongful convictions.

A cause for hope

If there is one positive that experts and lawyers across the country can agree on, it’s that there is now an almost unprecedented level of public and political attention on the criminal justice system.

Politicians at the state and federal levels are passing reforms on everything from how defendants are sentenced to how they’re treated when they’re in prison and how they’re able to reintegrate into society after they are

released. Criminal justice reform has united an often-polarized Congress, while conservative mega-donor Charles Koch and his liberal rival, George Soros, have been teaming up to push further.

“I certainly think there’s more focus from the public on some of the problems we see in the justice system,” says Ruzic. “I hope this is the beginning of a trend, and not just one of the many ups and downs an issue is going to see as it moves along.”

Much of the increased attention has been driven by negative press around the record exonerations and mounting lawsuits against public defender offices.

Bunton is among those who think this is a good thing. His office was formed after hurricane Katrina plunged the state’s public defense system into crisis, and he now thinks it has reached another breaking point.

“I think we are at another one of those moments, another one of those milestones as we move forward and try to create a more fair and just Louisiana,” he adds.

In Virginia, Ruzic hopes his state can head off that kind of crisis before it arrives.

“The way those states got there is because no one paid attention to it. It just got worse and worse until it reached a breaking point, and that’s what we’re trying to avoid,” he says. “We shouldn’t wait for something to break before fixing it. We should be doing maintenance and upkeep, especially when it concerns people’s constitutional rights.”

[Editor’s note: The original story gave incorrect information about the number of full-time employees in the Orleans Public Defenders office. It also had incorrect information in a chart about the salaries of Loudoun County, Va., public defenders and prosecutors.]

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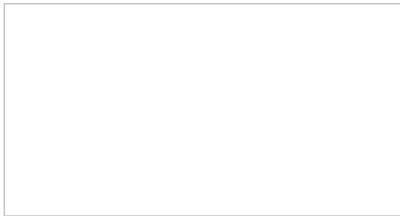
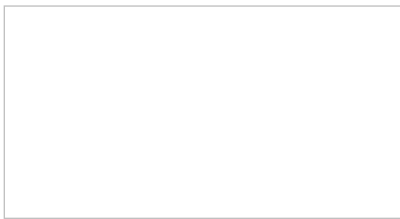
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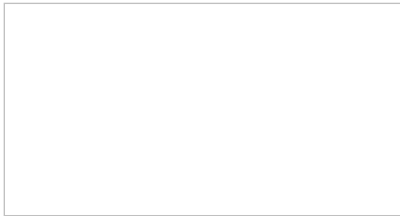
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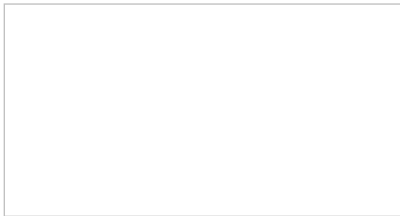
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Orleans public defender wins, death penalty groups lose as state redirects indigent defense money

BY JOHN SIMERMAN | THE ADVOCATE JUL 4, 2016 - 12:56 PM

John Simerman

In New Orleans and across Louisiana, public defenders are starting off the new fiscal year on better footing.

Gov. John Bel Edwards and the Legislature held steady the total amount of funding the state kicks in for indigent defense, while voting to shift more of that \$32 million to the front lines.

But the shift has taken a toll on the agencies that represent defendants in capital cases, both at trial and in years of appeals after convictions. Two of those outfits, the Capital Post Conviction Project of Louisiana and the New Orleans-based Capital Defense Project of Southeast Louisiana, say their budgets have been cut in half, with each losing about \$1 million.

Story Continued Below

A bill that Edwards signed June 17 requires the Louisiana Public Defender Board to dole out at least 65 percent of its budget to local district defenders, an increase of nearly \$5 million from what the state board had been delivering to local defenders in recent years.

The biggest beneficiary is the Orleans Parish Public Defenders Office. It will see a nearly \$1.5 million increase in state money, bringing its total budget to \$7.9 million. That figure assumes funding from the city stays level at \$1.5 million, with a modest decline in revenue from fines and fees generated largely from traffic tickets.

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'It's just not working': Funding public defenders with user-pay system doesn't make sense, many officials say

A long slide in the number of traffic tickets written across Louisiana — the biggest revenue source for most public defender offices in the state — reached a crisis point last year. More than a dozen district defenders curtailed services, cut staff or turned away poor defendants, leaving more than 1,000 arrestees in Louisiana without attorneys.

Ultimately, the Legislature spared those offices a steep projected cut in the state's annual supplement to local funding, though advocates note that a largely "user-funded" system remains shaky, with reform elusive.

In Orleans Parish, Chief Public Defender Derwyn Bunton described "a burst of resources that's going to delay and mitigate some bad things."

The extra cash will mean an end to a hiring freeze and other stiff cutbacks that Bunton resorted to over the past year to grapple with a severe budget shortfall.

The added money will allow him to add perhaps eight lawyers to his depleted staff and to beef up contracts for private attorneys to handle cases in which his office has a conflict, Bunton said.

"The good news is we're getting an increase," Bunton said. "But because of the problems created over the last year, we'll be dealing with a backlog of wait-listed and some refused cases."

In January, Bunton's office began turning away scores of violent felony cases, citing an overworked staff and the loss of experienced attorneys in his office.

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In cutback mode, Orleans Public Defenders Office waives off new 'conflict' cases

The dire budget picture prompted one Orleans Parish judge to order the release of seven inmates accused of violent crimes, citing a lack of money to represent them — a ruling that has since been blocked on appeal.

As it stood Friday, 54 indigent defendants remained on waiting lists for lawyers in New Orleans, according to figures provided by Bunton's office. They have gone without lawyers for as long as five months, though most have been waiting for shorter periods.

That list has been whittled down from more than 400 at one point. Some ended up hiring private attorneys. For others, judges appointed pro bono lawyers to handle their cases. District Attorney Leon Cannizzaro's office refused charges in some cases, while Bunton's office has made room for others.

However, Bunton bristled at the notion that the dwindling roster of unrepresented defendants suggests the problem wasn't as bad as it looked.

"The size of the list should not be diminished by the ingenuity of desperation," Bunton said. "Just because you get a lawyer in six months and a day doesn't mean no harm happened. This is the Bill of Rights, not a line at Rouse's."

Chief State Public Defender Jay Dixon said most but not all local offices will benefit from the shift in state funding. But the statewide funding troubles are far from over, he said.

For one thing, he said, the money may not last the year.

It also doesn't account for some 300 cases in which a recent U.S. Supreme Court ruling demands new sentencing hearings for inmates who are serving life prison sentences without the possibility of parole for crimes committed while they were juveniles.

Just a few of those hearings could cripple smaller parish defenders' offices, he said. In New Orleans, some 70 juvenile lifers are awaiting new hearings at a cost that Dixon pegged at as much as \$50,000 apiece for cases that reach a full-blown hearing.

What remains as district defenders like Bunton try to dig out of a fiscal hole, is a local funding structure that relies mainly on traffic ticket revenue, which for various reasons has slid by some 30 percent since 2010, Dixon said.

"I'm grateful to the governor, who basically protected our budget, but we've been talking about the shortage in funding for years and we're still in the same place," Dixon said. "The number of tickets keeps going down. As long as local funding keeps dropping, it's putting lipstick on a pig."

Whether the Legislature intended it or not, the shift of money to local offices has spelled trouble for capital representation, which saw overall state funding drop from \$10 million to a little more than \$6 million.

The Capital Post-Conviction Project of Louisiana has scored some hard-fought victories in recent years. It helped secure the 2014 release of death row inmate Glenn Ford, then saw a 6-2 U.S. Supreme Court majority grant death row inmate Michael Wearry a new trial this year in a 1998 murder case.

But the new legislation has left the agency \$1 million short and forced it to reduce its staff from 22 to 12, said Gary Clements, the group's director.

"All I can tell you is we put in very high-quality work, and we see positive results," Clements said. "We see the population of death row decreasing. Prosecutors apparently don't seem to like that result."

Whether the organization will have to turn away some cases or delay others remains uncertain, he said. "We still have attorneys. We still have support staff. We're still open for business," he said.

Also taking a \$1 million hit was the Capital Defense Project of Southeast Louisiana, which handles capital cases at trial in various parishes that don't have qualified attorneys to handle them. Few such cases arise these days in Orleans Parish, but director Kerry Cuccia said the volume fluctuates.

His budget was reduced from \$2.1 million to \$1.1 million in the legislative restructuring, he said.

Cuccia said he heard proponents of the legislation argue that too much was being spent on capital defense, though he said, "I'm not sure that translated into a purposeful thing to reduce" funding for capital defense, rather than simply a bid to stanch the tide of red ink among local public defenders offices.

"The fiscal problems this Legislature and the governor had to face in this session were mammoth," he noted.

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Cuccia said the Legislature has taken some steps over the years to bolster funding for poor defendants, increasing the state's contribution and in 2012 approving a \$10 increase in the fee that convicts and traffic violators must pay to support indigent defense. But that increase hasn't done much to solve the problem.

"I would not say the Legislature kicked the can down the road," Cuccia said. "They tried to address it. The things they have done have not worked out to provide enough for what the demand is."

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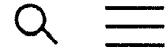
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New Orleans: Who's in Jail and Why?

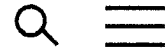
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Overview

Until recently, New Orleans was the longtime nationwide leader in urban jail incarceration rate, which today remains at nearly double the national average. Although the population of the city's jail has been declining since 2009, there is still much room for improvement, including addressing the considerable and persistent racial disparities in arrest and detention.

By examining the key sub-populations of people behind bars—including charge at the time of arrest and risk level—this report aims to provide accurate and unbiased data and analysis to support local leaders in safely reducing incarceration.



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Action Areas



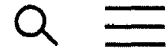
Reducing the Use of Jails

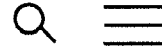


Scoping the Problem

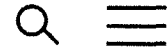
Key Takeaway

Despite common practice to detain defendants even when they are assessed as “low risk”, New Orleans has more than enough beds to accommodate both its current and projected jail population. The vast majority of people in New Orleans's jail have not been tried or convicted and many are low risk.





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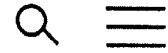
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Louisiana Locks Up More Nonviolent Offenders Than Neighboring States Without Achieving Lower Crime Rates

Posted by [Kevin Kane](#) on August 25, 2016 at 9:12 pm



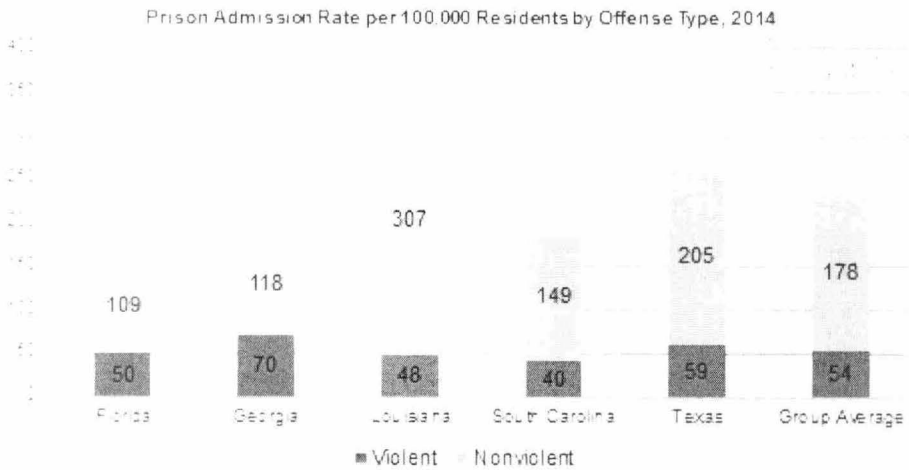
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State incarcerates violent offenders at a rate similar to other states in the South, while incarcerating nonviolent offenders at a much higher rate

Louisiana's legislative leaders and Governor John Bel Edwards are taking a top-to-bottom look at our criminal justice system, aiming for a better public safety return on taxpayer dollars. They have appointed the Justice Reinvestment Task Force to conduct that analysis, starting with an in-depth look at data trends.

On August 11, Task Force staff made the first of several presentations on factors that are driving Louisiana's incarceration rate. While the presentation provided a wealth of information, the most striking finding of the Task Force was that while Louisiana incarcerates violent offenders at a rate that is comparable to other southern states, we incarcerate nonviolent offenders at a much higher rate.

Admission Rate of Nonviolent Prisoners Much Higher Than States in Region With Similar Crime Rates

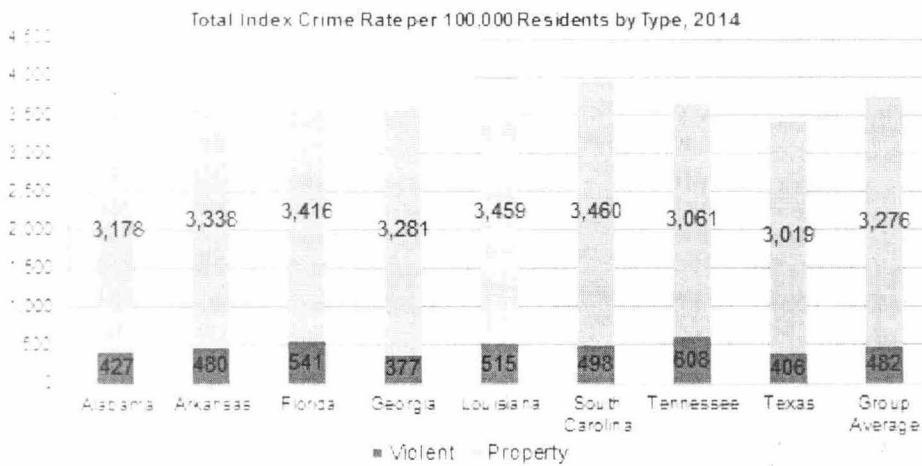


Source: Department of Corrections statistical reports for each state

As the above graph illustrates, while crime rates in Louisiana, South Carolina, and Florida are nearly identical, Louisiana sends people to prison for nonviolent offenses at twice the rate of South Carolina and three times the rate of Florida.

This raises an obvious question: Are we reducing crime by locking up more nonviolent offenders? The graph below indicates that incarcerating more nonviolent offenders has not led to lower crime rates than other states in our region

Louisiana Has Similar, Though Slightly Higher, Crime Rate to Many States in the Region



Source: Federal Bureau of Investigation, Uniform Crime Reports

Why don't we enjoy lower crime rates than our neighboring states? A key point for consideration is that while prison is an important tool for protecting the public from people engaged in violent crimes, it may not be the best tool for lower-level nonviolent offenses. When the criminal justice system takes people committing minor drug and property crimes and mixes them in prison with violent career criminals, we are disrupting the positive

things in their lives like employment and family connections. Further, putting these nonviolent offenders in a prison setting requires them to learn a new set of (antisocial) survival skills. They often come out worse than they went in.

This is not a blanket argument against imprisonment – just the recognition that prison is not the best intervention for all crimes. For low-level nonviolent crimes, it can do more harm than good and leave taxpayers footing the bill.

Fortunately, Louisiana can also look to our neighbors to learn more about alternatives. South Carolina, Georgia, Mississippi, and Texas have all recently passed measures to strengthen prison alternatives like probation and drug courts and changed laws about who goes to prison and for how long. They have seen remarkable results. Their crime rates are down and so are their imprisonment rates.

Mississippi, for example expanded eligibility for probation, electronic monitoring, and drug courts. They beefed up probation with graduated sanctions and incentives, and made probation sentences presumptive for certain low-level drug and property crimes. The Legislature passed these measures with a broad base of support that included business leaders, Christian conservatives, and the American Legislative Exchange Council. They have since seen probation success rates increase, their prison population dropped 18 percent between 2013 and 2015, and crime has continued to fall.

Louisiana has taken a step in the right direction by creating the Task Force to develop policy recommendations. Clearly we can improve upon the status quo, and this type of data-driven analysis is necessary to ensure that any proposed reforms are cost-effective and will improve public safety. Achieving a more rational and just criminal justice system may not be easy, but our neighbors have shown us that it can be done.

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

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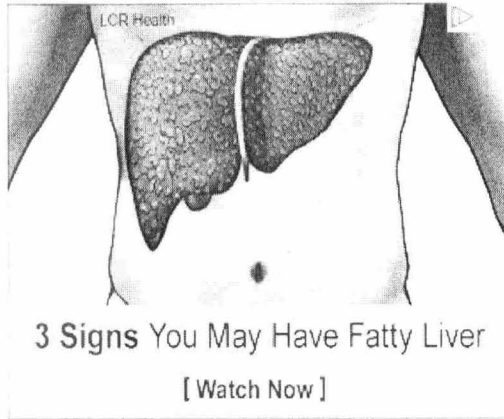
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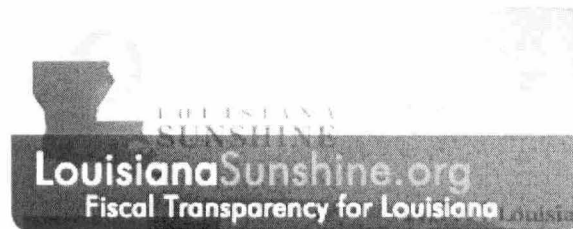
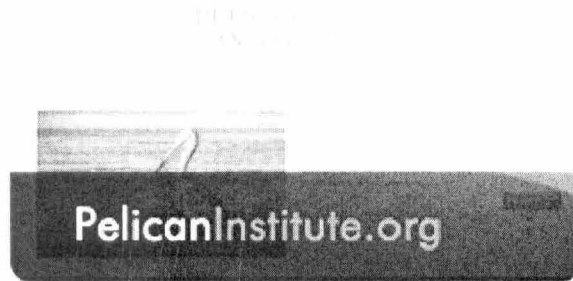
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WILL DO

In several parishes, real estate and adoption attorneys - and even prosecutors - are filling the gaps left by an unreliable public defense funding program

Part two of a three-part series reported in partnership with the Marshall Project

by . Video by

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Thursday 8 September 2016 07:13 EDT

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Last fall, insurance attorney Ryan Goodwin found himself in a visiting area of the Caddo correctional center in Shreveport, Louisiana, bracing for an awkward conversation. He had to make an admission to his new client - a 16-year-old who was facing life in prison for stealing someone's wallet and cellphone at gunpoint.

"I don't do criminal defense," he told the teenager, Norman Williams Jr. "But I promise you, I'll definitely try my best."

Goodwin typically represents insurance companies in litigation following car accidents. His job involves finding out what injuries the victim claims to have and whether they were caused by the crash. He has no criminal law experience.

But because the Caddo Parish public defender's office was suffering from a historic, statewide lack of funding, it could no longer provide counsel to hundreds of its poor clients. To fill the void, judges were randomly assigning the neglected cases to all the lawyers in Shreveport, including those specializing in real estate, personal injury, taxes and adoption. Anyone with a law license, a professional address in the parish and a pulse was placed alphabetically on a list. They could be called on at any moment to take a criminal case, unpaid.

For Goodwin, this presented a moral dilemma. When he met Norman, he knew he wasn't fit to represent him, but a court of law was telling him that he was. "I took generic criminal law and criminal procedure in law school, but that's just two classes separating me from any person," he says.

"I wouldn't want me representing me."

Louisiana's public defender system: 'If you're alive and have a law license, you're eligible'. Video by Laurence Mathieu-Léger

Goodwin decided to write a letter to the judge, John Mosely Jr, who had assigned him the case. "I understand the current status of the indigent defense office, as well as my civic duty," he wrote. "But the possibility that a young man could spend a significant amount of time in prison poses a difficult burden on me, considering my rudimentary knowledge of criminal procedure."

The judge kept him on the case.

So Goodwin wound up at the Caddo correctional center, attempting to explain the situation to his young client. “I tried to tell him about the constitution: that you have rights, that you have the right to a qualified attorney,” Goodwin says.

“But the way things are, I think he was happy just to have any lawyer, period.”

As Louisiana continues to provide insufficient, unreliable funding for the legal representation of the poor - “on a scale unprecedented in the history of American public defense”, warned an open letter by the president of the American Bar Association - public defenders across the state have barely scraped by, foregoing office necessities and laying off attorneys and essential staff.

Earlier this year, many of these offices had so few staff that they resorted to placing hundreds of their clients - even those sitting in jail, awaiting trial - on “waitlists” to receive a lawyer. “Conflict cases”, with multiple co-defendants requiring multiple lawyers, had become especially overwhelming for the defenders to handle.

In Caddo Parish, where Ryan Goodwin was asked to help, budget shortfalls forced the public defender to cut 12 attorney positions, leaving only 22 lawyers to handle more than 15,000 cases. In Lafayette, another populous parish 215 miles south-east of Caddo, the defender had to cut 47 of 65 attorneys. The waitlist there has more than 4,500 defendants, many facing life in prison.

The issue now facing judges and courts across the state is how to ensure a functional - and constitutional - justice system in the wake of these shortages. In New Orleans, for example, Judge Arthur Hunter ruled on 8 April that poor defendants sitting on a waitlist must be released from jail until the public defender can represent them. Prosecutors are appealing several of those defendants’ cases .

Everywhere else in the state, however, judges have taken more conservative approaches.

“I’m not going to be the one that lets one of them out, unless a higher court tells me I must,” says Jacque Derr, the district judge of Winn Parish, a rural area in central Louisiana. “What I’m scared of is some serious offender who is guilty ending up walking down our streets because of this ... All I can do is find a lawyer to agree to do it, or else these suckers are fixing to be home free.”

This summer, that is exactly what many of Louisiana’s judges have done. Judge Derr has conscripted his city prosecutor to also help out as a public defender. And instead of releasing inmates, the judges in Caddo Parish and elsewhere have appointed non-criminal attorneys like Goodwin to take criminal cases that they may not be equipped for.

“It’s a way of trying to paper over a funding problem without funding - to make sure that no matter what, they can keep their prosecutions going,” says Stephen Singer, a law professor at Loyola University and formerly the chief of trials and general counsel of the New Orleans public defender’s office. “Their ‘solution’ is to put up cardboard cut-outs of defense lawyers in place of actually spending the money on real public defenders.”

‘Like asking a dentist to do heart surgery’

Shreveport, the seat of Caddo Parish, was the last capital of the Confederacy. Directly in front of its courthouse, a monument to the cause reads: “Lest We Forget.”

The city was also home to a branch of the Standard Oil company, but Louisiana's oil and gas industry has struggled in recent years, leading to an economic downturn that affected funding for public services such as indigent defense. Today, casinos and strip clubs light up its mid-rise skyline, and billboards for lawyers ("One Call, Y'all!") line the highways.

On a humid day in June, many of those lawyers are gathered for a luncheon thrown by the Shreveport Bar Association. Dressed in seersucker suits and bow ties, they are crowded around the buffet, spooning fried catfish and black-eyed peas on to their plates. Between bites, everyone is commiserating about the public defender's funding crisis, and how ill-equipped they are to fill in. "I just got another one this week!" says Richard Lamb, a tax attorney who admits he has never argued a case in court.

The analogies seem to come easy:

"It's like asking a dentist to do heart surgery," Lamb says.

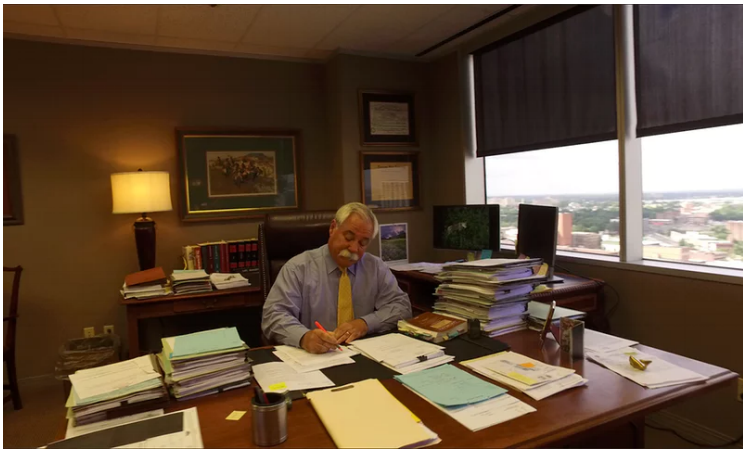
"It's like if we told a prosecutor to do a medical malpractice suit," says Goodwin, the insurance attorney.

"What if private lawyers were appointed to be DAs?" says Steve Baker, an adoption attorney, later in the day. "We'd probably just dismiss a lot of the cases, and they don't want that."

Another civil attorney, Jim McMichael, chimes in with a funny story about how a defendant put an arm around his appointed lawyer's shoulder and said: "Would it help if I told the judge that I also thought you were incompetent?"

Goodwin - whose former client Norman Williams Jr made a deal with the district attorney to testify against another defendant and is now doing five years in prison - says he cannot tell if this is all a comedy or a tragedy. "We're sharing laughs over beers about how my friend was assigned to represent a pimp," he says. "But then again, someone's liberty is at stake here."

On at least three occasions in the past, Caddo Parish has taken the same draft-a-lawyer route out of a public defender crisis - and criminal defendants have fared far worse than Williams. In 1984, the local bar had divided all of Shreveport's lawyers alphabetically, just as judges did again this year, to represent the indigent. In one murder case, a man named Glenn Ford was randomly assigned to be defended by an oil and gas attorney and a slip-and-fall insurance attorney. They failed to challenge prosecutors' selection of an all-white jury, which then found Ford guilty after deliberating for only three hours. He spent the last three decades of his life on death row before being exonerated in March 2014.



Steve Baker, who practices adoption law in Shreveport, said of the crisis: 'What if private lawyers were appointed to be DAs? We'd probably just dismiss a lot of the cases, and they don't want that.'
Photograph: Laurence Mathieu-Léger for the Guardian

Ford, one of the longest-serving death row inmates to be exonerated in the US, died a year after he was released from prison. The state of Louisiana never provided compensation to him or his family.

This time around, to better prepare their lawyers for these assigned cases, the local bar association planned a seminar on criminal law for non-criminal attorneys. (One flyer read: "This Will Sell Out, So Make Your Reservation Now!")

On a Friday in May, more than 20 private attorneys filed into the basement of the Caddo Parish courthouse, where they learned the "Do's and Don't's of Providing Effective Assistance" in criminal cases. Over a three-hour period, a judge, a representative from the DA's office, a former DA and a former public defender showed them PowerPoint presentations on how to interview a client (compare what the client is saying with what you know from the police report), how to visit a jail (show your bar card) and how to file basic motions. They also provided examples of the differences between criminal and civil rules for evidence. In the final few minutes, volunteers were chosen to practice their newfound skills in several courtroom scenarios, including a mock arraignment and bail hearing.

"We ran out of time before all the questions could get answered," says Jim McMichael, the bar association attorney who helped organize the seminar. "People were so concerned, saying: 'I don't know what I'm doing.'"

Some in attendance were unimpressed with the crash course. "In three hours, they're supposed to become criminal defenders?" says Henry Walker, a longtime criminal defense attorney in Shreveport and the former president of the Louisiana criminal defense bar. "They just learned how to trust the DA, make quick deals, dispose of the case and go back to their real jobs."

But Judge Brady O'Callaghan, who helped implement Caddo Parish's system of appointing private lawyers, believes many of them are more capable than they have given themselves credit for. "If someone can depose a doctor for five hours, they can do a plea hearing," he says. "I've never known a lawyer to tell a paying client: 'I can't learn this, I'm sorry.'"

In O'Callaghan's view, all these lawyers have a professional obligation to offer their assistance, when needed, to the poor. "This is not something we're ecstatic about," he says. "It's not like we're just picking out of a hat and saying: 'Hey, let's see what happens' ... But as a temporary

solution, it is better than either releasing these defendants from jail or incarcerating them without any lawyer.”

The appointed lawyers say their lack of experience is only part of the problem. The court also does not pay them to take the cases and rarely offers funds for hiring investigators or expert witnesses. They have little incentive, in other words, to investigate crime scenes, call witnesses, meet clients and their families, and study up on the developments in criminal law in the years since they left law school.

“We’re going to prioritize our paying cases, there’s no denying it,” says David Turansky, a former divorce lawyer who now focuses on personal injury cases. “We’re just not going to spend our time learning constitutional law or what a ‘Batson challenge’ is.”

Steve Baker, a chatty adoption attorney with a thick book of New Yorker lawyer cartoons in his office, says that it would be unethical for him to take the cases. His strategy has been to object to the appointments outright, and to share useful legal motions and pleadings with his colleagues so they can get out of them, too.

In one case, Baker was appointed to represent a defendant who faced life in prison - but he took no action and never visited the person in jail (the case was reassigned to another lawyer more than seven months later). In another, a partner at his firm instructed his son, a junior associate, to walk down to the courthouse and take a plea as quickly as possible.

“Most of us are just trying to get in, get out,” he says.

On 1 July, Louisiana’s new fiscal year began, and public defense offices in several parishes received a small influx of funds. National attention on the crisis waned, and in Caddo Parish and elsewhere the public defenders have temporarily reduced their waitlists and stopped actively appointing non-criminal attorneys.

But because the fundamentals of how the state funds public defense - primarily through traffic tickets - have not changed, the defenders say their money will inevitably run dry in the course of only a few months. In Caddo, any private attorneys who have already been assigned cases still have to see them through, and the appointments may resume later in the year.

“We’re trying not to have to do this,” says Pam Smart, the district’s chief public defender, referring to the appointment of non-criminal attorneys. “But we’re going to always be teetering on the edge of it.”

Prosecutors play defense

A few hours to the south-east, in an office decorated with a wall-sized map of the state of Louisiana, a lawyer named J Keith Gates sits behind two heaps of files: one for his job as a prosecutor, the other for his job as a public defender.

“Look, it’s all courtroom work,” he says, pulling a file from each stack to show their similarities. “There’s no conflict unless you’re prosecuting and defending at the same time.”

It is a situation practically unheard of elsewhere in the US - a half-prosecutor, half-defender - but in Winn Parish, where the funding crisis left the public defender’s office even more decimated than in Caddo, it was perhaps the only option.

Last year, the Winn public defender saw its staff of three attorneys, two investigators, and two secretaries slashed to one part-time lawyer - a former Louisiana State University football player named Herman Castete - one part-time investigator and a part-time assistant.

Castete implemented a waitlist, and poor defendants in conflict cases were sitting in jail without an attorney. "It may be impossible for the public defender's office to remain open," he wrote in an internal report to the state public defender board. "There is simply no money available."

To temporarily resolve that situation, the district judge, Jacque Derr, began appointing attorneys from the private bar, just like in Caddo Parish. But Winn is much more rural, with fewer available lawyers, so Derr had to take the additional measure of enlisting Gates.

It is against Louisiana Public Defender Board policy for anyone serving with any public defender's office to also serve as a prosecutor within the same district. But in this case, the defender himself, Castete, had signed on to the idea.

Gates says that he, Derr, Castete and the DA are all very diligent about avoiding potential conflicts of interest. As city prosecutor, he mostly handles minor cases brought to him by the city police (battery, disturbing the peace, DUI, shoplifting, theft), while in his new role as a district defender he is handling more serious felonies (armed robbery, weapons crimes, drug crimes). If there is any overlap, he has promised to recuse himself. "We don't want the appearance of impropriety," he says.



The appointed lawyers say their lack of experience is only part of the problem. The court also does not pay them to take the cases or offer funds for hiring investigators or expert witnesses. Photograph: Laurence Mathieu-Léger for the Guardian

But to Stephen Singer, the former member of the state public defender board who objected to using Gates as a defender, this is more than just a rural parish performing triage during a funding crisis. "He's a prosecutor. He plays for the other team," Singer says.

For example, many defendants charged with felonies in district court, where Gates would be their defender, have also been charged with misdemeanors in city court, where he is the prosecutor. In short, Gates could have defendants whom he has both prosecuted and defended.

Derr, whose chambers are decorated with a sign reading "Be Still And Know That I Am Boss", agrees there is a conflict - but adds: "Nobody's ever said, 'Hey, judge, he prosecuted me, I don't want him defending me.'"

Besides, says Derr, there are more pressing issues for Winn Parish to resolve than Gates's dual role - like whether the public defense crisis will slow down the very important prosecution of Kenneth Bratton, a defendant whom the judge calls "a one-man serial crime wave". Bratton has most recently been accused of at least three counts of burglary, three counts of trespassing and damage to property, and stealing gasoline. He also led the sheriff's office on a nine-day manhunt.

"Ain't no question that dude did it," says Derr, who will be presiding over Bratton's case.

The only problem is that Bratton has been sitting in jail for over a year without an attorney, trying to write his own legal motions, because the defender's office is so undermanned. In order to make sure that he has no constitutional claim to be released, the judge first tried to appoint two civil rights attorneys from New Orleans - without notifying them. They found out and objected.

Anna Lellelid, one of the attorneys conscripted from afar, says that being 250 miles away from her client would make her just as ineffective as a non-criminal lawyer. "He's just shuffling attorneys around," she says of Derr, "trying to do whatever he can to moot the underlying issue, which is the funding of the public defender's office."

But now the judge is excited about his new strategy: he will have the prosecutor, Gates, represent Bratton.

"Kenny's got a lawyer," Derr says. "So now we can convict him."

Tomorrow, meet Rhonda Covington, the last line of defense for thousands in a forgotten corner of rural Louisiana

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FOR LOUISIANA'S defenseless poor, it's on

Meet Rhonda Covington, the last line of defense for thousands in need of an attorney in a forgotten corner of rural Louisiana

Part three of a reported in partnership with the Marshall Project. Read parts and

by . Video by

theguardian

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Rhonda Covington is short on time. As the only public defender for the 20th judicial district of Louisiana, she has a lot to take care of.

At any given moment, she could be investigating cases, calling witnesses, scouring through evidence, taking photos at crime scenes (with her own camera), meeting with her clients' families, writing motions, typing up pleadings, making appointments, answering the phones, answering the door, getting the mail at the post office, filling in timesheets, filing monthly reports, doing the accounting, paying the rent and utilities, cleaning the bathroom, dusting the furniture, sweeping and mopping the floors, taking out the trash, trimming the bushes, unclogging the plumbing, buying the toilet paper, or meeting with everyone arrested in a thousand-square-mile area just north of Baton Rouge, within 72 hours of their arrest.

"There are days," she says, "when I feel that I could literally scream to the top of my lungs for 10 minutes."

Every Wednesday, she makes an all-day trip to the infamous Angola prison to meet with clients.

Every other night, she visits inmates at the local jail.

Every weekend, she works.

She also appears in court almost daily, where she handles all types of cases - juvenile and adult, misdemeanor and felony.

Earlier this year, following what Governor John Bel Edwards's office called "the largest budget crisis in our state's history", the Louisiana public defense system spiraled into fiscal ruin. Public defenders who had long depended on a highly unstable source of funding - traffic tickets - now saw their revenues slashed further. Soon, many districts were finding makeshift ways of getting by - including Caddo Parish, which conscripted tax attorneys, real estate attorneys and other novice recruits from the private bar to fill in for the overwhelmed defenders.

But in other towns, public defense offices have been left to fend for themselves. Stripped of full-time attorneys, investigators, translators, social workers and support staff, they are now little more than ragtag, part-time squads.

Meet Rhonda Covington, the only public defender for Louisiana's 20th judicial district. Video by Laurence Mathieu-Léger

In the 16th judicial district, for example, a single public defender stands by as groups of up to 50 mostly black, poor defendants are convicted of and sentenced for major felonies - all at once, all together - in a few hours or less. And in the 20th district, exactly one woman, Covington, is employed full-time to represent poor people accused of crimes.

Because her district initially received only \$34,086 in assistance from the state last year to run a public defender's office that covers more than 900 cases across two parishes, East Feliciana and West Feliciana, Covington has been forced to cut just about everything but herself. She recently dismissed an attorney (savings: \$38,400 a year), reduced her secretary to part-time (\$7,194 a year), canceled the office's cellphone plan (\$1,829.28) and discontinued housekeeping services (\$2,400). She saves another \$1,000 a year by having an inmate work crew mow the yard outside her office.

Covington, whose clients call her "Ms Rhonda", wears a medical boot on her right foot because she tore a ligament a few months ago while running to the courthouse. She no longer has any health insurance, let alone worker's compensation, for the injury.

She gets help around the office from two contract lawyers who chip in two days a week, and a makeshift office corps of two part-time, \$15-an-hour paralegals and an intern during the summer.

There are also her "office managers": two cats, named Liberty and Justice.

For All died a long time ago.

'Ms Rhonda' against the world

On a Monday in June, Covington is frantically prepping copies of the docket for her next session in court. She can usually be found with a giant Sonic cup of Diet Coke in the crook of one arm ("I'm addicted," she says) and a handful of files in the other.

Her intern, Jimmy Zahorchak, is helping out for now; by August, he will have gone back to law school at Louisiana State University. "One summer of help, that's all I get," she says. "I can only pay him \$10 an hour anyhow, so I'll probably lose him to the DA's office."

Zahorchak is making copies of motions for her to sign while the phone is ringing off the hook.

"Public defender's office," Covington answers. "Hey dear, how are you? Would you hold, please?" She brings a second phone to her other ear.

"Public defender's office, Rhonda speaking ... Oh, you're Eric's mother? His next trial date is 3 October," she says from memory.

Covington pours another Diet Coke, using her shoulders to keep the two phones pressed against her ears.

A client comes through the door, explaining that his boss accused him of stealing a tractor, but he was just using it for side work, and -

“Hold on, Mr Brand, I’ll be right with you, don’t go anywhere!”

On the phone, she says: “Would you please tell them that even if you don’t think those police interviews are important, I still want to hear them? Thank you, ma’am, I appreciate it.”

Turning again to the client in her office, she asks: “Now, Mr Brand, what can I do for you?”

Within an hour Covington is making her way to court, where she has to quickly help a few defendants take pleas before driving to West Feliciana Parish to grab some files at the courthouse there, after which she has to stop to pick up the mail. Then she is headed to the jail back in East Feliciana Parish to visit a new client named Mario Adams, who she thinks might be locked up on the wrong burglary warrant. “It just doesn’t feel right,” she says, pointing out that Adams is from Mississippi and that the police have no evidence he was even in East Feliciana at the time of the burglary. “I have to check it out.”



Covington's district received only \$34,086 in assistance from the state last year to run a public defender's office that covers more than 900 cases across two parishes. Photograph: Laurence Mathieu-Leger for the Guardian

Finally, a few minutes into that drive, while passing an inmate work crew on the left, Covington has a moment to lament how rushed she felt back in the courtroom. “The clients insist on your full, undivided attention,” she says. “But without any money, without any help, you just can’t do it ... I shouldn’t complain. I should save my complaining for my cases.”

Covington says her father hates her criminal defense work. “Every time he reads in the newspaper about some terrible crime somewhere, he calls me up and says: ‘See, Rhonda, see, see?!’ The attitude of a lot of people in Louisiana is: ‘If they’ve been arrested, then by damn ...’”

Her response is always the same. “I just don’t think it should be easy to take away somebody’s liberty. It shouldn’t be cheap to take away someone’s liberty.”

The district attorney’s office in Covington’s district, after all, handles a similar caseload but with about \$1m more in its budget. She used to be able to afford a translator, but now, whenever she has a Spanish-speaking client, she has to rely on a police officer to translate their private discussions - which, she says, is a conflict for obvious reasons. She also had a case a few years ago

in which a handwriting expert saved her client from going to jail, but she definitely would not be able to afford that now.

When Covington gets to the jail, she is greeted by a chorus of “Heya there, Ms Rhonda!” She walks past a long, white board with the names of almost a hundred inmates scribbled on it. Most of them are her clients.

The necessity of ‘mass pleas’

Fifteen poor, black men shuffle into a courtroom together in southern Louisiana’s Cajun country, dressed in orange jumpsuits and shackled at the wrists, waist and ankles.

As they file into the jury box - which today is serving as the “plea box” - their chains jingle against the old, hardwood floor. Here in the 16th judicial district, at the St Martinville courthouse, it is “felony plea day”, with Judge Gregory Aucoin presiding.

Many of these defendants have not discussed their cases with their public defender yet, and they will have about 30 seconds to speak with him this morning.

Then the judge, with a cigar dangling from his mouth, will ask: “Are you satisfied with the advice your attorney has given you in this matter?”

“Yes, sir.”

“Yes, sir.”

“Yes, sir,” they will all say, down the row.

“OK, I accept your plea agreement.”

And just like that, with no time for arguments to be heard in each of their cases, they will have all pleaded guilty together, and will be headed to prison for years, sometimes decades.

Last year, the 16th district’s public defender’s office was forced to cut \$311,000 from an already skeletal budget of about \$1.5m. As a result, they offered increasingly cursory assistance at these mass hearings, in which up to 50 defendants are collectively marched into a courtroom then convicted and sentenced to major felony charges carrying up to life in prison.

“Mass pleas” of this sort are not unheard of in Louisiana and elsewhere in the country, especially in states with chronic public defender problems, including Pennsylvania, Utah, Michigan and Missouri. Usually, however, it is a process reserved for much smaller groups of defendants, especially in misdemeanor cases, while major felonies involving the possibility of significant prison time receive more individualized attention.

As the hearing in St Martinville begins, the only defender in the courtroom, Gary LeGros, glances at the long list of people he is representing. Wearing a small hoop earring and a suit that hangs over his hands, he calls out to the defendants in the pews, who, unlike those in the plea box, were able to pay bail and came to court freely: “Everyone here who’s represented by the public defender’s office, please come up and print your name on this sheet!”

LeGros holds up a legal pad, and over a dozen people stream forward. He then gives their names to an assistant, who rummages through several mammoth file boxes, looking for each case.

One of the defendants, Brandon Washington, is facing burglary charges. He says he used to have a paid attorney but lost his job at a Halliburton factory and had to turn to the public defender. Several months after making that switch, he has no idea who his lawyer is and has never talked to him.

“I think it may be that guy,” he says, referring to LeGros.

LeGros soon makes his way into the jury box with the men in jumpsuits and chains. He asks for their names, calling back to his assistant to see if she has the relevant file. Then he gives each the option of making a deal, and if they say yes, he shouts over to the DA.

“That one’s a theft case, we’ll do a deal,” shouts the DA.

“OK,” says LeGros, after checking quickly with the defendant.

“Mr LeGros, what’s that one pleading?”

“Guilty, I think.”

As more deals are made across the room, there is little discussion of the nature of each case, or of the background and circumstances of each defendant. Every agreement is made in a matter of seconds, weighed and considered by each defendant for only a moment. Ultimately, no defendants will plead “not guilty” today and go to trial.

In fact, of the 4,492 felony cases in this district last year, there were only eight jury trials, and not because only eight people believed they were not guilty. The court schedule sets aside one week for trials every three months, and anyone who wants a trial has to wait, usually in jail, for one of those dates to come around. The public defenders, with no time to be more thorough, advise their clients that pleading is the surest, safest way to go.

When everyone has been prepped for their “mass plea”, a bank of white lawyers - defenders and prosecutors seated close together - face the panel of black defendants. The judge, Aucoin, starts reading off their pleas. He informs them of their rights, and in an instant, all are felons.

LeGros turns to the defendants’ families, who have been watching from the front rows, and says: “Welcome to the criminal justice system.”



There were only eight jury trials in the 16th judicial district last year.
Photograph: Laurence Mathieu-Léger for the Guardian

If he had more funding, LeGros would spend more time doing “real lawyer work”, as he puts it, instead of just processing his clients en masse. “I can pretty much keep track of all of them, and most cases don’t require much attention,” he says by phone. “But there’s no way all those boys understand what’s going on when they get their rights all together like that. I don’t like it, but shit, I’m just a country lawyer. What you going to do?”

Yet the group pleas are only partly the result of an underfunded public defender’s office, says Christopher Murell, a civil rights attorney in New Orleans and the executive director of the Promise of Justice Initiative, a criminal justice reform organization. It is also about a courtroom culture - on the part of judges, DAs and public defenders alike - of trying to get all the cases processed expediently, without friction.

The judges and DAs “get angry at you for not giving them a heads up that you’re going to file a motion, because that will mess up their schedule”, says Murell. “A fair trial is considered an interruption.”

Cecelia “Beanie” Bonin, is the chief public defender of the district (and Le Gros’s boss). Her office is located adjacent to an above-ground cemetery, in a first-floor space that feels more like a basement. On a whiteboard at the back of one room, someone has listed a set of priorities:

#1: How to go about getting the waitlist moving.

#2: Review who needs an attorney.

And further down the list, in all caps, #10: PROCEDURE FOR SANITY.

When she took over the office in March 2015, Bonin thought she would begin by raising expectations. Her plan was to get control over the caseload, promote performance standards, and demand that her attorneys file more motions and have more meaningful conversations with their clients. She never considered that more than a year later, her attorneys would be watching helplessly during mass hearings like the one in St Martinville.

But Bonin soon realized that when an office is perpetually on the brink of bankruptcy, little else is possible. She could not afford enough attorneys to actually discuss pleas in advance, let alone develop relationships with defendants. Nor could she find good, experienced lawyers who would work for her in the first place, given how little she was able to pay them. The ones she already employed all needed to work two jobs to supplement their salaries, which begin at \$34,000 a year.

One of Bonin’s lawyers had 345 active cases but was working only 15 hours a week. The rest of the time, she ran a private practice.

‘Commit the same crime next time’

In the 16th judicial district and across Louisiana, things have improved slightly for public defenders since July, when the state legislature’s new budget went into effect. Controversially, it slashed funding for the lawyers who represent defendants in death penalty cases, and shifted that money to the overwhelmed district-level defenders. Now, defendants facing the death penalty are finding themselves on waitlists for legal counsel.

Even with the shift in the budget, Rhonda Covington still labors alone, and the mass pleas have continued. One summer day in New Iberia, just down the road from St Martinville, Judge Thibodeaux turns toward a plea box of a dozen poor defendants. Smiling, he says to them: “Y’all just need to all commit the same crime next time, so we can do this faster.”

A public defender goes over to them, learns their names, and makes a deal.

Then the judge starts in, mass-processing them by reading off their rights.

“Do you understand your right to a jury trial?”

“Yes, sir.”

“Yes, sir.”

“Yes, sir,” they all answer.

“Do you understand your right to confront your accusers?”

“Yes, sir.”

“Yes, sir.”

“I can’t hear you. Say, ‘Yes, sir,’” the judge says to one defendant.

“Do you understand that you have the right to counsel when the state proceeds against you?”

The public defender is not paying attention. He is talking to the next batch of defendants, scribbling down their pleas.

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CRISIS

Years of drastic budget cuts have created bottomless caseloads for public defenders - the 'pack mules of the system' - and tipped the scales of justice against the poor

Part one of a three-part series reported in partnership with the Marshall Project

by . Video by

theguardian

Wednesday 7 September 2016 06.55 EDT

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“What if I’d had more time?” Across the US, it is the question public defenders often find themselves asking the most. Would a young, pregnant African American woman in Lexington, Kentucky, who faces minor fraud charges laid down in April still be in jail if her lawyer had the time to appeal against an impossible \$40,000 bail bond?

Could the 50-year-old illiterate white man in Cole County, Missouri, charged in August with vehicular assault and facing over a decade in prison, ever be assigned an attorney with the resources to defend him?

How many of the 30 defendants present for a single “mass plea” hearing in Louisiana’s 16th judicial district in June would have pleaded not guilty if they’d had more than 20 seconds of legal counsel?

In 1963, the landmark *Gideon v Wainwright* supreme court ruling enshrined the constitutional right for indigent criminal defendants - those who cannot afford to pay for a lawyer - to access legal counsel. But 53 years on, as the rate of incarceration across the country has more than quadrupled and up to 90% of criminal defendants in the US qualify as indigent, this cornerstone principle of the justice system has been eroded to breaking point.

As Ed Monahan, Kentucky’s public advocate and chief defender said: “We’re in crisis in Kentucky and in America.

“Public defenders are the pack mules of the system,” he said. “Pack mules can carry a lot. But you put one more box on an overburdened mule, and it won’t be able to function.”

Louisiana, race and the consequences of a broken public defender system. Video by Laurence Mathieu-Léger

In recent years the US has begun to reckon with its role as the world’s biggest jailer, home to a manifestly unequal justice system that disproportionately punishes poor people of color. In diagnosing the causes of this problem much of the focus has centered on sentencing reform, but in a country where 95% of criminal cases are settled by plea deal, little attention has been given to the critical state of indigent defense. Around the US, defenders routinely report an increase in

overburdening and underfunding, caused by a variety of structural, political and economic drivers.

Up-to-date figures are scant, but according to a 2008 estimate by the American Bar Association, state and county governments spent a total of \$5.3bn on indigent defense systems a year, just 2.5% of the roughly \$200bn spent on criminal justice by states and local government every year. The depth of crisis varies in each state, indicative of the complex patchwork of defense systems that are funded and administered differently dependent on jurisdiction.

In Missouri, for example, where the defender office is funded entirely at the state level, Governor Jay Nixon has repeatedly blocked the passage of state legislation to cap defenders' workloads and increase their funding. Most recently, in July, Nixon withheld \$3.5m of a relief fund approved by the state legislature to hire additional staff. As a result, the Missouri system is chronically overburdened, according to a 2014 study, which found the office was in need of 270 more staff to meet increasing caseloads.

Instead, said the director of the state's defender program, Michael Barrett, the office has lost 30 staff members since 2014 due to funding cuts, and is taking on 12% more cases - now 82,000 a year. Barrett said this meant defenders were often juggling upwards of 150 cases at a time, with an average of \$350 available for each client, ranging from minor misdemeanor cases to non-capital murders.

"Let's put that in context: if you or I were to hire counsel for a simple DUI, it would cost thousands of dollars," Barrett said.

Last month, Barrett took a novel approach to mitigate the crisis. He attempted to compel Nixon, a former attorney general and private-practice lawyer, to represent a 50-year-old illiterate white man in Cole County - a right Barrett claimed he has under state law.

"Given the extraordinary circumstances that compel me to entertain any and all avenues for relief, it strikes me that I should begin with the one attorney in the state who not only created this problem, but is in a unique position to address it," Barrett wrote.

The case itself was not extraordinary, Barrett said, but the defender's office in Cole County is one of the most overburdened in the state, where defenders work more than 225% above the recommended caseload limits.

At a preliminary hearing weeks later, a judge handed down a single-page ruling which found that Barrett did not have the authority to compel the governor. "I was disappointed but not surprised," said Barrett, adding that the case has now been assigned to one of his own overloaded attorneys.

The situation in Kentucky, another state-funded system, is a little different; funding difficulties are tied to the legislature rather than the governor's office. Although the defender program was spared from sweeping budget cuts across the state, earlier this year the state senate rejected a \$6.2m budget increase handed down by a sympathetic Republican governor, Matt Bevin, which would have created 44 new positions in the defender's office.

Kentucky defenders took on average 448 cases in the past year, 54% above recommended national standards. Attorneys take on 11% more cases than they did a decade ago, and in areas

such as Louisville now take close to double the national standard. The department received \$49m last year - less than 0.5% of the overall state budget.

Even in Colorado, a state-funded system where the defender's office is subject to a number of legislative safeguards that makes it one the most well funded in the country, agency executive Doug Wilson said his department was operating at a 10% staffing deficit. "I'm not telling you we're fully funded and everything is peachy," Wilson said. "I'm just telling you, we're in better shape than most agencies across the country."

In Utah, an estimated 62% of all misdemeanor defendants had no access to counsel at all, and at the very least 35% of public defense attorneys are overloaded with cases. Again, the root causes are different. Indigent defense is funded entirely at the county level, and in all but two counties indigent defense is provided by contracted attorneys - rather than defender's offices - who are subjected to no state oversight and are paid a fixed fee per case. As such, concluded a recent study by the Sixth Amendment Center, defense providers in most of Utah are essentially incentivized to work their cases quickly instead of effectively, and are thereby systematically subjected to a conflict of interest.

But perhaps nowhere in the US is this crisis felt more acutely than in Louisiana, where Americans are incarcerated at a higher rate than any other state, and where the defender system is already on the brink of meltdown.

Unlike any other state, Louisiana pays for its indigent defense system primarily through speeding tickets and other locally generated revenue, rather than guaranteeing funds through the budgeting process. As a result, the finances of each defender's office are subject to an extraordinarily high level of uncertainty, especially in districts without major highways - and during floods and other emergencies, when the police and courts are doling out fewer tickets.

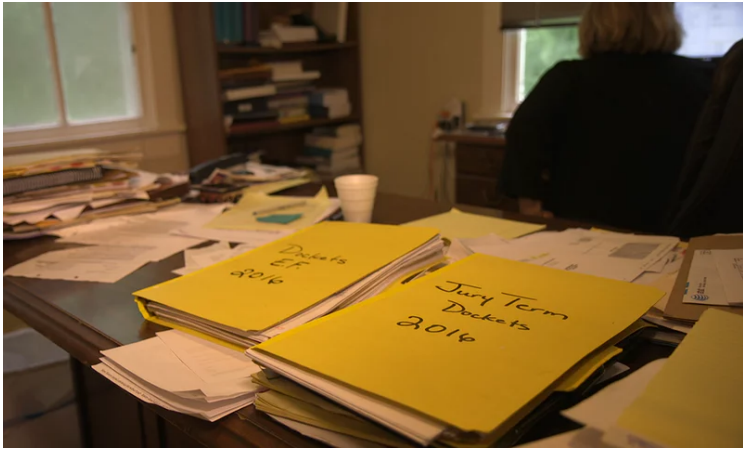
Earlier this year, that unstable system was thrown into further disarray by Louisiana's worst budget crisis in decades, which came in the wake of a steep drop in oil prices and years of tax-slashing by former governor Bobby Jindal. Around the state, defenders went into triage, putting thousands of their clients on waitlists for a lawyer.

But national attention on the crisis has waned, in part because conditions have improved in the city that receives no shortage of media coverage, New Orleans. After receiving a small influx of funds, the public defender's office there ended its hiring freeze while reducing its waitlist to fewer than 40 defendants.

Out in Louisiana's 63 other parishes, however, much of this summer's improvement in the indigent defense system is shallower than it appears. In Caddo Parish, the courts have addressed the public defender's funding problems by appointing all the lawyers in town - including tax, real estate and adoption attorneys - to the cases that were being neglected, which has superficially resolved the waitlist. In Winn Parish, a prosecutor is now working part-time as a defender, another makeshift and constitutionally questionable way of making do in the absence of funding.

In the 16th judicial district, up to 50 poor defendants are convicted and sentenced - at once - for major felonies carrying up to decades in prison, while the single public defender representing all of them struggles to present any of the facts and arguments in their separate cases. And in the 20th district, exactly one lawyer is now employed to run a defender's office that covers two parishes and more than 900 cases.

Over the next two days, the Marshall Project, in collaboration with the Guardian, will focus on the dire state of public defense in Louisiana and the often bizarre coping strategies some parishes have been forced to take.



Louisiana's funding of public defenders - primarily through local court fees and traffic tickets - has left the system on the brink of meltdown. Photograph: Laurence Mathieu-Léger for the Guardian

How bad is the picture around the country? Frustratingly, the scale of the problem remains unknown as dozens of states and jurisdictions produce no reliable data at all on the condition of their public defense systems.

The last nationwide survey of public defender offices was carried out almost 10 years ago by the Department of Justice's bureau of justice statistics (BJS). The findings were stark: 73% of county-operated defender systems, utilized in 27 states, were functioning above the maximum recommended caseload level.

In the 22 state centralized defender programs, 15 ran on caseload levels that exceeded the recommended case limit. In a world of meagre measurement and inadequate oversight, many argue the findings were a significant underestimate of the nationwide strain on the system.

In 2013, the BJS embarked on a follow-up survey, aiming to examine all forms of indigent defense systems - not just the defender's offices examined in 2013. But the process has been arduous. Although the department has had a full response rate among state-administered offices, only 70% of county-based programs have responded, meaning publication of this side of the research may be delayed until spring of next year.

Suzanne Strong, the statistician leading the research, described many of the county-based systems as a "completely unknown universe".

Despite the urgency of the crisis, recognized by both the US attorney general, Loretta Lynch, and her predecessor, Eric Holder, the issue remains intractable. Congressional bills offering defender's offices easier access to federal grant money have gone nowhere.

And in an election year during which Hillary Clinton has explicitly promised to "reform our criminal justice system from end to end", dealing with the crisis in funding defense of the poorest people coming before the courts does not feature on her platform for change. Donald Trump, who has promised to be "the law and order candidate", has a vision for reform that goes no further than a vow to appoint "the best prosecutors and law enforcement officials in the country".

In Washington, Democratic congressman Ted Deutch introduced in 2013 the National Center for the Right to Counsel Act, legislation that would create a private, non-profit centre to provide training, research initiatives and grant funding to defender's offices around the country. Although the legislation was endorsed by a spectrum of legal groups, including the American Bar Association, it got nowhere in the House and was subsequently reintroduced last year.

“There has been a lot of bipartisan conversation here about criminal justice reforms, but most of that is focused on sentencing reform,” Deutch said. “We will continue to struggle with mass incarceration if we don't do something to stop the system from feeding people into our prisons.

“In Washington, it sometimes takes a long time to help people recognize the problem that exists and that we have to grapple with.”

A few days spent in the courtrooms of rural Louisiana might be a start.

Tomorrow, the ruinous effects of Louisiana's inadequate public defense funding, leaving real estate and adoption attorneys - and even prosecutors - to fill the gaps

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