

Public defense system crisis denies justice to poor in US courts

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Approximately 5 million people who cannot afford legal representation are processed through US courts each year as indigent defendants—accused persons too poor to hire their own lawyers—and are provided public attorneys. About 75 percent of current US prison inmates were represented by court-appointed public lawyers, while two-thirds of felony defendants are indigent. At both the federal and state level, indigent defendants are found guilty at a much higher rate than defendants who are able to hire their own private attorneys.

Economic decline coupled with increased police powers in the US have contributed to swelling indigent defense caseloads and overcrowded jails in the past few years, even as violent crime levels have reached their lowest point ever recorded by the Justice Department. Many legal advocates point to falling wages, fewer forms of public assistance, rising rates of homelessness and police profiling of the poor based on race and locale as primary factors in caseload increases.

In Kentucky, for example, arrest rates have dropped each year since 2000, yet the state Department of Public Advocacy saw a 3 percent jump in caseloads in the 2001 fiscal year, 7 percent in 2002, 8.4 percent in 2003, and 12 percent in 2004, when they reached 130,000. Indigent defense caseloads in Minnesota have increased 16 percent since 2000, to more than 175,000. Virginia cases have also increased substantially each year from 2000. In the same period, statewide crime decreased, falling last year to the lowest level since 1970.

While crime in Texas has dropped, consistent with the national trend, an estimated 12 percent of the state poverty population is now arrested annually. The state has earned a reputation for injustice after several incarcerated men were exonerated through much belated DNA testing. In numerous felony cases, appointed lawyers exhibited gross ineptitude, psychological impairments, and indifference, even sleeping in the courtroom. Nevertheless, 15 of 18 bills relating to the improvement of public defense have stalled in the Texas legislature this session, including legislation requiring the

creation of a committee to investigate and prevent wrongful convictions of indigent defendants. The remaining three bills await Governor Rick Perry's review later this summer.

Citing the need to balance state budgets, several state legislatures including those in Michigan, Ohio and Florida have already denied requests for improvements and have instead proposed cuts to already under-funded and inadequately implemented public defender programs.

Courts in many places are still paralyzed from emergency cuts that subsequently became permanent reductions. In Alabama, agency budgets were cut by 18 percent in 2003, even as expenditures for caseloads rose by the same percentage. Oregon's courts were subjected to such a severe budget cut in 2003 that 20,000 indigent citizens charged with misdemeanor and non-violent offenses had their cases postponed until the fiscal year had ended. Defendants who had been arrested and were unable to post bail were detained for months in local jails, losing employment, belongings, and, in some cases, their families.

A Montana bill, passed by the state legislature June 8, approved the creation of a statewide office to oversee public defense as of July 2006. The American Civil Liberties Union hailed the legislation, calling it a "national model for other states striving to remedy deficiencies" in public defense. Even so, the new agency is set to receive a mere \$14 million from the \$7 billion two-year budget, which does not begin to deal with the severity of the crisis in the public defense system.

In addition to on-going attacks on the welfare and Social Security systems, cutting the funding for indigent legal access is one more strike against the country's poor and working class. It is also another significant step toward the dismantling of individual constitutional rights, in particular the right to a fair trial.

The Sixth Amendment to the US Constitution guarantees the right of a person accused to legal representation. In 1963, in the case of *Gideon v. Wainwright*, the Supreme Court broadened the legal interpretation of the Sixth Amendment and established that poor defendants were entitled to counsel

provided by the state, even in petty criminal cases involving misdemeanor charges. Most states soon thereafter developed governmental agencies or local court-awarded contract systems for the defense of criminal defendants too poor to hire lawyers and unable to defend themselves.

The multitude of problems plaguing these indigent defense systems revealed by a December 2004 American Bar Association (ABA) review—including lack of funding, an exponential rise in caseloads, and insufficient pay for attorneys—makes it clear that the fundamental intention of the law is being destroyed. The result is a standard of indifference, lower-quality services, a tendency for defenders to recommend to clients that they plead guilty for the sake of expediency, and the felony convictions of an estimated 10,000 innocent people in prison and on Death Row.

The ABA report, “*Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*,” was based on the testimony of 32 legal experts serving as witnesses to public defense proceedings in 22 states. Based on hundreds of pages of testimony, the report concluded that “thousands of persons are processed through America’s courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation.”

The ABA considers inadequate funding to be the origin of virtually all other problems within the system. Local jurisdictions face a critical shortage of attorneys willing to work for very little money per case. The few who do accept indigent clients end up with excessive caseloads that make it impossible to devote the time and research necessary to adequately defend them.

In addition, lack of funding precludes the supplementary services, such as investigators and expert witnesses, that are available to attorneys representing wealthier clients. Indigent defense expenditures in 2002 totaled approximately \$2.8 billion, compared to \$5 billion on prosecution of criminal cases, according to the testimony of Norman Lefstein, Dean Emeritus at Indiana University School of Law. Those figures do not even include the amounts allocated to police and forensics units that work with the prosecution.

The ABA report notes that lack of funding particularly cripples counties responsible for the majority of public defender expenses. According to the Chief Public Defender in South Dakota, for example, predominantly rural counties have such restricted budgets that a choice must be made between “whether the roads are going to be graveled or the defendants are going to be defended.”

Attorney Frank Eaman, describing working conditions in Detroit and surrounding Wayne County, Michigan, reported to the ABA: “For assigned counsel in Michigan, the rule is

you don’t have an expert. You don’t have an investigator.” Wayne, a populous and overwhelmingly working class county, receives only half the appropriations for indigent defense received by similarly populous counties in other states.

Judges in Virginia and elsewhere have adopted a cost-cutting technique of requiring “demonstration of need” by public defenders in open court before granting special requests for expert testimony. According to the ABA report, Virginia judges require the defense counsel to prove, while in the presence of the prosecution, that expert and investigative testimony is really necessary, often unfairly forcing disclosure of case weaknesses.

In some Mississippi counties, nearly half of the indigent defense cases are processed on the day of arraignment with guilty verdicts, without the benefit of trial. In Georgia, a single, complicated form provided to defendants serves as both a waiver of the right to counsel and a guilty plea. Unless they sign the form, defendants are told by court clerks, their case will not be called. Average time between arrest and arraignment in Louisiana is 315 days, making any option that appears to expedite the judicial process appealing to defendants.

Pleading guilty in the hope of a lighter sentence or avoidance of jail time has consequences for innocent defendants beyond that of wrongful convictions, including loss of voting rights, licenses, and access to public assistance and welfare, as well as the deportation of immigrants.

Particularly in the South, judges coerce poor, often illiterate or non-English speaking defendants to waive counsel and instead enter guilty pleas, or advise them to confer with prosecutors in order to strike a deal. However, examples from all over the US abound. The ABA report quoted a Riverside County, California, witness recounting arraignment proceedings there: “The judges told the defendants, ‘If you plead guilty today, you’ll go home. If you want an attorney, you’ll stay in jail for two more days and then your case will be set for trial and, if you can meet the bail amount, you’ll be released.’ Almost everybody in the room pled guilty.”

The full text of the ABA report is available online here



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