

US public defender system crippled

Part 1

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This is the first of a two part series. Part two will be published tomorrow.

Budget cuts at every level of government have crippled US public defender and civil legal aid offices, even as rising numbers of the poor seek free representation in disputes over foreclosures, unfair work dismissal, medical debt, and other legal troubles.

High caseloads, burnout and fatigue, and incompetence plague the public defender system throughout the US. Lack of representation, coupled with draconian sentencing laws, feed into a prison system that holds a higher percentage of its population—and executes them at a higher rate—than any other country in the world.

The consequences for masses of people are ruinous. Families lose their homes, are forced into devastating bankruptcies, buried under legal fees and broken apart with long jail terms.

The Legal Services Corporation estimates that in 2009 it was forced to turn away nearly a million people seeking legal assistance.

The National Legal Aid and Defender Association reports that in New Jersey and Washington DC, “a stunning 99 percent of defendants in housing eviction cases are unrepresented by counsel.” In New York, nine out of ten defendants confronting foreclosures on “subprime,” “high cost,” or “non-traditional” mortgages—arrangements disproportionately targeted to low-income homebuyers—faced the court without counsel. Legal Services Corporation reports that its offices across the nation are “besieged with requests for foreclosure assistance.”

Nearly nine out of every ten Texas Immigration and Customs Enforcement detainees face deportation with no lawyer. Throughout the country, Spanish-speaking defendants have little in the way of bilingual assistance.

Maryland indigent defendants must appear at bail hearings without representation because the public defender’s office lacks funds to provide attorneys. In California, public defender offices are funded at only half the level of

prosecution offices, yet they are charged with representing fully 85 percent of defendants charged with serious crimes.

“Fewer than 20 percent of low-income families with civil legal needs are ever able to obtain the services of counsel to help them gain access to the courts,” the Brennan Center for Justice at New York University School of Law reports.

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 at state expense, even in petty criminal cases involving misdemeanor charges. To comply with this ruling, most states soon thereafter instituted governmental agencies or local court-awarded contract systems for the defense of criminal defendants who were too poor to hire lawyers and unable to defend themselves.

The multitude of problems plaguing these indigent defense systems makes it clear that the protection provided by law is being undermined. The result is lower-quality services, the tendency for court-appointed attorneys to recommend to clients that they plead guilty for the sake of expediency or court fee collections—and felony convictions of an estimated 10,000 innocent people.

The results of inadequate representation are most starkly on display in every death row in the country, and in the numerous exonerations of innocent people who spent years imprisoned for crimes they did not commit. In many of those cases, the accused had court-appointed counsel that did not adequately represent them, or in some cases did not meet with them at all.

A review by the Innocence Project of convictions overturned by DNA testing reveals “a trail of sleeping, drunk, incompetent and overburdened defense attorneys, at the trial level and on appeal.” In some cases, the non-profit legal policy organization found, lawyers slept in the courtroom during trial, failed to investigate rudimentary aspects of the cases, did not even show up for hearings, and

were “disbarred shortly after finishing a death penalty case.”

The Innocence Project’s efforts to review convictions in Illinois resulted in the exoneration of more than 40 prisoners—many of them victims of police abuse, unfair prosecution, and inadequate counsel—and abolition of capital punishment in the state.

More than half of the 200 prisoners on death row in Alabama were represented by court-appointed lawyers. Alabama has the highest per capita rate of executions in the US. In Texas, the state with the largest total number of executions in the US, one in four death row inmates were represented by court-appointed attorneys who had been disciplined for professional misconduct. Such a state of affairs is repeated in virtually every jurisdiction in the country.

Louisiana, the world’s “prison capital”

Louisiana imprisons more of its residents than any other state, in a country that incarcerates more of its citizens than any other in the world. At 1,619 prisoners per 100,000 residents, Louisiana’s incarceration rate is double the national rate. It is more than 12 times that of China. The state has a higher percentage of inmates condemned to life without parole than any other state. And because of draconian “three strikes” sentencing laws, thousands of inmates are “lifers” for repeat offenses as slight as petty theft or drug possession.

Most prisons in the state are for-profit facilities, and many are owned by local sheriffs who oversee the dragnets that haul residents in. The poorest residents—the state is also among the poorest in the country—are disproportionately targeted. Most inmates in the local prisons are serving stiff sentences for nonviolent charges such as drug offenses, burglary, or check fraud. “Sheriffs trade inmates like horses,” the New Orleans *Times Picayune* notes, “shipping a few to a pal up north who has empty beds.”

These for-profit jails collect \$24.39 per inmate per day from the state. None of this money, however, is spent on rehabilitation or job training, feeding into a predictable cycle of desperation and recidivism.

In New Orleans, the epicenter of crime and imprisonment in the state, budget cuts to long-underfunded local legal aid and public defender offices have left prisoners virtually without protection against this whirlpool.

Eight out of ten defendants in New Orleans are poor enough to qualify for public aid. Since February, Orleans Parish has shed one-third of its public defenders, along with

other staff, leaving a few dozen attorneys to handle tens of thousands of cases.

The state legislature has attempted to replace funds with fees of \$35-\$100 that poor clients must somehow pay if they are convicted. The fee “creates a system that undermines the Constitutional right to conflict-free counsel by forcing attorneys to rely on their clients’ convictions for much needed funding,” Roopal Patel of the Brennan Center for Justice noted in a comment last month.

In St. Tammany Parish, the public defenders’ office is so overwhelmed with cases that the federal Bureau of Justice Assistance launched an investigation into what the American Civil Liberties Union characterized as “woefully inadequate” services. The *Times Picayune* described the St. Tammany office as “an old, sagging library” where 22 attorneys are “handling more than twice as many cases as [they] should be. There is no one to investigate alibis, find witnesses or collect evidence. The office’s resources are a pittance compared to the well-oiled conviction machine of the district attorney.” The legal aid office has a budget of \$2.7 million per year, including fees from clients—about half of what is needed.

The conditions in St. Tammany typify the state- and nationwide problem. In Jefferson Parish, indigent defense is now funded primarily through fees imposed on those convicted of crimes. The office insists that the arrangement is “a necessity” because it has operated at a \$500,000 deficit since 2009.

To be continued



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