

US public defender system crippled

Part 2

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18 May 2012

This is the second and concluding part of a two part series. Part 1 was published May 17.

Legal hurdles for the “newly poor”

As the economic crisis continues to unfold, millions of Americans have been thrust into poverty, bankruptcy and foreclosure. In regions of the country hardest hit by the collapse of the housing market, masses of “newly poor” residents have sought out help from legal aid agencies in holding on to their homes, working through divorce proceedings, or grappling with debt.

Last month, Florida Republican Governor Rick Scott vetoed \$2 million in funds for state legal services. This cut amplifies federal-level attacks; Congress has cut Legal Services Corporation funding by 17 percent, to a mere \$348 million to be divided among some 900 legal aid offices throughout the country.

In southern Florida, an epicenter of the housing collapse, the region’s Legal Aid Service has been devastated by the cuts. Palm Beach County’s legal aid office is “looking at a \$200,000 hit in 2013,” director Robert Bertisch told the Florida *Sun Sentinel* May 11. The cut will precipitate layoffs and a drop in the number of cases that can be managed.

In Broward County, Legal Aid Service has laid off 20 staff members, including five attorneys. As a result, the office estimates it may be able to take on only 7,000 cases this year, 2,000 fewer than last year even though demand continues to rise.

In an effort to keep up, the legal aid offices have sought to bring in more local attorneys to contribute pro bono services. Legal advocates have made similar appeals in Missouri, West Virginia, and Indiana.

Many of the office’s clientele are “those who never thought they would need free legal assistance,” Broward Legal Aid director Anthony Karrat told the *Sun Sentinel*.

As people increasingly seek legal recourse for economic

distress, “the staff is overwhelmed,” according to Kathleen Thomsen, the region’s development director. “People who can’t get help can become homeless, or kids remain in stressful situations. That can destabilize the community.”

Broward attorney Patrice Paldino described the case of one client who lost his \$16-an-hour job in March and was now threatened with eviction from the \$850-a-month rent apartment he shared with his wife and child. They have no savings, a poor credit rating, and no relatives that can help them. “This is an absolutely typical, heartbreaking story,” Paldino told the *Sun Sentinel*. “They have no backup, they live paycheck to paycheck. It’s the new poverty... my best hope is to delay the inevitable.”

Indigent defendants face court alone

Numerous legal advocates have filed lawsuits against states that have left public defender offices underfunded to the point of nonexistence. In Maryland, a February Court of Appeals ruling determined that the state would have to hire 284 new public defenders in order for thousands of poor defendants to be represented at bail hearings. “Whenever a commissioner determines to set bail, the defendant stands a good chance of losing his or her liberty, even if only for a brief time,” the court wrote. “Furthermore, the likelihood that the commissioner will give full and fair consideration to all facts relevant to the bail determination can only be enhanced by the presence of counsel.”

While agreeing with the ruling, the state’s public defender head, Paul DeWolfe, stated in an affidavit that the office was “unable to comply with the court’s mandate at this time in light of its current resource constraints.” The office’s 535 attorneys are already overburdened with caseloads exceeding “standards for effective assistance of counsel in nearly every case type and every jurisdiction in the state.”

Within weeks of the appeals court ruling, the Maryland legislature drafted measures to repeal rather than fund the mandate.

Some 180,000 commissioner hearings are held in Maryland every year, seven days a week, 24 hours a day. None are staffed by public defenders. Nearly 85,000 bail review hearings are also unstaffed by indigent defense attorneys.

In Luzerne County, Pennsylvania, the chief public defender and three clients filed a lawsuit against the county for funding. The suit, spearheaded by the ACLU of Pennsylvania, charged that a lack of funding and staffing has led to the public defenders office's inability to represent poor clients. Severe understaffing and overwhelming caseloads have led to "sub-constitutional representation to many indigent defendants and the complete deprivation of representation to many others."

In December, the office stopped accepting new cases except for serious charges such as homicide, felony sex offenses, extraditions, or in mental health, juvenile incarcerations, or parole violations cases. As a result, poor defendants with lesser charges may have no choice but to face the court alone.

The county, located in the economically distressed coalfield of the state, was at the heart of the "kids for cash" court scandal, which saw more than 5,000 juvenile offenders—most of them from poor families—shunted through the system and into for-profit juvenile detention centers.

The judicial black hole of immigrations enforcement

Immigration and Customs Enforcement detains some 33,400 immigrants each day, according to data from the Northwest Immigrant Rights Project. Many of these detainees speak little to no English, and are routinely denied the right to legal counsel or an interpreter. The Justice Department instead allows US Border Patrol agents to act as interpreters—a policy that violates the Civil Rights Act because many arrests for traffic or other minor offenses become immigration cases and result in indefinite detention or deportation.

The "zero tolerance" policies in place along the US-Mexico border states of Texas, New Mexico, and Arizona have created an untenable workload for local public defenders. Border Patrol's so-called "Operation Streamline," put in place in 2005 and escalated by the Obama administration, has contributed to a 218 percent increase in misdemeanor illegal entry prosecutions over the past half-decade. In 2011, the Justice Department recorded nearly 50,000 "Streamline" prosecutions.

"From a due-process perspective, it's a nightmare," said William Fry, the Del Rio, Texas public defender chief. "It's horrible." Many of the immigrants he represents do not understand the charges they face, and some are so desperate that a conviction means little to them. The volume of cases makes mistakes inevitable, he told the *Houston Chronicle*. "The program got its arms around everything, its tentacles into

everything," he said. "As a consequence, believe it or not, you can sometimes find an American citizen or a lawful permanent resident on the Streamline docket."

Likewise, in civil cases non-English speaking defendants must navigate the justice system without adequate representation. In Las Vegas, Nevada, the Clark County public defenders office employs only one Spanish interpreter. The office, which has more than 100 attorneys, handled nearly 5,000 cases for Spanish-speaking clients last year, about one in three cases.

The Las Vegas court system contracts out other translation services to 20 other certified court interpreters, whose wages were recently cut by 28 percent by the county. The cut has prompted interpreters to protest for a fair wage. Interpreters are paid by the hour but work highly irregular schedules. Some have said they will not return to the job.

An April 25 report by Public Radio International's "The World" featured Reno, Nevada court interpreter Álvaro Degives-Más, whose office was under severe budget constraints. Degives-Más was working on years-old cases. One defendant, who spoke only Spanish, had already served seven years in prison but maintained his innocence. The translator, who was uncertified for court interpreting, had made a mistake in interpreting pre-trial testimony.

"The guy was so insistent that I looked at him and said, 'Well, I'm looking here at the transcript. It says so-and-so...' I mean, I back-translated it to him, in this case in Spanish of course," Degives-Más told PRI. "And the guy said, 'No, I never said that.' This guy isn't saying, 'Yes I did it.' He said, 'If I did it.'" Because the Spanish word "si" can mean "yes," or "if," Degives-Más explained that the jury was given to understand the defendant's statement as a confession. "Seven years, seven years of prison," he said. "This is real stuff, this is real people, that get really in deep, deep trouble."

Concluded



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