

# New England Journal of Public Policy

---

Volume 32

Issue 1 *Social Traps and Social Trust:  
Institutional Transformations in an American  
City following a Natural Disaster*

Article 13

---

3-21-2020

## Rising from Katrina's Ashes but Still in Crisis: Public Defense in New Orleans

Derwyn Bunton

*Chief Public Defender, Orleans Parish, Louisiana*

Follow this and additional works at: <https://scholarworks.umb.edu/nejpp>



Part of the [Criminology and Criminal Justice Commons](#), [Emergency and Disaster Management Commons](#), [Public Policy Commons](#), and the [Urban Studies Commons](#)

---

### Recommended Citation

Bunton, Derwyn (2020) "Rising from Katrina's Ashes but Still in Crisis: Public Defense in New Orleans," *New England Journal of Public Policy*. Vol. 32 : Iss. 1 , Article 13.

Available at: <https://scholarworks.umb.edu/nejpp/vol32/iss1/13>

This Article is brought to you for free and open access by ScholarWorks at UMass Boston. It has been accepted for inclusion in New England Journal of Public Policy by an authorized editor of ScholarWorks at UMass Boston. For more information, please contact [library.uasc@umb.edu](mailto:library.uasc@umb.edu).

## **Rising from Katrina's Ashes but Still in Crisis: Public Defense in New Orleans**

**Derwyn Bunton**

When we least expect it, life sets us a challenge to test our courage and willingness to change; at such a moment, there is no point in pretending that nothing has happened or in saying that we are not yet ready. The challenge will not wait. Life does not look back.

—Paulo Coelho, *The Devil and Miss Prym*

New Orleans' nickname "Big Easy" was based on the "anything goes" perception of the city. Feeding this perception was a sense of lawlessness, that New Orleans was a place where the rules changed depending on who you were and who you knew. So when Hurricane Katrina hit the city in August 2005 and tossed everything around—flooding mansions and missions, damaging the Superdome and supermarkets—the storm challenged old perceptions and presented unique challenges. Katrina made at least one thing clear: New Orleans could no longer wait for change, pretend nothing happened, or look back. The city's survival depended on its ability to move forward.

One of the greatest challenges to New Orleans' ability to move forward was its criminal legal system, especially the public defense system. For decades before Katrina, the public defense system in New Orleans—like others throughout Louisiana—was "plagued by negligent attorneys who provide[d] haphazard and deficient representation." Orleans Parish Prison, for example, was packed with more than six thousand people, most of whom had no representation once Katrina hit.<sup>1</sup> Fragile and underfunded, the New Orleans public defense system lacked the ability to even try to respond to the crisis of Katrina. All but four staff members were terminated immediately after the storm. Like most social institutions in New Orleans, however, public defense in New Orleans had been targeted for reform multiple times before Katrina, with few positive results.

Katrina was uniquely devastating, producing a national outcry and causing local embarrassment. Now palpably visible, the unjust status quo was deemed unacceptable. At the time, I and a group of like-minded leaders stood ready with time, passion, and capacity to seize the moment to effect reform. While opposition to reform remained alive, it was critically wounded, as millions in and outside New Orleans could see how the system they had supported and defended all these years had failed. With reform opponents weakened by the storm, New Orleans started accepting changes to its public defender system.

I begin this article with a brief history of public defense in New Orleans, outlining the well-documented injustices and dysfunction plaguing public defense before and immediately after Katrina and describing the efforts that were made to cure the ills of the system. I then discuss the efforts by reformers in the years after Katrina to create a more just, fair, and equitable public defense system. In the final section I discuss outcomes and the lessons learned from the efforts to transform public defense in New Orleans and the challenges that remain as the struggle for equity and fairness in our public defense system continues.

*Derwyn Bunton is a national leader and advocate for public defense and equal justice. He is chief public defender for Orleans Parish, Louisiana. Before becoming chief, he was a civil rights litigator and executive director for what is now the Louisiana Center for Children's Rights, the nation's first stand-alone juvenile defense provider.*

## **Public Defense Pre-Katrina: History, Structure, and Struggle**

### **History**

Nearly 250 years ago, a civil disturbance broke out in a territory on the verge of revolution. An unjust monarch maintained an occupying force of soldiers, and in late March 1770, eight of these soldiers fired on civilians, killing five and wounding six others. The territorial government returned indictments for murder, and the penalty for conviction was death. After several attempts, the soldiers—unpopular and poor—could find only one lawyer to handle their case. That lawyer represented the soldiers and their captain and achieved acquittals for all but two of the soldiers, who were found guilty of lesser offenses. All escaped the death penalty.

The civil disturbance became known as the Boston Massacre. Six years later, that territory declared its independence, and the United States of America was born. That lawyer who represented the unpopular and abandoned soldiers free of charge (or at least at a price too small for history to remember) went on to become the second president of the United States, John Adams—perhaps the first great public defender.

The principle that no person accused of a crime should face the government without counsel is an American value that predates our republic.

The right to counsel is rooted in the Sixth Amendment to the United States Constitution as part of the Bill of Rights, adopted in 1789. It is one of the original ten amendments, forming the foundation of the United States. It reads, “In all criminal prosecutions, the accused shall enjoy the right to . . . the Assistance of Counsel for his defense.” The right to counsel was initially interpreted to mean that those who wished to have counsel, and who were able to afford counsel, would not be denied the right to have representation in criminal cases in both state and federal court.<sup>2</sup>

The United States Supreme Court, however, did not order states to provide counsel for the poor facing criminal prosecution until after the passage of the Fourteenth Amendment to the US Constitution in 1868.<sup>3</sup> The Fourteenth Amendment made the US Bill of Rights applicable to the states—but not all at once. The Supreme Court systematically, gradually, and selectively made the Bill of Rights applicable to the states through the Fourteenth Amendment.

In 1963, the Supreme Court decided *Gideon v. Wainwright*.<sup>4</sup> This case made the Sixth Amendment applicable to the states, guaranteeing poor people counsel in criminal cases. In *Gideon*, the Supreme Court wrote: “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”<sup>5</sup> Robert F. Kennedy remarked: “If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell . . . to write a letter to the Supreme Court . . . the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter, the Court did look into his case . . . and the whole course of American legal history has been changed.”<sup>6</sup> *Gideon* is the seminal case on the right to counsel in the United States. It is the reason we have public defenders representing poor people around the country.

### **Structure**

In 1966, in response to *Gideon*, Louisiana created indigent defender boards, divided into forty-one judicial districts. Under local control and funded by court fines and fees paid by people accused of crime (largely traffic tickets), these boards (known as IDBs) were tasked with providing competent counsel for people too poor to afford a lawyer on their own.<sup>7</sup> In 1974, the right to counsel was codified in the new Louisiana state constitution, recognizing the right to counsel and other rights of men and women accused in criminal proceedings. The Louisiana Constitution of 1974 specifies:

“The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.”<sup>8</sup>

Louisiana’s statewide user-pay public defender funding scheme is unique in the United States. Louisiana’s entire criminal legal system depends on fines and fees generated by (or at least assessed against) poor people moving through the system. In the beginning these fines and fees were the sole source of revenue for public defender offices around the state. Every other part of the criminal legal system received supplemental funds directly from the state or local government or both. It took the Louisiana State Legislature twenty years after ratification of the 1974 Constitution to provide supplemental state funding to public defense—at a woefully low level.<sup>9</sup>

Before Katrina, the IDB in New Orleans was known as the Orleans Indigent Defender Program or OI DP. At the time Katrina hit New Orleans, it was an office that comprised between forty and fifty contract, part-time attorneys handling a large percentage of the new criminal cases moving through the New Orleans criminal justice system—more than a hundred thousand cases in 2004. If the lawyers handled only half the workload, it meant a caseload average of a thousand new cases per lawyer—part-time. Such caseloads were excessive by any measure.<sup>10</sup> For a couple of decades before Katrina, the OI DP and the entire state public defender system received constant and consistent national criticism.<sup>11</sup>

## **Struggle**

The Louisiana and New Orleans public defender system was targeted for reform many times by social justice advocates and frontline public defenders.<sup>12</sup> One of the most heavily publicized efforts to reform public defense in Louisiana and New Orleans occurred in the early 1990s. An overworked and underresourced public defender, Rick Tessier, appeared in court, stood up, and told Judge Calvin Johnson of the Orleans Parish Criminal District Court he was unable to proceed. Tessier asserted that he was ineffective at the outset and to move forward would deprive all his clients of their Sixth Amendment rights. Judge Johnson halted proceedings and ordered hearings and briefings to determine whether the public defender system was structurally ineffective. After testimony from multiple practitioners and experts, Judge Johnson found Tessier and the public defender system unconstitutional at its inception. The district attorney appealed and the case was ultimately decided by the Louisiana Supreme Court.<sup>13</sup> In *State v. Leonard Peart*, the Louisiana Supreme Court declined to provide any systemic relief, finding instead that public defender services in that section of court were unconstitutional because of excessive workloads.<sup>14</sup> So the disparities and ineffectiveness continued from district to district and section to section.<sup>15</sup>

*Peart* was emblematic of the challenges public defense reform advocates faced before Katrina. Decision makers were reluctant to make systemic change—what some organizers call a fear of too much justice—while at the same time pretending the unfairness, inequity, and injustice either did not exist or was confined, contained, or episodic. Reformers, however, were steadfast. Efforts were launched in the courts and in the legislature to improve public defense in New Orleans and throughout Louisiana. Each shortfall, half win, and failure drew more intellectual capital to the cause and gave advocates experience. The various efforts also provided hope as we saw incremental improvements in structure.<sup>16</sup>

Through it all, OI DP lawyers fought hard, but even the most skilled were fighting with their hands tied. Structurally, the OI DP provided little more than speed bumps on the way to jail and prison for the poor and overwhelmingly African American clients moving through the system. Because a person in jail was not considered a case until the district attorney decided to accept the

case, often a person who could not afford a lawyer sat in jail after an arrest for more than two months before he or she was sent to a courtroom and assigned a public defender.<sup>17</sup>

Part-time lawyers were assigned to courtrooms rather than clients. The terrible incentives created by this system were threefold. First, the system caused lawyers to care more about pleasing—or at least not angering—judges than clients. Second, lawyers prioritized completing the day’s court docket over worrying about clients’ substantive cases. Third, because ODP lawyers were part-time (and poorly paid), more attention was given to their private—paying—clients.

The ODP had no meaningful investigative resources, no organized training, and no money for experts or adequate administrative support. The chief source of ODP income was traffic tickets—the nation’s only statewide user-pay criminal justice system. ODP attorneys were forced by oppressive caseloads and poor funding to brutally triage cases, making quick decisions about which cases were worth fighting. Innocent clients pleaded guilty rather than face charges represented by an understaffed and underresourced public defender. Because of this history, before Katrina, Louisiana became a national leader in exonerations and incarceration.<sup>18</sup> The Department of Justice, Bureau of Justice Assistance, in its 2006 report on the ODP, confirmed the problems of the New Orleans court-centered, resource-starved public defense system: “There appeared to be little accountability within the office. There were no client files or any other records or data, save a monthly tabulation of cases closed and how they were closed (e.g., trial, plea, dismissal). There is no phone number for the office, and clients cannot come to the office. We were told that attorney evaluations seem to be passive, based on judicial satisfaction with the attorneys assigned to their court. There is no supervisory evaluation of public defenders on such core skills as communication with clients, recognition of legal issues, or trial preparation.”<sup>19</sup>

The National Legal Aid and Defender Association also assessed public defense in New Orleans after the storm. It too found that public defense in New Orleans before Katrina was probably systemically unconstitutional. The report reads: “Pre-Katrina, the public defense system in New Orleans was not obligated to adhere to any national, state or local standards of justice resulting in public defenders handling too many cases, with insufficient support staff, practically no training or supervision, experiencing undue interference from the judiciary, all the while compromising their practices by working part-time in private practices to augment their inadequate compensation.”<sup>20</sup>

## **Public Defense Post-Katrina: Reform, New Structure . . . and Struggle**

When thousands of men and women in orange jumpsuits were forced by the flood waters of Katrina to find safety on an overpass under the New Orleans sun, their massive numbers provided vivid evidence of decades of overincarceration, failed criminal justice policies, and cumulative injustice. The columnist David Brooks put it this way: “[Hurricane Katrina] wash[ed] away the surface of [New Orleans] society, [and] expose[d] the underlying power structures, the injustices, the patterns of corruption and the unacknowledged inequalities.”<sup>21</sup> Public defense in New Orleans was one of these exposed injustices and unacknowledged inequalities. Still, advocates in New Orleans who dreamed of a better and more just city saw in post-Katrina New Orleans an opportunity to rebuild the criminal legal system with justice and fairness as its cornerstones. Critical to any fair and just criminal legal system is public defense.

## **Reform**

The pre-Katrina struggles in New Orleans built an infrastructure of reformers and developed intellectual capital to move public defense forward. Thus, in the aftermath of the storm, with the New Orleans criminal legal system in full collapse, I and other reformers began to work for change.<sup>22</sup>

We met in Springfield, Louisiana, on May 10 and 11, 2006, to discuss the crisis in public defense. We all agreed that reform was long overdue and that funding and structural reform were necessary.<sup>23</sup> Also at that meeting was Ronald Sullivan, a Yale Law School professor and former director of the District of Columbia public defender program whose knowledge about best practice for public defense left us with a vision, renewed hope, and sense of purpose.

A month earlier, Chief Judge Calvin Johnson (the judge responsible for the *Peart* decision) persuaded the local IDB members to resign and appointed an entirely new board, tasked with reforming the system.<sup>24</sup> I was part of that new board. We hired Sullivan to help organize the reformed OI DP and launched a state reform effort, using the debacle caused by Katrina as a reason to reform the structure of public defense. Among the many leaders of this effort was the Louisiana State Bar Association president, Frank Neuner, who played a major role.

## **Structure and Struggle**

OI DP was reborn as the Orleans Public Defenders Office (OPD). With a budget of \$2.8 million in federal relief funds, the new board set about remaking public defense in New Orleans. The Bureau of Justice Assistance report asserted, however, that real reform would cost millions more.<sup>25</sup> Under Sullivan's direction, we mandated attorneys to work full-time on behalf of poor people in New Orleans. We added Jon Rapping, the former training director for public defender programs, to train a new class of attorneys.<sup>26</sup> We also mandated lawyers be assigned to clients—not courtrooms—based on levels of experience and competence. It was a seismic cultural shift. It drew a seismic response.

The post-Katrina confrontations between OPD and the old guard were extraordinary. Many in the criminal legal system simply wanted their old system back. The Orleans Parish District Attorney even charged an OPD investigator with kidnapping for daring to interview a young witness in the course of her investigation.<sup>27</sup> This was a response to professional defense investigation—routine in other jurisdictions but foreign (and therefore illegal) in New Orleans. The charges were later dropped.

Opponents to reform seemed to be as numerous as proponents. Perhaps most formidable among the opponents were Criminal District Court judges, most of whom either very publicly attacked the board or remained silent while others did.<sup>28</sup> The chief tool used to try to rein in our independent board: contempt. Acting individually and as a group, Criminal District Court judges routinely found our new independent board and lawyers in contempt.<sup>29</sup> After demanding to remain present with the lawyer he supervised and the client OPD represented, Stephen Singer, the OPD chief of trials, was placed in a compliance hold and dragged out of the courtroom by deputies—after the court's order of contempt.<sup>30</sup> Before Katrina, the criminal bench exercised significant control over the OI DP board, selecting members who catered to the wishes of the judges rather than those of the clients. After Katrina, with the appointment of an independent board, the judges resisted the loss of control and, without more structural reform, attempted to regain control as soon as Judge Johnson's term as chief judge expired. We responded by filing suit in federal court in May 2007.<sup>31</sup>

Deeper structural change was brewing, though. In the 2007 legislative session, legislation designed to change the structure of public defense statewide was making its way through the Louisiana State Legislature. HB 436, sponsored by Representative Daniel Martiny, aimed to create a more independent state board with more authority (and more funding) to regulate public defense practice. Important to us, if passed, the legislation would immediately eliminate local IDBs, consolidating their power in the position of chief district defender. The chief defender in place at the time of passage would assume the powers of the IDB, and in the future, the chief district defender would be chosen by the newly created Louisiana Public Defender Board—reasonably immune to and independent of the local judiciary and political pressures.<sup>32</sup>

In August 2007, the Louisiana Public Defender Act (Act 307) became law, and Christine Lehman assumed the role of chief defender. A new public defender office, chosen by the reform-oriented board, was now all but guaranteed. Act 307 eliminated the IDBs, mooted our lawsuit, and remade the structure of public defense in Louisiana and New Orleans—for the better. Act 307 created a new Louisiana Public Defender Board, which required membership from diverse constituencies, eliminated local boards, set standards for practice, and removed judges from the decision-making process regarding type of service delivery or selection of the chief defender.<sup>33</sup> It also gave more money to public defense and gave the Public Defender Board the ability to hold districts accountable for how they deliver public defense services in Louisiana.

## **Public Defense Pre-Katrina: Outcomes, Lessons, and the Road Ahead**

### **Outcomes**

When the dust settled, OPD emerged as an independent, client-centered, full-time public defender office with better training and more resources. New, progressive public defender leaders created an office more capable of living up to the promise of *Gideon*, granting all of us the right to effective counsel. In *Gideon*, the US Supreme Court states that public defenders are fundamental to the existence of justice in our criminal courts: “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”<sup>34</sup> Obstacles and challenges continue, however, to prevent our criminal legal system from achieving fairness, justice, and equity.

Fourteen years after Katrina, OPD remains underresourced and understaffed. The state reforms of 2007, while laudable, failed to change the structure of our user-pay criminal legal system. Hard-fought structural and policy reforms can be fully realized only with adequate funding and resources, and the system in place today is inadequate, unreliable, and unstable.<sup>35</sup> For example, OPD is currently restricting public defender services for the fourth time in fourteen years.<sup>36</sup> Thus, we have poor people waitlisted for an attorney and staff laid off or put on furlough; we lack investigative and expert funds, and funding for conflict case representation is inadequate. These issues are largely products of Louisiana’s user-pay criminal legal system. Fueling the criminal legal system on fines, fees, and costs from poor people caught in the system yields inadequate, unpredictable, and unreliable revenues, rendering public defenders incapable of providing professional, ethical, constitutional representation for the poor.<sup>37</sup> More work is needed to ensure that *Gideon* and the reforms of the past fourteen years are not hollow. To that end, OPD strives to live up to its responsibilities in our criminal legal system: defend innocence, fight for clients, and hold power accountable.

## **Lessons**

Despite great disparities between the funding and resources for our office and those for other criminal justice agencies, public defense in New Orleans is exponentially better than it was before Katrina. OPD is now a local partner in managing jail population, increasing public confidence in the criminal legal system, reducing wrongful convictions, maintaining system accountability, and ensuring that justice is done. OPD attracts national recognition for its strength, tenacity, and commitment to excellent representation. For example, OPD won the Southern Center for Human Rights, Frederick Douglass Human Rights Award in 2009.<sup>38</sup> In bestowing that award, the same organization that had deemed public defense in New Orleans an unconstitutional disaster (even before Katrina) now recognized OPD as a champion of civil and human rights. Among the most prestigious honors OPD received was the 2015 American Bar Association/National Legal Aid and Defender Association, Clara Shortridge Foltz Award.<sup>39</sup> As it had for the Frederick Douglass award, OPD, declared one of the best public defenders in the nation, earned praise from an early critic.<sup>40</sup>

The New Orleans community respects and supports OPD, recognizing that justice for poor people means something and requires a champion to make it mean something. OPD has little in common with the old ODP. Evidence of OPD's acceptance within the community as a champion of justice for poor people came on December 16, 2014, when, more than 250 people answered our call to protest the 2004 shooting death of Michael Brown Jr. in Ferguson, Missouri, and other police shootings.<sup>41</sup> Our community stood with us to highlight the injustices seen every day in New Orleans criminal courts and our willingness to bear witness and fight. We essentially emptied the courthouse for this demonstration, and no one was held in or even threatened with contempt. Community recognition and support is also evidenced by the number of people who show up each year for OPD's Second Line for Equal Justice.<sup>42</sup>

## **The Road Ahead**

Hurricane Katrina split all our lives into before and after. Katrina challenged us to not just survive but change. Fourteen years later, OPD is now evidence of how the most entrenched and intransigent places can reform. For the moment, however, that work is incomplete. For the reform effort to continue, stakeholders and decision makers must make structural changes to our user-pay system. The fight for public defense reform provides a blueprint. I am in my tenth year as chief defender for Orleans Parish, but I have worked on behalf of the poor and vulnerable all my professional life—more than twenty years. This journey of public defense reform has taught me some important lessons.

*Remember your failures and who failed with you.* Those same people, if committed, will be around when the time is right and change is most needed. They are the intellectual (and physical) muscle needed to make change a reality—the people learning the same tough lessons from previous efforts. For example, the chair of the reform-minded board put together by Judge Johnson was Denise LeBoeuf, a superb lawyer and veteran of many legal and legislative battles fought in the effort to change how the criminal legal system in Louisiana operates.<sup>43</sup>

*Find the opportunity in every moment.* Katrina was devastating. It forced me to move to Shreveport, Louisiana, after short stints in Tennessee and Texas. Maintaining a reform mindset was critical to my not giving up on New Orleans. Katrina forced humility on our community that sowed the seeds for change. But just as easily we might have given into destructive despair.

*Recruit new allies.* Particularly after Katrina, as we endeavored to strengthen and build on reform, new stakeholders joined in the call for reform. But reform really started in those moments after the storm and in the new local board. The new reform board members were partners from



prestigious firms: Harry Rosenberg and Kim Boyle from Phelps Dunbar, and Phil Wittmann from Stone Pigman Walther and Wittmann. The education each of these new board members received turned them into advocates for change in their respective communities.

*Continue to educate yourself and others on the issues.* Information is powerful. Our reform was armed with reports and a history of litigation and legislative efforts that helped us persuade stakeholders that change was necessary and urgent. Knowing the history and having all the facts allowed us to point to third-party opinion and research to prove we were on the right side of history and the issues.

*Media work and strategy are powerful tools.* The incredible work done by journalists over the past decade and a half has been invaluable in educating stakeholders, decision makers, and the public. The work of the media highlighting the problems of real people in the criminal legal system, publicly calling out unfairness, and exposing years of neglect prompted people to pay attention and demand action.

Our reform successes and failures in post-Katrina New Orleans make it impossible to pretend that nothing happened or that nothing can be done. Katrina taught us that the stakes are too high to say we are not ready. Our reform journey continues.

## Notes

---

<sup>1</sup> Ann M. Simmons, “The Nation: Justice on Katrina Time; Hundreds, if Not Thousands, Languish behind Bars without Their Day in Court,” *Los Angeles Times*, December 12, 2006.

<sup>2</sup> D. Majeeda Snead, “Will Act 307 Help Louisiana Deliver Indigent Defender Services in Accordance with the 6th Amendment Right to Counsel Mandate?,” *Loyola Journal of Public Interest Law* 9, no. 158 (2008).

<sup>3</sup> The Fourteenth Amendment, which was ratified on July 9, 1868, provided in part: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.”

<sup>4</sup> *Gideon v. Wainwright*, 372 US 335, 344 (1963). The court found that “in our adversary system of criminal justice, any person haled into court who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him.” Thus, the right to counsel in felony cases was deemed necessary in our concept of ordered liberty, fundamental fairness and due process.

<sup>5</sup> *Ibid.* at 796.

<sup>6</sup> “Address by Hon. Robert F. Kennedy, Attorney General of the United States, before the New England Conference on the Defense of Indigent Persons Accused of Crime,” Parker House, Boston, MA, November 1, 1963.

<sup>7</sup> Snead, “Will Act 307 Help Louisiana?,” 160.

<sup>8</sup> “When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or [one] appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.” Louisiana Constitution art. I, § 13.

<sup>9</sup> Ed Greenlee, “Feature: Justice in Louisiana: Indigent Defense: The Louisiana Indigent Defense Assistance Board,” *Louisiana Bar Journal* 50, no. 97 (August/September 2002) (noting the assistance board’s inadequate statewide budget of \$7.5 million to supplement local public defender offices).

<sup>10</sup> Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 2011). In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC), established and funded by the federal government, recommended annual maximum caseloads for public defense programs. The NAC’s recommendations had—and continue to have—significant influence in the field of public defense with respect to annual caseloads of public defenders. Specifically, the NAC recommended that annual maximum caseloads “of a public defender office should not exceed

the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year; not more than 200; and appeals per attorney per year: not more than 25.”

<sup>11</sup> Fox Butterfield, “Few Options or Safeguards in a City’s Juvenile Courts,” *New York Times*, July 22, 1997 (“Welcome to the Orleans Parish Juvenile Court, considered by many lawyers and children’s rights advocates to be the most troubled juvenile court system in the country.”); Stephen B. Bright, “Counsel For The Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer,” *Yale Law Journal*, May 1, 1994, 1887–1890 (“A public defender in New Orleans represented 418 defendants during the first seven months of 1991. During this time, he entered 130 guilty pleas at arraignment and had at least one serious case set for trial on every single trial date during the period. In ‘routine cases,’ he received no investigative support because the three investigators in the public defender office were responsible for more than 7000 cases per year. No funds were available for expert witnesses. The Louisiana Supreme Court found that, because of the excessive caseloads and insufficient resources of the public defender office, the clients served by this system are ‘not provided with the effective assistance of counsel the [C]onstitution requires.”); Brett Barrouquere, “Money Sets Fate of Bills\*\*\*Justice Reform Victim of Finance,” *Baton Rouge Advocate*, May 26, 2003 (“‘My feeling is that the system there is in crisis,’ [David Carroll, director of research and evaluation for the National Legal Aid and Defender Association in Washington, D.C.] said. ‘We have real issues with the quality of representation going on down there.’”); Sasha Polakow-Suransky, “I Plead the Sixth,” *American Prospect*, July 25, 2002 (“In a corner, Victor Papai, the head of indigent defense at the juvenile court, shares a 4-foot-by-10-foot office with a staff of six part-time attorneys. Each handles close to 800 cases per year—four times the federally recommended annual caseload for full-time juvenile defenders. But when I enter, Papai is alone playing solitaire on his computer.”).

<sup>12</sup> One of the best chronologies of reform efforts is found in a case considered at least a partial victory by reformers, *State v. Citizen*, 04-1841 (La. 04/01/2005); 898 So. 2d 325. In *Citizen*, after documenting decades of underfunding for public defense, the Louisiana Supreme Court decided courts have the power to halt prosecutions where resource disparities render the proceedings unfair—and thus unconstitutional.

<sup>13</sup> *State v. Peart*, 621 So. 2d 780 (La. 1993).

<sup>14</sup> *Ibid.* at 789. The court concluded that, to be effective, “the lawyer not only possesses adequate skill and knowledge, but also that he has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients.”

<sup>15</sup> “An example of these disparities is documented in a report on the American Bar Associations’ Hearings on the Right to Counsel in Criminal Proceedings. One witness reported that in Calcasieu Parish 83% of the cases revealed nothing that suggested the public defender ever talked to his client outside of the courtroom. It reported that often what happened was that ‘on the morning of the trial, the public defender [would] introduce himself to his client, tell him the ‘deal’ that has been negotiated, and ask him to ‘sign here.’” Snead, “Will Act 307 Help Louisiana?,” 164.

<sup>16</sup> “The legislature has taken steps to remedy the critical state of indigent criminal defense in Louisiana since our warnings in *Peart*. For instance, it created the statewide Indigent Defense Assistance Board in 1997, via La. R.S. 15:151. In 2003, the legislature, by separate but identical House and Senate resolutions (HR 151; SR 112), created the Louisiana Task Force on Indigent Defense Services, effective January 12, 2004, to study the problem and make an initial report no later than March 1, 2004. The legislature has constituted the Task Force as a blue ribbon committee whose members range from the Governor to the Chief Justice of this Court. It is not [p. 14] clear whether the 2003 Task Force ever made its report, but this year, by concurrent resolution (SCR 136), the legislature voted to continue the Task Force, directing it to report on its findings together with specific recommendations no later than April 1, 2005. We assume that, given the obvious deficiencies in funding from the State to satisfy its constitutional mandate in La. Const. Art. I, § 13, this Task Force will work diligently to formulate specific recommendations on April 1, 2005, to address these problems and that the legislature will act quickly to promulgate these, or other, appropriate solutions.” *State v. Citizen* at 336.

<sup>17</sup> The time spent in jail while the district attorney (D.A) decides whether or not to accept a case is known locally as “doing D.A. time.” The D.A. has 45 days to decide on a misdemeanor, 60 days on a felony, and 120 days on a serious felony. See La. Code. Crim. Pro. Art. 701 et seq. The practice of not assigning or appointing an attorney until after a case is accepted by the D.A. (while a person sits in jail) is still a widely implemented policy in public defender offices throughout Louisiana. This practice is used to save scarce, inadequate resources.

<sup>18</sup> Emily Maw, “‘When They See Us’ and Louisiana,” *Times-Picayune*, June 23, 2019. (“Nationally, Louisiana has the second-highest per capita rate of proven wrongful conviction. New Orleans far and away leads US cities in the rate at which it wrongly convicts people, largely young black men. And because of Louisiana’s draconian sentencing, most of the state’s wrongly convicted were sentenced to life without parole, or death.”)

- <sup>19</sup> Department of Justice, Bureau of Justice Assistance, *An Assessment of the Immediate and Longer Term Needs of the New Orleans Public Defender System* (Baton Rouge: Louisiana Public Defender Board, 2006).
- <sup>20</sup> National Legal Aid and Defender Association, *A Strategic Plan to Ensure Accountability and Protect Fairness in Louisiana's Criminal Courts* (Washington, DC, 2006).
- <sup>21</sup> David Brooks, "Brace Yourself for the Next Torrent That Opens the Wounds of Race, Class," *Detroit Free Press*, September 2, 2005, op-ed.
- <sup>22</sup> Laura Parker, "City's Public Defender System Troubled before Katrina; Activists, Lawyers, Feds See a Chance to Fix New Orleans' Judicial Problems," *USA Today*, May 23, 2006. ("The Southern Center for Human Rights, an Atlanta-based public interest law firm, sent attorneys and staff members to New Orleans in March. In a scathing report, the center concluded that even before Katrina, overwhelmed public defenders in New Orleans generally 'did not visit crime scenes, interview witnesses, check out alibis, did not procure expert assistance, did not review evidence, did not know the facts of the case even on the eve of trial, did not do any legal research and did not otherwise prepare for trial.'")
- <sup>23</sup> Snead, "Will Act 307 Help Louisiana?," 170.
- <sup>24</sup> Gwen Filosa, "Indigent Defense Board Sworn In: Members Face Task of Rebuilding System," *Times-Picayune*, April 27, 2006.
- <sup>25</sup> Nicholas L. Chiarkis, D. Alan Henry, and Randolph N. Stone, *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System* (report prepared by the BJA National Training and Technical Assistance Initiative Project at American University, 2006), available at <http://lpdb.la.gov/Serving%20The%20Public/Reports/District%20Reports.php>; Laura Maggi, "Indigent Office in for Nearly \$3 Million: But It's a Drop in the Bucket, Officials Say," *Times-Picayune*, May 12, 2006.
- <sup>26</sup> In 2014, Jonathan Rapping received the MacArthur "Genius" Grant for his work to change the culture of public defense. "Jonathan Rapping," MacArthur Foundation, <https://www.macfound.org/fellows/925/>, accessed December 31, 2019.
- <sup>27</sup> Sarah Covert, "Charge Undermines Aggressive Indigent Defense," *Times-Picayune*, August 4, 2009, op-ed.
- <sup>28</sup> Melissa Block, "New Orleans Judge Slams City's Justice System," *All Things Considered*, NPR, April 2, 2007. ("Indigent defense in New Orleans is unbelievable, unconstitutional, totally lacking the basic professional standards of legal representation and a mockery of what a criminal justice system should be in a Western, civilized nation.")
- <sup>29</sup> Gwen Filosa, "Defender, Investigator Found in Contempt: They Tried to Interview Children in Rape Case," *Times-Picayune*, July 16, 2009; James Gill, "Fight Looms for Control of Indigent Defense," *Times-Picayune*, April 25, 2007, op-ed ("Since the indigent defender board was reconstituted after Katrina, it has asserted the right and the duty to represent clients without political or judicial interference, as both state law and American Bar Association standards require. This has come as quite a shock to the judges, who under the old system called all the shots, with predictable consequences for the constitutional rights of poor defendants."); Laura Maggi, "Public Defender Office Leader Jailed: Judge Says More Attorneys Needed to Cover Juvenile Cases," *Times-Picayune*, January 10, 2007; Laura Maggi, "Indigent Staff Rise Is Ordered: Judges Say Office Not Competently Run," *Times-Picayune*, November 11, 2006 ("They let that system stand for years and years without a peep," [Denise LeBoeuf, chair of the Orleans Indigent Defense Board, said], "I'm pretty suspicious that this is all done for the altruistic benefit of poor people.").
- <sup>30</sup> Gwen Filosa, "Lawyer Handcuffed in Clash with Judge: Public Defender Freed after Hour of Detention," *Times-Picayune*, May 13, 2008.
- <sup>31</sup> Once Judge Johnson ceased being chief judge, the new chief judge, Raymond Bigelow, a staunch opponent to reform, tried to dismantle the reform-minded board, replacing four of us (myself included). We responded by filing suit. See Laura Maggi, "Suit Filed over Indigent Defense: Judges Vote to Pull 4 Members off Panel," *Times-Picayune*, May 5, 2007. ("The attempted removal of four members of the present board and replacing them with other people is nothing more than an attempt to interfere with the management decisions by what is, by any measure, an outstanding indigent defender board," said Herbert Larson, the attorney for the board.)
- <sup>32</sup> Snead, "Will Act 307 Help Louisiana?," 171.
- <sup>33</sup> *Ibid.*
- <sup>34</sup> *Gideon v. Wainwright*, at 796.
- <sup>35</sup> Matt Sledge and Bryn Stole, "Supreme Court Panel Urges Revamp of Louisiana's 'User Pay' Criminal Justice System, but Implementing It Will Be Hard," *Baton Rouge Advocate*, April 18, 2019.
- <sup>36</sup> Matt Sledge, "Orleans Public Defenders to Cut Services, Freeze Hiring in Face of Revenue Shortfall," *Baton Rouge Advocate*, May 5, 2019. ("It's not a new problem. The agency's recurring budget crises led to large-scale layoffs in 2012 and a waiting list for representation in felony cases in 2015 and 2016.")
- <sup>37</sup> Derwyn Bunton, "When the Public Defender Says, 'I Can't Help,'" *New York Times*, February 19, 2016.

<sup>38</sup> “Frederick Douglass Awards Dinner: Recent Awardees,” Southern Center for Human Rights, [https://www.schr.org/frederick\\_douglass\\_dinner\\_recent\\_awardees](https://www.schr.org/frederick_douglass_dinner_recent_awardees), accessed December 31, 2019.

<sup>39</sup> “Clara Shortridge Foltz Award,” National Legal Aid & Defender Association, <http://www.nlada.org/about-nlada/nlada-awards/clara-shortridge-foltz-award-biennial>, accessed December 31, 2019. (“[The award] commends a public defender program or defense delivery system for outstanding achievement in the provision of indigent defense services. The achievement may be the result of an effort by the entire program, a division or branch or a special project. This award is co-sponsored by NLADA and the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. Established in 1985, this award was named for the founder of the nation’s public defender system. Foltz, California’s first woman lawyer, introduced the ‘Foltz Defender Bill’ at the Congress of Jurisprudence and Law Reform in Chicago in 1893.”)

<sup>40</sup> “Created in the wake of a complete criminal justice system failure following Hurricane Katrina, OPD has become the benchmark for public defense in Louisiana. OPD represents nearly 20,000 people each year; has made significant advances in juvenile mitigation, bond advocacy, and mental health representation; and laid the groundwork to reduce recidivism with diversion and alternatives to incarceration programs.” “2015 Recipient,” available at *ibid*.

<sup>41</sup> Helen Freund, “Public Defender’s Office Joins in National Protest Movement: Attorneys to Gather on Courthouse Steps,” *Times-Picayune*, December 16, 2014; Ken Daley, “Public Defenders Stage Protest on Inequality in Justice System: ‘It’s A Conversation We Have To Have,’” *Times-Picayune*, December 17, 2014 (“More than 250 lawyers, clients and supporters of the Orleans Parish Public Defenders’ office staged a silent, 4 1/2-minute protest on the steps of the city’s criminal courthouse Tuesday, symbolically objecting to what their chief termed the daily inequities levied upon overwhelmingly minority suspects and defendants in New Orleans and around the nation.”).

<sup>42</sup> Mark Hertsgaard, “New Orleans Public Defender Turns Away Felony Cases: Derwyn Bunton, the Crescent City’s Public Defender, Has Refused to Accept Serious Felony Cases, Claiming That Underfunding Means His Office Can’t Do Its Job,” *Daily Beast*, November 25, 2016. (“Gathered before him were about 200 people who had marched across town in a ‘second line’ parade, a beloved New Orleans musical ritual that has helped generations of African Americans preserve their cultural identity and sense of community in the face of racial injustices dating back to the days of slavery. ‘Equal Justice For All’ read one of the protest signs that bobbed above the crowd beneath bright blue skies. ‘Fund Public Defenders Now’ urged another.”)

<sup>43</sup> A bio of Denise LeBoeuf is available on the ACLU website at <https://www.aclu.org/bio/denny-leboeuf>, accessed December 31, 2019.