AFFIDAVIT OF ROBERT C. BORUCHOWITZ

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W.

I, Robert C. Boruchowitz, declare, based upon my good fai

trial court dismissed the lawsuit on ripeness grounds, the Kentucky Governor shortly thereafter announced a new $2 million allocation for public defense.

c. I submitted a declaration as an expert witness in support of a motion filed by the Miami Dade County Public Defender in State of Florida v. Bowen, 39 So. 3d 479 (Fla. Dist. Ct. App. 2010)

Affidavit

Affidavit

53. Another pattern across the districts is that there are very few trials, even though

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there are few motions and fewer trials, when the lawyers have too many cases but keep taking more, the participants can become inured to a culture that lawyer and journalist Amy Bach calls "ordinary injustice." See Amy Bach, Ordinary Injustice: How America Holds Court (Metropolitan Books, 2009). Ms. Bach described how a community of legal professionals can become accustomed to a pattern of lapses.

70. In many Districts in Louisiana, the caseload has been so high for so long, the funding has been so inadequate for so long, the disparity in resources between the prosecution and the defense has been so dramatic for so long, the defenders have operated with meager investigation and practically no expert witnesses for so long, people have been staying in jail for weeks or months before having counsel appointed for

- x sufficient legal research;
- x sufficient preparation for pretrial hearings and trials; and
- x sufficient preparation for hearings at which clients are sentenced.

ABA Eight Guidelines of Pub. Def. Related to Excessive Workloads, Guideline 1 (2009).

77. The ACCD Statement on Caseloads and Workloads "recommends that public defender and assigned counsel caseloads not exceed the [National Advisory Commission on Criminal Justice Standards and Goals] recommended levels of 150 felonies, 400 misdemeanors, 200 juvenile court cases, 200 Mental Health cases, or 25 non-capital appeals per attorney per year." American Council of Chief Defenders, Statement on Caseloads and Workloads 1 (2007). If a public defender or assigned counsel is carrying a "mixed caseload", including cases from more than one category of cases, "these standards should be applied proportionally. (For example, under the NAC standards a lawyer who has 75 felony cases should not be assigned more than 100 juvenile cases and ought to receive no additional assignments.)" Id.

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Postlethwaite & Netterville, APAC, and ABA Standing Com. on Legal Aid and Indigent Defs., The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards 2 (Feb. 2017). The Louisiana Project stated: "[A]lternatively, based on the Delphi Method's results and analysis presented herein, the Louisiana public defense system currently only has capacity to handle 21 percent of the workload in compliance with the Delphi Panel's consensus opinions." Id. That conclusion presumes that the defenders would have adequate investigative, secretarial and other support services, which in general they do not. The Louisiana Project report is available at http://www.americanbar.org/content/dam/aba/images/abanews/LouisianaProjectReportFinal.pdf

87. In addition to the assessment of the LPDB itself and the Louisiana Project, other state workload studies have concluded that defender caseload levels should be much lower than those of Louisiana's defenders. The Missouri Project, A Study of the Missouri Public Defender System and Attorney Workload Stui20(W)h2(t)-2ne3P3r3.9(g)12TD.03 -6]TJ 0 Tc 0 Tw1w [(
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NAC standards. Standard 3.3 provides in part that "[c]aseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseloads should assume a reasonably even distribution of cases throughout the year." Washington CrR 3.1 (Standards for Indigent Defense); see also Washington State Bar Association, Standards for Indigent Defense Services, Standard 3.3 (2011).

91. The Court's Standard 3.3 specifically addresses the need to reduce caseloads further when cases are more demanding:

> The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources.

Id.

92. The New York State Office of Indigent Legal Services has recognized the critical importance of limiting caseloads. In a recent statement on its web site relating to an upcoming request for proposals for funding, it wrote:

> Excessive caseloads impair the quality of legal representation that indigent defendants receive. Indeed, it is widely and properly recognized that maintaining reasonable public defender and assigned counsel caseloads is the sine qua non of effective representation. See Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel (The Constitution Project, 2009) at 192, Recommendation 6; and Securing Reasonable Caseloads: Ethics and Law in Public Defense (American Bar Association, 2011) at 209 ("caseload limits . . . are the very bedrock of quality control").
>
> No lawyer, however well qualified, can provide the effective assistance of counsel that our Constitution requires if he or she is saddled with an excessive caseload.

NYS Office of Indigent Legal Services, https://www.ils.ny.gov/content/upstate-quality-improvement-and-caseload-reduction.

VII.

Affidavit

111. In a March 18, 2016 memorandum to all Louisiana Public Defenders, the LPDB wrote:

> As a result, our criminal courts are now in a state of near total collapse and public safety is imperiled. Unlike the rest of the country, a wholly inadequate and unpredictable system of parish fines and fees funds much of the cost of this constitutional obligation . . . . Louisiana public defenders are now implementing our Restriction of Service Rule and telling the courts that because they have too many cases they cannot provide reasonably effective assistance of counsel to each of their clients as required by law, and so they must decline new appointments. . . . To fail to take this action is to risk wrongful convictions of accused persons, which has occurred all too frequently in Louisiana and other states.

LPDB, Memorandum from LPDB to all Louisiana Public Defenders (March 18, 2016), available at http://lpdb.la.gov/Serving%20The%20Public/News/txtfiles/pdf/LPDB%20Memo%20to%20Defenders_3_18_2016.pdf

112. In Peart, the Louisiana Supreme Court held that:

> [H]aving found that evidence in the record before us shows that the provision of indigent defense services in Section E of Orleans Criminal District Court is in many respects so lacking that defendants who must depend on it are likely not to be receiving the reasonably effective assistance of counsel the constitution guarantees, we find that a rebuttable presumption arises that indigents in Section E are receiving assistance of counsel not sufficiently effective to meet constitutionally required standards.

621 So. 2d at 791.

113. The situation of the defender in Peart was essentially the same as that of most Louisiana public defenders today. He had 70 active felony cases. Id. 784. In a seven-month period, he represented 418 defendants. His office had only enough funds to hire three investigators who were the only ones to provide assistance in more than 7,000 cases per year. He usually received no investigative support. Id. There were no funds for expert witnesses, and his office's library was inadequate. Id.

114. Many Defenders have told us that they see themselves as engaged in "triage," the implication of which is that some clients simply will not be helped. The volume of cases coupled with the inadequate support services and inadequate supervision, complicated by inadequate compensation, geographical challenges, and in some cases, additional burdens from prior criminal convictions, [illegible] period, he represented [illegible] trials [illegible]

and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

124. In addition, in many misdemeanor cases, the defendants do not participate at all, and often the judges sentence people to jail or suspended jail sentences with no adequate colloquy about the right to counsel or adequate waiver of counsel. See, e.g., discussion of District 7 [¶¶ 320-26], District 17 [¶¶ 552-65].

125. In my opinion, the failure to enable appropriate communication with clients is a sign of the broken public defense system in Louisiana.

VIII. Insufficient Funding for Overhead for Defender Offices and Contract Defenders

126. A result of the overall lack of funding is that, throughout Louisiana, compensation for contract attorneys and funding for district offices is insufficient to provide adequate resources for overhead, including support staff and benefits. As discussed below, one of the DAs pays a salary of $4,200 a month that equals $50,400 a year. On an 1,800 hour year, that would equal $28 per hour. In many Districts, the compensation does not include benefits, so health, dental, life and disability insurance, and any retirement investment must be paid out of the $50,400.

127. It is important to consider contract defender salaries with two important facts in mind: (1) the debt that lawyers accrue going to college and law school and (2) the real overhead costs they have in running a law practice. The average yearly cost of attending LSU Law School is $46,034.90. LSU Law, Cost of Attendance, Tuition & Fee for Current Students,

Louisiana are far below the South Dakota level and drive those counsel to have other work so that they can earn a reasonable living.

134. Many Louisiana conflict counsel are paid the same amount no matter how many cases they are assigned in a year. This violates Principle 8 of the ABA Ten Principles of a Public Defense Delivery System, which states in part:

> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be s
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d. Advocate for release if in custody

e. Confirm appointment process beyond first appearance

f. Consider appellate review of order denying bail or setting release conditions and pursue as appropriate

156. Notwithstanding those requirements, in Louisiana courts, there is a pervasive absence of such representation at the early stages of proceedings. As a result, defendants frequently take pleas without the assistance of counsel's necessary advice, (e.g., discussion of District 17 [¶¶ 552-564], and are also often incarcerated for extended periods without a challenge either to the charges against them or to their incarceration. See e.g., discussion of District 17 [¶561].

157. Although these are clear standards indicating what defenders should do, the statewide pattern is that of defenders either having the time nor the inclination to take those steps for clients.

XI. Meeting with Clients

161. The initial meeting with a client should be long enough to provide both the information the lawyer needs to obtain and to provide the information the client needs to have to make informed decisions and to develop workable communication with the lawyer. Attorneys should ensure that barriers to communication, such as differences in language or literacy, are overcome and the client comprehends the information provided by the attorney. It is important to address issues such as whether the client is a U.S. citizen, whether the client is on probation or parole, and whether there are medical or mental health issues. Failure to spend adequate time with a client and cover these points violates professional standards and increases the risk that defender attorneys will provide inadequate representation to their clients. My own rough standard is that the initial meeting should be about one hour. If the lawyer's schedule does not permit that, there should be a second meeting and the total time of the two initial meetings likely should be at least one hour

162. A careful review of a client's case is necessary in order to provide constitutionally adequate advice to a client about a possible guilty plea. Some analysis of the prosecution's case and review of the possible consequences of conviction are required. In my opinion, based on my observations and observations of others and reading the Board Reports, the practice in many Louisiana districts falls far short of meeting these critical elements.

163. It is especially important that clients understand all of the consequences resulting from a guilty plea. Consequences can be quite grave. No criminal conviction should ever be regarded as minor or unimportant. When convicted, a defendant could be deported, denied employment, or denied access to a wide array of personal licenses. A person convicted of a misdemeanor may be ineligible for student loans. Additional consequences can include the loss of public housing and access to food assistance, which can be dire, not only for the misdemeanant but also for his or her family. Fines, costs, and other fees associated with convictions can also be staggering and too frequently are applied without regard for the ability of a defendant to pay the assessed amounts. See National Association of Criminal Defense Lawyers, Minor Crimes, Massive Waste, The Terrible Toll of America's Broken Misdemeanor Courts 12-13 (2009) (citing Bridget McCormack, Economic Incarceration, 2 Windsor Y.B. Access to Just. 25, 223-46 (2007)). In my opinion, the attorney must fully understand and explain to the client the potential impact of a guilty plea, including on housing, employment, heath or food benefits, custody of minor children, and deportation.

164. As Rick Jones, the Executive Director of the Neighborhood Defender Service of Harlem, explained, while it may seem attractive to accept a plea to "get this criminal charge over with," a criminal conviction, "even for a minor offense, has an enormous impact on a client's life." Id. at 13.

165. Some Louisiana c-4(u)-4(i)ahnw 1.58 004 Tw 273715 c plends 2(e)6(d) the uick H.

procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

American Bar Association, Ten Principles of a Public Defense Delivery System, Principle 4 (2002).

168.

XIII. Motions

187. Section 723 of the LPDB Trial Court Performance Standards states:

§723. The Duty to File Pretrial Motions

A. Counsel should consider filing an appropriate motion whenever there exists a goodfaith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a pretrial motion are:

1. The pretrial custody of the accused;
2. The constitutionality of the implicated statute or statutes;
3. The potential defec

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195. In an article that concluded that "forensic science is in crisis," three British authors wrote:

> De facto deference to the weight ascribed to forensic evidence in the courtroom or indeed to the opinions of experts is being consigned to the past. Shortfalls inherent in the current system include operational problems related to the efficiency of the justice system and the way it is administered [1], the admissibility of expert evidence [2], reliability tests [3], and structural problems including the influence of the evidence tendered by experts on the jurors [4], the adversarial nature of the system in common law jurisdictions [5], the bias of legal representatives [6], and flawed assumptions in forensic sciences [7–10].

Éadaoin O'Brien, Niamh Nic Daeid & Sue Black, Science in the Court: Pitfalls, Challenges and Solutions, Philos. Trans. R. Soc. Lond. B. Biol. Sci. (2015), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4581010/

196. In Representing Clients With Mental Illness: A Resource for Louisiana Defenders, a publication co-produced by the LPDB, the authors commend the use of expert witnesses:

> The use of strategically selected experts and specialists can assist attorneys in numerous aspects of the legal defense, including:
>
> - Communication style and the manner in which the attorney relates to the client
> - Client's competence to stand trial
> - Client's mental state at the time of the offense
> - Plea negotiations
> - Jury selection
> - Making decisions about client testimony
> - The need for medical treatment or other services for the client until the case is disposed
> - Determination of assessments, evaluations and testing that is needed
> - Selection of witnesses for the trial, including the penalty phase

Louisiana Appleseed, the Louisiana Coalition, and LPDB, Representing Clients With Mental Illness: A Resource for Louisiana Defenders (2011), available at http://appleseednetwork.org/wp-content/uploads/2012/05/Representing-Clients-with-Mental-Illness3.pdf

197. The manual advises defenders of the importance of consulting social workers:

> When deciding who to obtain as a mental health expert(s), the attorney should consider first consulting a mitigation specialist, who will often be a licensed social worker. The specialist will:
>
> - x Conduct a thorough bio-psycho-social history investigation
> - x Interview the client
> - x Conduct collateral interviews
> - x Gather the client's medical records
> - x Determine what cultural, environmental, and genetic circumstances might have factored into the client's case.

Id.

198. And the authors add [a] forensic social worker is ideal to use in case history development because this social worker has been trained and is experienced in working with court related matters." Id. at 18.

199. It appears that, in most of Louisiana, Defenders make little or no effort to engage mental health experts, including mitigation specialist social workers, to assist them in their cases.

200. In my opinion, the rate of expert usage by Louisiana Defenders is far too low. Expert testimony about the mental health of the client, for example, could be used both to establish a defense, including the absence of an intent element, and to provide mitigation for sentencing. It might also help to persuade a district attorney to offer a reduced charge. Failure to request an expert witness can indicate serious dereliction of his duty to investigate the facts and circumstances of the client's case. See ABA Standards for Criminal Justice 4-4.1 (4th ed. 2015) ("Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter. . . . Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence.)).

201. Many of the District Defenders report no budget expended for expert witnesses. For 2016, this includes the 2nd District, the 3rd District, the 5th District, the 7th District, the 8th District, the 9th District, the 10th District. Other District Defenders report low levels of expert witness expenditures. For example, the 4th District, which reported handling 10,382 cases in 2016, reported spending $2,892.50 on experts in 2016. The 6th District, which reported handling 1,571 cases in 2016, reported spending $2,000 on experts in 2016. The 11th District, reporting handling 1,662 cases, reported spending $2,400 on experts in 2016. In my opinion, such infrequent use of experts is inexplicable, a sign of a broken public defense system, and that public defense system risks providing inadequate representation to indigent defendants.

202. As a comparison, in 2016, the King County (Washington) Department of Public Defense, when it assigned 5,941 new felony cases to public defenders and assigned counsel, spent $1,962,547. This was for 2,206 requests for experts in 707 cases. The Defenders were obtaining experts in approximately 11.9% of all their felony cases. The Department estimated that it declined 34% of the requests made by defenders in all program areas. The county spent a total of $2,357,162 in all practice areas, including misdemeanor, juvenile, and civil commitment. This expert witness expenditure for felony cases amounted to a per capita expense of $330.33, dividing the expenditure for felony case expert witnesses by the total number of new felony assignments.

203. In Louisiana, the districts spend between $0 and $8.06 per capita for [illegible]

210. In my opinion, guilty pleas at the first meeting with a client are generally not advisable. This is because at a first appearance, it is difficult, if not impossible, for an attorney to complete the individualized investigation and analysis that must go into consideration of that client's situation. Recognizing this important principle, the Washington State Supreme Court adopted a standard that "dispositions of cases by pleas of guilty to criminal c

216. The Maryland Public Defender website describes the work of its social workers in part as follows:

> With specialized training in forensic services, our licensed social workers join with defense attorneys to provide holistic representation by assessing the underlying causes of clients' behaviors, and developing individualized recommendations for treatment..
>
> By investigating a client's social history, our social workers uncover the root causes of a client's decision-making, and develop meaningful plans to remove barriers to success in the future. Social workers meet with clients, family members and other support networks to unearth, scrutinize and evaluate client information, then use that information to offer alternatives to incarceration and expert testi-2(t)t tec sru

228. It is clear that the majority of Louisiana public defense attorneys do not fully follow these guidelines as to training and supervision, and as a result they fail to meet professional standards of representation, increasing the risk that the State will provide inadequate representation to indigent criminal defendants.

229. In my opinion, the lack of supervision in Public Defenders' Offices across Louisiana violates Principle 10 of the ABA 10 Principles: "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." American Bar Association, Ten Principles of a Public Defense Delivery System, Principle 10 (2002)

230. The absence or minimal level of supervision and training in most districts compounds the problem that results from the limited supervision and training provided by the staff of the Board.

231. The State Public Defender reported on the adverse impact of not providing training: "The reduction in the LPDB administrative budget has resulted in a curtailing of training for public defenders throughout the state. This directly and adversely impacts a line defender's ability to adequately represent the poor." 2016 Board Report at 2.

XIX. Waiver of Counsel

232. In many Louisiana misdemeanor courts, defenders either are not present or stand by not participating as judges take guilty pleas from accused persons who have not consulted with a lawyer or adequately waived counsel.

233. As set out below in Article 556, the Louisiana Rules contemplate that the court will determine that the defendant understands all of the rights that the defendant is waiving:

> Art. 556. Plea of guilty or nolo contendere in misdemeanor cases; duty of court
>
> A. Except as otherwise provided in Paragraph B of this Article or in R.S. 32:57 or in any other applicable law, in a misdemeanor case, if the defendant is not represented by counsel of record, the court shall not accept a plea of guilty or nolo contendere without first determining that the plit

238. Notwithstanding these clear holdings, our observers saw repeated instances of judges dealing directly with defendants and accepting pleas without the necessary advice of counsel on proper waivers of counsel, while either defenders in the courtroom did nothing or there was no lawyer available. See, e.g., discussion

alone who were on the waitlist for counsel, 29 of whom were incarcerated. See Yarls v. Bunton, No. CV 16-31-JJB-RLB, 2017 WL 424874, at *2 n.13 (M.D. La. Jan. 31, 2017). He wrote:

> Defendants cannot dispute that waitlists violate the constitution, but they use them in an attempt to comply with ethical duties that require them to limit their caseloads. By issuing a declaratory judgment, the Court would just be repeating what those involved already know.

discussion of District 4 [¶ 304], District 7 [¶¶ 333-40], District 8 [¶ 362], District 9 [¶ 398], District 30 [¶ 410], District 10 [¶ 419], District 42 [¶¶ 451-57], District 14 [¶ 478], District 17 [¶¶ 539, 442-45], District 19 [¶ 614], District 21 [¶¶ 676-78], District 35 [¶ 736].

251. The American Bar Association has recognized the financial disincentives that can arise in the mixed private practice-public defense practice situation. The ABA Criminal Justice Section Standards Providing Defense Services Standard 5-4.2 Restrictions on private practice provides: "Defense organizations should be staffed with full-time [illegible]

Id.

260. In the 1st District, I also interviewed a contract attorney, Sean Southern, who took over a caseload of about 200 cases in October 2016 and who reported receiving 8 to 10 new cases a month. He told me that while he would benefit from the use of investigators, he has not had a case that required investigation. This indicates both the failure to appreciate the benefits of investigation and a culture in which lawyers avoid asking for investigation because they feel that

267. The 1st District Defender told me that she had to cancel the office's Westlaw contract and has not been able to renew it. One of the contract lawyers in the 1st District told me he would like the office to provide statute books, which cost about $400.

B. 2nd District (Claiborne, Bienville, and Jackson Parishes)

268. During Calendar Year 2016, the 2nd Judicial District Public Defenders Office received 923 new cases and received only $493,609 in total revenue to handle these new cases, or $534.79 per new case. Id. at 75, 85.

269. The office carried over into 2016 413 adult misdemeanor and 670 adult felony non-LWOP cases. Id. at 85. They received 364 new misdemeanor cases and 480 new non-LWOP felony cases. Id. They closed 595 adult felony and 487 adult misdemeanor cases. Id. This suggests that the six part-time contract attorneys were not able to keep current with their cases.

270. Its attorneys "maintain caseloads of 40 felonies and misdemeanors combined

279. The former District Defender for the 3rd District, Mr. Jones, who now is an assistant district attorney there, told our observers that he left the defender job because of the lack of health insurance and that he could not deal with the instability of running the public def

307. In the Fourth District, the misdemeanor contract attorneys are paid in the $2600 to $4200 a month range. The felony attorneys are paid in the $3350 to $6200 per month range. There are no benefit plans. The District Defender told me that the lawyers are not properly compensated at those rates. He suggested that an appropriate salary range for defenders in his office would be from $75,000 per year to $175,000 per year for the supervisor. His own current salary is $123,000 per year, with no benefits.

308. The compensation for the District Attorney for the Fourth District far exceeds that of the District Defender. The following is from the Financial Report for the District Attorney for 2014:

Donald, Tucker, Betts & Fuller, District Attorney of the Fourth Judicial District Financial Report 36 (Dec. 31, 2014), available at https://app.lla.state.la.us/PublicReports.nsf/8B8AF5464ADA4EF986257E7A005353E0/$FILE/00008B65.pdf.

309. The total expenditures for the Fourth District District Attorney's office in 2014 amounted to $4,438,479. Id. at 8. The office received $885,574 in federal grants. Id. at 18.

310. Because the compensation, including benefits, for the District Attorney for the 4th District significantly exceeds that of the District Defender, the compared payments do not comply with Principle 8 of the ABA's 10 Principles:

> There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.

311. The compensation scheme for defenders in the Fourth District violates the ABA Providing Defense Services Standard 5-4.1, "Chief defender and staff" which provides in part: "The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices." American Bar Association, ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-4.1 (3d ed. 1992).

312. In 2016, the office tried 36 misdemeanors out of 3,087 closed cases (with 13 acquittals), a trial rate of approximately 1.1%. 2016 Board Report at 112. It tried 30 non-LWOP felony cases out of 2,756 (all guilty), a trial rate of just over 1%. Id.

E. 7th District (

$21,334.46 per attorney. Four hundred misdemeanors at $142.23 per case would be $56,892. Those amounts are simply inadequate to support a full attorney and overhead.

315. The 7th District stated in the Board Report for 2016 that "reliance on insufficient revenues has resulted in caseloads that by far exceed established caseload limits. Excessive cases limit each defender's ability to provide effective assistance of counsel to their clients." Id. at 166. Public defense attorneys in the 7th District maintain caseloads almost four and a half times the recommended caseload limit for one attorney. Id. These are the equivalent of 878 cases per year for a full time equivalent attorney. Out of 564 closed misdemeanor cases, the District had no trials. Id. at 174. Out of 1315 closed non-DWOP felony cases, there was one jury trial. Id.

316. Asked whether the District foresaw restricting services in 2017, the District responded: "Possible, keeping close on revenue and spending and looking for ways to decrease monthly costs." Id. at 170. This is troubling, given the excessive caseload and the almost non-existent trial rate.

317. When an attorney has 878 cases per year, he or she would have about two hours per case. Preparing for and conducting a trial with that kind of caseload for more than a handful of clients is practically impossible.

318. An indication of the negative consequences of the District's excessive caseload is

324. There was no indication that when pleading the defendants were made aware of the collateral consequences of a plea.

325.

326. After the district attorney handed copies of the charges to the defendant, the judge asked the defendant how he pleads, and Mr. Harbor said, “Not guilty, your honor.” The district attorney said, “You can’t make bond,” and Mr. Harbor said no. The district attorney then spoke directly to the defendant about a possible plea of guilty. Responding to the judge on how he pled with regard to possession of drug paraphernalia and driving with a suspended license, Mr. Harbor said guilty. The district attorney said, “If he pleads to the marijuana as well, we’ll offer him 17 days with credit for time served.” He also said that if the defendant pled guilty to an open container charge, “we can run that concurrent with the other charges.” The judge asked if the defendant wished to change his plea on the possession of marijuana charge, and he said, “Yes, sir.” The defendant stood alone and was sworn in by the court clerk.

Affidavit

driving time required to the women's jail and between courts, Mr. Carson has too little time for his clients.

337. One part-time defender is listed on the reports of three different districts—7, 9, and 28. The 2016 Report states: "In the 7th Judicial District, public defense attorneys maintain caseloads almost four and a half times the recommended caseload limit for each attorney. Excessive cases limit each defender's ability to provide effective assistance of counsel to the clients." Id. at 166. The office reported handling 3,345 cases in 2016, and listed six part-time contract attorneys, including Darrell Hickman, and the district defender. Id. at 166, 171. The 7th District office is in Vidalia, Louisiana.

338. Darrell Hickman is also listed as a part-time contract attorney in the 9th District, which is in Alexandria, Louisiana. Id. at 554. The 2016 Board Report states that the "9th Judicial District, public defense attorneys maintain caseloads almost two and a half times the recommended caseload limit for each attorney." Id. at 200. The Report lists 16 part-time contract attorneys plus the District Defender, handling 3,846 cases in 2016. Id. at 206, 199.

339. Darrell Hickman is also listed as one of four part-time contract attorneys (and there is one full-time staff attorney) in the 28th District, which is in Jena, Louisiana. Id. at 554. The Board Report lists four part-time contract attorneys including the District Defender, handling 627 cases and maintaining caseloads 1.55 times the Board's maximum limit. Id. at 554, 548, 549.

340. As indicated in the map below, the distances among the three parish courthouses are considerable. It is 69 miles from Concordia Parish to Rapides Parish and 38 miles from Rapides (Alexandria) to Jena.

341. According to the Avvo listing, Mr. Hickman's office is in Alexandria, in Rapides Parish. His Avvo listing shows that he works in a number of practice areas besides criminal law. It lists his criminal practice as 16% of the total. Darrell Keith Hickman, https://www.avvo.com/attorneys/71301-la-darrell-hickman-154735.html (last visited May 1, 2017)

342. In all three of the districts in which Mr. Hickman worked in 2016, there were almost no trials. In the 7th District, out of 564 closed misdemeanor cases, there were no trials. Id. at 174. Out of 1315 closed non-LWOP felony cases, there was one jury trial. Id. In the 9th District, out of 1699 closed misdemeanor cases, there was one bench trial. Id. at 209. Out of 1645 closed felony non-LWOP cases, there were one jury and six bench trials. Id. In the 28th District, out of 86 closed misdemeanor cases, there were no trials, and out of 135 closed felony non-LWOP cases, there was one bench trial. Id. at 557. In all three districts, the offices opened far more cases than they closed, suggesting that the lawyers could not stay current with their caseload.

343. While it is difficult to know from the Board reports how many cases Mr. Hickman was assigned in 2016 in the three districts, the fact that he advertises a private civil practice and he has cases in courthouses that are considerable distances apart suggests that he has little time for each of his defender cases.

F. 28th District (La Salle Parish)

344. Mr. Carson also is Chief Defender in the 28th District and Darrell Hickman takes cases in the 7th, 9th, and 28th Districts.

345. During Calendar Year 2016, the 28th Judicial District Public Defenders Office received 505 new cases and received only $171,651 in total revenues to handle these cases, or $339.90 per new case. Id. at 548, 557. According to the 28th District, "[l]ocal funds derived primarily from traffic tickets and special court costs are insufficient to support client representation" and "continue to be erratic and insufficient as the district is rural with no major highways." Id. at 548.

346. The District was one of the districts in restriction of services during 2016. "Insufficient personnel and fiscal resources forced the 28th Judicial District office to beal (e)-4(a)6(l (e)-4(a)

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354. Several months after the defendants had been arrested and charged and after the district attorney had provided discovery to the public defender including the name of the confidential informant in the case, the assigned defenders moved to withdraw as they had represented the informant. On January 28, 2016, Chief Defender Carson moved to withdraw the office from the case because of the conflict of interest presented because one of his office's clients was the informant against Ms. Keene. On March 3, 2016, Mr. Carson filed a second motion to withdraw, which was set for hearing April 5, 2016.

355. Mr. Carson had placed Ms. Keene on a wait list for counsel on February 29, 2016. See Notice of Placement on Wait list, in Appendix He filed an a

362. In the 2016 Board Report, the District Defender added: "We are in restriction of services because we don't have funding to pay lawyers we need to represent all entitled defendants. Our district needs funding for 4 lawyers in order to meet needs of indigent defendants." 2016 Board Report at 187. The District had two

376. On November 28, 2016, the matter was set for trial on April 24, 2017. The court documents I reviewed did not disclose the disposition of Mr. Small's motion. On November 28, 2016, Mr. Malone had been in custody for ten months without a lawyer committed to his representation. On April 24, 2017, a new attorney was present and the matter was reset for August 28, 2017.

377. I have read the statement of Plaintiff Ashley Hurlburt. At the time of the petition, Ms. Hurlburt had been held in Winnfield City Jail since her arrest on June 6, 2016. She and her husband are charged with negligent homicide of their one-year-old child and face a maximum sentence of five years in prison. Since her arrest, it appears that the court has appointed three different attorneys to represent her. The first attorney was a contract public defender in one court and part-time prosecutor in another court. He filed a boilerplate motion to reduce bond, but according to Ms. Hurlburt never pursued the motion or spoke with Ms. Hurlburt about the motion. The court then removed the attorney from the case for an unknown conflict of interest. It is my understanding that the second attorney did meet with Ms. Hulrburt after the lawsuit was filed, but that the second lawyer also withdrew because of a conflict of interest. Apparently the third lawyer has met with Ms. Hurlburt. The court had set a hearing date for February 22, 2017 and trial for April 24, 2017. No investigation had taken place. It is my understanding the trial is now set for June 19, 2017. It is my understanding that Ms. Hurlburt has had to receive medical attention for pre-existing depression and anxiety disorders.

378. I have reviewed the (ie)6(w)-2,3(l)-r63/t </Mn42(th2a)4DPadn << rdi1 0.003 Tw 4* [(fi)-4

384. During that visit, the defender told our observers that he would write "smiley faces" on the files of those clients he deemed to have a good attitude and the prosecutor would know that if a defendant's file did not have a smiley face that they had a bad attitude. He stated that for in

Tiffany L. Ratliff, Attorney at Law, L.L.C., Practice Areas, http://www.tratlifflaw.com (last visited May 1, 2017).

399. While the Board Report does not include how many cases Ms. Ratliff had in the two districts, the indications are that she had a heavy defender caseload in addition to her private practice and that her private practice left little time for defender clients.

2. 30th District (Vernon Parish)

400. The District Defender in the 30th District is Tony Tillman. 2016 Board Report at 585. Mr. Tillman in his private practice represents West Louisiana Ice Inc., which in 2016 was involved in a dispute with the City of Leesville. See West Central's Best, Leesville ice company claims large quantity of ice was ruined during water line work, seeks compensation (Oct. 5, 2016), available at http://www.westcentralsbest.com/news/leesville-ice-company-claims-large-quantity-of-ice-was-ruined/article_99faaeb8-8b11-11e6-8864-0f93957501a3.html.

401. Tony Tillman was paid $3,000 a month for part of 2016 as interim district defender in District 9. 2016 Board Report at 45.

402. The District wrote in its Board report: "All attorneys are contract attorneys and all have private practices. All attorneys rely on their private practice for their primary income." Id. at 588.

403. The Board Report of February 2013 stated that no caseload reduction was provided to the District Defender for his work supervising 11 part-time attorneys and four non-attorney staff. LPDB, 2013 Board Report 539 (Feb. 2013). This practice continued in 2016. See 2016 Board Report at 589.

404. During Calendar Year 2016, the 30th Judicial District Public Defenders Office received 1,755 new cases and received only $617,059 in total revenue to handle those cases, or $351.60 per new case. 2016 Board Report at 583, 593. Since 2012, local revenues associated with court (l). st 55(l)-26(y)e contbe0 Td [(e)6(D)4(is)1(tr)e ($9(at)-6(ed)-Tw 14(d i))-4(n)-4(l)-26.ce "S

411. Responding to the question on how to provide conflict-free representation, the District wrote: "During interview clients are asked if they were arrested with anyone or if they have any co-defendants. If they have co-defendants we then make a note so that at the time of appointment or if

423. The 10th District has inadequate investigation resources. The office reported that it would have to lose its one investigator in January 2015 and was not able to replace him, 2015 Board Report at 223, although one of the defenders told our observer in January 2017 that the office had one investigator. In 2016, the office reported spending $1,530 for investigation and nothing on expert witnesses or social workers. 2016 Board report at 232. One lawyers told our observer that the investigator works mostly on the "serious cases."

J. 11th District (Sabine Parish) and 42nd District (DeSoto Parish)

424. Steven Thomas is District Defender in the 11th District (17 years) and in the 42nd District (17 years). Both districts list their office as in Mansfield, Louisiana. The 11th District is Sabine Parish and the 42nd is DeSoto Parish. According to Google Maps, it is 41.8 miles between Mansfield in Desoto and Many in Sabine.

425. In the 11th District, Mr. Thomas is listed as full-time staff, with five part-time contract attorneys and three non-attorney employees and contractors. In the 42nd, Mr. Thomas is listed as full-time, with four part-time contract attorneys and three non-attorney employees and contractors. The non-attorney employees and contractors are the same people in the two districts. A cooperative endeavor agreement between the 11th and the 42nd District is the only way they have both "remained solvent." Id. at 235.

426. In both districts, Mr. Thomas reviews 72-hour forms and assigns the attorneys to cases. Id. at 237. There were 906 new cases in the 11th District in 2016, id. at 244, and 931 new cases in the 42nd 2016. Id. at 813. That is, 1,837 new client cases that he had to review and assign to attorneys. If he took no weekday days off, and assigned cases five days a week for 52 weeks, he had to review and assign 7 new cases every day. Mr. Thomas also makes the determination of a reduced fee charged to clients if they are deemed able to make a partial payment. Id. at 808, 239. In the 11th District Report, Mr. Thomas describes his supervisory role consulting with the lawyers on cases: "I also work individually with attorneys about strategies and approach on particular cases." Id. at 240.

427. In the 11th District Report, Mr. Thomas describes as an external factor that affects the quality of the representation or the budget, the fact that juvenile clients are detained in Coushatta, Louisiana, which Google Maps says is a 39-mile drive from the District Defender Office. He wrote, "Yes, distance from clients impacts access and greatly increases costs for attorneys, mileage, etc." Id. at 238.

428. Considering the limited resources in the two districts, as outlined below, and given the enormous responsibility carried by Mr. Thomas as chief defender in two districts the courts of which are more than 40 miles apart, it is impossible for him to provide effective representation to all his clients.

429. The 11th District defenders have caseloads that are 334% of the LPDB maximum, or the equivalent of 668 felonies or 1503 misdemeanors per year for a full-time attorney.

430. In the 42nd District, the defenders have caseloads that are 289% of the LPDB maximum, or the equivalent of 578 felonies or 1300 misdemeanors per year for a full-

worse and any reduction in DAF would force us to reconsider the fairness of the agreement and practical/moral basis for continuing it.

Id. at 240. The 42nd District responded with the same language. Id. at 809.

432. During Calendar Year 2016, the 11th Judicial District Public Defenders Office received 906 new cases and received only $261,246 in revenues to handle these cases, or $288.35 per new case. Id. at 235, 244. Seventy seven percent of the revenues come from state funding because "local funding is largely insufficient." Id. at 235. The 11th Judicial District office's expenditures exceeded the office's revenues. Id.

433. The Report displayed the following chart showing a decrease in revenue and the complete elimination of a reserve fund for the District.

Id.

434. In the LPDB Report for 2015, the 11th District reported an average caseload 5.56 times the LPDB standard. 2015 Board Report at 237. It further reported that "[r]eliance on insufficient revenues has resulted in caseloads that by far exceed established caseload limits. Excessive cases limit each defender's ability to provide effective assistance of counsel owed to clients." Id.

435. An attorney representing clients in 5.56 times the number of cases considered acceptable by the LPDB would have 1,112 felony cases. Within 1800 hour year of directly representing clients, that would permit only an average of 1.618 hours per case. It is simply impossible to provide effective representation to the majority of clients with that amount of time available per client. The misdemeanor number is even more staggering. 556% of 450 equals 2,502 cases. The amount of time lawyers would have for their clients is far below what is required to represent a client effectively. Even a 1,503 full-time equivalent misdemeanor caseload in 2016 is overwhelming.

436. While the 2016 numbers are lower than those in 2015--a caseload of 3.34 times the LPDB felony maximum of 200 is 668 felonies per lawyer per-year--they still do not permit the lawyers to provide effective representation to all their clients. On an 1800 year of directly representing clients, that is 2.69 hours on average available per felony, simply not enough to provide effective representation for most clients.

437. The 11th District Defenders reported having 3 trials out of 269 closed misdemeanor cases, and 12 trials out of 326 closed felony cases. 2016 Board Report at 244. The lawyers reported winning three acquittals in bench trials. That is a good outcome for those three clients. However, the hours spent on trying cases reduce the amount of time available for other clients.

438. The 11th District contract attorneys are part-time; Mr. Thomas is listed as full-time in two districts. If one FTE lawyer handled all 326 closed felonies, which is highly unlikely, those 12 trials would have reduced significantly the time available for all the other cases. Even if they only took one day to prepare and one day to try, which would be unlikely, those trials took 24 days or 192 hours. Because we know that the

average FTE caseload was the equivalent of 668 felonies per year, we can calculate the remaining time available as if the lawyer were roughly half time, or having an approximately 900 hour year of directly representing clients. After deducting the trial time, there would be only 708 hours for the other 314 cases, or 2.25 hours per case. In addition, the office reported carrying over 220 non-LWOP felony cases into 2016, providing a total caseload for the year of 571, as they had 351 new cases. Id. The actual time per case likely was significantly less than 2.25 hours, as the lawyers had some work to do on those 220 carry-over cases.

439. The 11th District reported spending only $2,400 on expert witnesses and $1,620 for investigators in 2016, indicating that the lawyers did not have the resources they needed for their work. Id. at 249. As noted above, caseload limits should be lowered when lawyers do not have adequate support.

440. The 11th District reported that in 2016 it used Fast Case and spent no money on legal research software. Id. 242.

441. Our observer saw arraignments in 11th District/Sabine Parish District Court on March 16, 2017. After the judge entered a series of not guilty pleas and appointed counsel for a number of defendants, he took an hour-long recess during which two lines of defendants were formed, the guilty line and the not guilty line. The defenders in the room consulted with a handful of these defendants during the recess.

442. The judge then began taking guilty pleas from a group of defendants. For several who were charged with traffic-related misdemeanors such as speeding, he gave them a fine, five days in jail if in default, and told them they could "step" out

443. The judge took guilty pleas from seven people charged with a variety of offenses including domestic abuse battery, violation of a protection order, theft, possession of marijuana, and disturbing the peace. These seven pleas took a total of approximately 15 minutes and while the judge mentioned the possible sentences he did not discuss the elements of the crimes.

444. Later in the day, our observer watched a preliminary hearing on a theft case that the court and the public defender conducted without the defendant present. The judge said the defendant was incarcerated. The defender said he was not here but she would proceed without him. After the detective's testimony, the court found probable cause. While it is conceivable that the defendant for some reason had told his lawyer that he did not want to be present, the court should have inquired further and in my opinion, the court and the defender should not have proceeded in the hearing without the defendant present without a further inquiry. On another case, involving a stolen car, a gun, and methamphetamine, the defendant was not present and the defender proceeded without her. The court found probable (L)11(a

1. 42nd District (De

454. Mr. Kammer's partner in the firm is listed as Pugh "Sonny" T. Huckabay, III. On the firm's website, Mr.

466. The District reports attorney caseloads that were 2.28 times the LPDB maximum, id. at 287, which translates to 456 felonies per year for a full attorney. Despite that, the District did not restrict services in 2016 and did not anticipate restricting services in 2017. Id. 291. The Chief Defender told our observer on January 9, 2017, that his attorneys have upwards of 300 cases in each section of court

467. The District has significant conflict of interest issues.

468. The 14th District, through the Chief Judge, is asking law enforcement officials to collect money from the Defender clients to pay the defenders. This poses serious problems regarding the relationship between the Defender and its clients and raises at least the appearance of a conflict of interest, as the law enforcement officers are witnesses in the Defender cases. The idea of an armed sheriff going to a client's house to ask for money for the client's public defender threatens the attorney-client relationship. There also is no indication of a determination that the client is able to pay the assessed fees before the sheriff goes to collect them. The 2016 Board report includes the following:

Id. at 293.

469. Another conflict of interest issue is presented by the Defender having accepted funds from the District Attorney so that the Defender could provide counsel at an arraignment calendar. The District reported: "Because of the simultaneous court sessions, we were required to hire an attorney to attend the Hearing Officer sessions. The DA agreed to give us $20,000 per year from his LACE fund to cover the expense." Id. at 289.

470. The Defender reported carrying over into 2016 2095 misdemeanor cases, opening 2,063 new ones, and closing 2,566. Id. at 297. They carried over into 2016 3284 felony non-LWOP cases, opened 3477, and closed 3533. This indicates that the defenders may not be able to keep current with their cases.

471. The District reported spending only $1,000 on expert witnesses and no funds for interpreters or social work, while handling 13,413 cases at 302, 286. The office had a total of 6,761 non-LWOP felony cases and 18 LWOP cases. Id. at 297. Not using more than $1,000 in expert witness resources is a sign of a failing public defender program.

472. The defenders do not have as many resources as the district attorney, according to what the chief defender and one of his staff told our observer. The Chief Defender said that each ADA has their own secretary and investigator. One of the defender staff told our observer that the defenders have one legal secretary to every two divisions of court (about six legal secretaries). She said they have four investigators. The 2016 Board Report lists 15 staff attorneys including the chief defender, and eight part-time contract attorneys. Id. at 293.

473. On January 9, 2017 our observer witnessed a woman, who was represented by a defender attorney, plead guilty to operating under the influence second offense. The judge asked the defendant if she understood that she was pleading guilty without discovery and she replied "yes"

474. This example illustrates the practice of defenders in participating in guilty pleas when they have not been able to investigate the case even to review discovery.

475. Harry Fontenot is the 14th District Defender (Calcasieu) and the 38th District Defender (Cameron).

476. The information in the 2015 and 2016 Board Reports supports the conclusion that having one person be the chief defender in both these two districts leads to deficiencies in the provision of defender services because there is too much work for one person to do effectively. In the process, it appears that at least some of the numbers reported by Mr. Fontenot are not accurate.

477. The parish seats are 58 miles apart. Google Maps shows the following information:

478. Mr. Fontenot's LinkedIn page has the following information:

Harry Fontenot, www.linkedin.com/in/harry-fontenot-bab64840/ (last visited May 1, 2017).

479. LinkedIn provides the opportunity for a user's associates to endorse his or her skills. Mr. Fontenot's LinkedIn page lists 22 endorsements for wrongful dismissal work, 16 for commercial litigation, 12 for personal injury, 10 for criminal defense, and 1 for white collar criminal defense, suggesting that criminal law is only part of his practice and that he accepts private practice clients. See id.

480. Mr. Fontenot is listed as a full-time staff attorney in the 14th District and in the 38th District. 2016 Board Report at 293, 732.

481. The 14th District Reported: "All attorneys employed by PD office are full-time with no outside practice permitted. Contract attorneys are considered part-time and have their own private practices." Id. at 291.

482. It would appear that Mr. Fontenot does not apply the outside practice rule to himself.

483. Mr. Fontenot is assigned all non-conflict cases in the 38th District. Id. at 728.

484. Because of staff cuts in the 14th District, Mr. Fontenot took on more work in 2016. The 14th District reported the following for 2016:

Id. at 289.

485. And the District reported:

Id. at 291.

486. The 14th District reported 3,477 new felony assignments in 2016. Id. at 297. Mr. Fontenot handled arraignments for 9 months, so it is likely he represented clients in 2,607 arraignments. If the court met five days a week for 36 weeks, that would mean he handled approximately 14 felony arraignments per day. Even if Mr. Fontenot spent only two minutes talking with each client and two minutes handling the actual hearing (which would be unlikely to

be enough time to provide effective representation, he would have had to spend at least one hour every day doing arraignments, not counting travel time.

487. The 14th District reported handling 13,413 cases in 2016, including 3477 adult felony and 2063 adult misdemeanor cases. Id. at 286, 297.

488. The 14th District reported 4,717 applications for services in 2016. Id. at 290.

489. The District reported 82 non-LWOP felony trials, 3 LWOP trials, and 13 misdemeanor trials. Id. at 297.

490. The 14th District should have declined cases as its caseload is more than double what it should be.

491. The 14th District had 14 full-time attorneys, 8 part-time contract attorneys, and 12 non-attorney employees and contractors in 2016. Id. at 293.

2. 38th District (Cameron Parish)

492. The 38th District reports that "public defense attorneys maintain caseloads in compliance with recommended caseload limits for each attorney." Id. at 727.

493. In 2016, the 38th District reported no expenditures for expert witnesses, interpreters, or social workers. Id. at 740. The 38th District did report expenditures of $2,743.01 for conflict counsel. Id.

494. The 38th District reported handling 177 cases in 2016. Id. at 726. While it is not clear how many of those might have been assigned to conflict attorneys, it is likely Mr. Fontenot represented clients in the bulk of those cases. The District reported 59 adult felony cases, 109 adult misdemeanor and 2 juvenile misdemeanor cases pending on December 31, 2015. Id. 735.

495. With 34 people to supervise, 14 of whom were full-time attorneys, Mr. Fontenot should have 1.4 FTE supervisors under him or if he were going to supervise people himself, he should not have had case work and he still needed at least a .4 FTE supervisor. And all this without even considering his responsibility in the 38th District. While his report does indicate that other attorneys have supervisory authority, none of them has any caseload or workload relief. See id. at 292.

496. The 38th District reported no new cases in any category in 2016 except 4 misdemeanors. Id. at 735. Yet it reported 96 applications for services in 2016. Id. at 729.

497. It is not clear how a district that had 173 cases pending on December 31, 2015, would have only four new cases in 2016. One possibility is that because Mr. Fontenot had too much to do, his report for the 38th District is incomplete and/or mistaken.

498. The 2015 Report raises other questions. The district reported having 108 adult misdemeanor and 58 adult felony cases pending on December 31, 2014. 2015 Board Report at 728. Yet it closed only 6 adult misdemeanor cases and 8 adult felony cases while opening 21 new misdemeanor and 31 new felony cases. If the District had 58 felony cases pending at the end of 2014, and in 2015 opened 31 new cases and closed 8, it should have had 81 felony cases pending at the end of 2015. Yet it reported 59 felony cases pending at the end of 2015 and that it closed all of them in 2016.

499. If the District had 108 misdemeanor cases pending at end of 2014 and in 2015 opened 21 new ones while closing only 6, it should have had 123 misdemeanor cases pending at the end of 2015. Yet it reported 109 pending at end of 2015.

[Tables for the 38th District are in the Appendix G.]

500. The large number of cases carried over from 2014 suggests that Mr. Fontenot was not able to tend to his clients' cases. It also is possible that because Mr. Fontenot has too many things to do, his reporting of the numbers was incomplete or mistaken. It certainly appears that at least some of the numbers were incorrect.

M. 15th District (Acadia, Lafayette, and Vermillion Parishes)

501. The 15th Judicial District office exhausted its fund balance and began restricting services on January 1, 2016. 2016 Board Report at 305. The District described as an additional need $1,000,000 in additional state funding "to meet workload standards and clerical assistance." Id. at 310.

502. The defenders have an average caseload that is 206% of the LPDB maximum. Id. at 306.

503. The District reported:

> These caseload averages do not include the 463 felony, two juvenile, 82 misdemeanor cases and 61 traffic related cases received during CY16 which were still on the office's waitlist in January 2017. The district also had thousands of cases received prior to CY16 which were moved to the waitlist due to attorney layoffs.

Id. at 306.

504. The District provides in-house training and takes advantage of Gideon's promise training. Id. at 311.

505. Regarding the questions in the Board Report on supervision, the district wrote:

> ROS has been destructive of systemic growth, and we have lost a portion of full time and part time felony defense. Supervision and controls have been impaired due to the litigation related to judges demanding lawyers and DD along with executive staff responding to complaints from clients other stakeholders. ROS has been destructive of systemic growth, and we have lost a portion of full time and part time felony defense. Supervision and controls have been impaired due to the litigation related to judges demanding lawyers and DD along with executive staff responding to complaints from clients other stakeholders.

Id.

506. The District is able to provide health benefits: "All full time employees are

> attorneys do not possess the necessary skills to undertake extensive pre-trial motion litigation, or jury voir dire and jury trial advocacy, or sentencing advocacy through written memorandum and meaningful presentations, then the LPDB must expand its training agenda and consistently offer these essential programs for attorneys in the district public defender offices.

Id. at 16.

530. NAPD, while recognizing the office crisis caused by the restriction of services, emphasized the importance of supervision in maintaining effective representation:

> [T]he district defender should make time to conduct case reviews with her attorneys so that she knows that cases are being prepared and presented consistent with ethical standards and the standards established by the LPDB. Courtroom observation of pre-trial motions, trials and sentencing hearings also afford an opportunity to provide attorneys with immediate feedback and suggestions for affirming quality representation and for improving courtroom advocacy and attorney client relationships.

Id. at 17.

531. Recommending that Louisiana move away from the reliance on local fees paid by the defendants whom defenders represent, the NAPD authors wrote:

> Such reliance may encourage some offices to plead people guilty in order to increase their own anticipated revenues. It may also lead to the troubling expression of offices having a “good month” if fin.(t)-2(i)5vi paid bsTs-4(l)-6.1(v r)3(ov(ood m

Affidavit

The Law Offices of Carlton J. Cheramie & Andrea Stentz, http://www.cheramielaw.com (last visited May 1, 2017.) Ms. Stentz is in partnership with Carlton J. Cheramie who also is a part time contract attorney in the district.

544. Benjamin Comeaux is a part time contract attorney in the district and on his web page describes his practice areas as follows: "As a general practitioner, our lawyer focuses on just about every practice area including family law, personal injury, business law and criminal defense." 2016 Board Report at 349; The Law Offices of Benjamin Comeaux, Don't Sit Idly By as the Judge Takes Away Your Freedom, http://bcomeauxlaw.com/practice-areas (last visited May 1, 2017). He lists his practice areas as follows:

- x Criminal Defense
- x Expungements
- x Child Custody
- x Divorce
- x Domestic Violence
- x Personal Injury
- x Wills and Successions

The Law Offices of Benjamin Comeaux, Choose a Local Attorney to Handle Your Local Case, http://bcomeauxlaw.com/about (last visited May 1, 2017).

545. Andrew Wise is listed as a full time staff attorney for the district. 2016 Board Report at 349. There is a web page for Andrew W. Wise working "in the Houma/Thibodaux area". Andrew C. Wise, Protecting Rights and Preserving Freedoms of Those Accused, http://www.awwiseattorney.com (last visited May 17, 2017). His web page includes the following:

Id. There is only one Andrew Wise listed in the Louisiana bar directory, and his address is in Thibodaux. Louisiana State Bar Association, LSBA Membership Directory, https://www.lsba.org/public/membershipdirectory.aspx (last visited May 1, 2017)

546. Maria E. Dugas is listed as a full time staff attorney for the district. 2016 Board Report at 349. She also has a webpage for her law firm in Houma, Louisiana, in which she advertises her areas of practice as including criminal law, estate planning, will

LPDB, The State We're In (2016). Full page with those definitions is in the Appendix. On a map accompanying those definitions, the 17th District is reported as a having a contract system. Id.

548. The District reported working on 5,114 cases in 2016. 2016 Board Report at 343. It has a chief defender who has an active private appellate practice and considers himself "other staff" at the District. Id. at 349. It has five "Full-Time Staff Attorneys" at least two of whom advertise an active criminal and civil private practice. Id. It has six part-time contract attorneys at least three of whom have an active civil private practice. Id. The demands of the attorneys' private practices inevitably drain time and attention from their defender clients' cases and make it difficult to maintain the current, specialized knowledge of criminal law and procedure defenders need.

549. The District reported carrying over into 2016 578 pending misdemeanor cases, opened 2,006 new ones, and closed only 1,927. Id. at 352. It carried over 538 non-LWOP felonies, opened 1207, and closed 1155. Id. This indicates that the attorneys are not able to keep current on their cases.

550. The District tried 13 misdemeanor cases (less than 1 % trial rate), of which 3 resulted in acquittals, and 15 non-LWOP felonies (1.29% trial rate). Id. They tried 4 LWOP cases out of 29 closed cases. Id.

551. The District has no investigator and no social worker. Id. at 357. They spent nothing on expert witnesses in 2016. Id. The lawyers worked on 39 LWOP cases in 2016, 29 of which were closed and four of which went to trial. Id. at 352. Even if the District apportioned the 39 LWOP cases equally to all 12 attorneys (including Mr. Plaisance), each attorney would have had at least three LWOP cases among their caseload in 2016. Those cases require an average of 200 attorney hours to complete.

552. The 17th District does not have enough attorneys, support staff, and expert

improper lane change. The judge continued the matter until May 23. The judge should have conducted an inquiry into the defendant's eligibility for appointed counsel, to determine whether he was automatically eligible because of receiving public assistance or earned less than 200% of the Federal Poverty Guideline, and if not, whether he was able, considering his income, debts, and expenses, to hire counsel without undue hardship. The defender should have spoken to the judge to advocate for a proper inquiry.

554. The LPDB has the following on its web site:

LPDB, What are the guidelines to qualify for a public defender?, http://lpdb.la.gov/Advocating%20for%20Clients/Materials/Frequently%20Asked%20Questions.php (last visited May 1, 2017).

555. In another case on the same docket, a defendant charged with driving under suspension appeared without counsel for his arraignment and the judge never discussed with him the right to counsel or whether he needed appointed counsel.

556. On the same calendar, a defendant pled guilty without counsel and without waiver of counsel to careless operation of a vehicle and expired driver's license. The judge sentenced her to pay fines but said that she would have to serve jail time "in default of payment."

557. On the same calendar, a defendant pled guilty without counsel and without waiver of counsel to speeding and was sentenced to pay a fine and 10 days to serve in default of payment. Mr. Ledet was seated at a table and did not participate in the proceeding.

558. On the same calendar, the judge asked a defendant charged with domestic abuse battery how he wished to proceed today. There was a pause and the judge said, "With or without an attorney?" The defendant said, "Without I guess." The judge said, "Ok, let him be arraigned." There was no colloquy on waiver of counsel. The judge said that if the defendant wanted to speak to an attorney, he should do it before the next court date.

559. On the same calendar, another defendant pled guilty to speeding, without counsel or waiver of counsel, and received a sentence of a fine and 10 days to serve in default of payment.

560. On the same calendar, another defendant appeared without counsel or waiver of counsel. He apparently had failed to appear on March 1. The judge asked where he was. The defendant said, "At home. I got in an accident. I believe I had a concussion and they just let me walk home on the side of the road." The judge asked whether the defendant had any proof of this accident. He said no. The ADA said the charges were improper lane use and an expired driver's license. The judge asked the defendant how he wished to proceed. The defendant said, "I kind of don't understand." The judge said, "Enter a plea of not guil gv61<ar13(ui)-2om Thej aidthey(w)22(o)4(u)5(l)-2(d)

get a $50 or $100 fine and the bench warrant would be recalled. This defendant needed counsel to advise him on the new charges, on the failure to appear/contempt charge, and to assist him in documenting the accident he said caused his failure to appear. He was facing the real possibility of jail time, and neither the court nor the public defender nor the district attorney acknowledged his right to counsel.

561. Another defendant on the same calendar earlier had failed to appear. He proceeded without counsel or waiver of counsel. The court fined him $50 for failure to appear, with 2 days in jail if in default, for the contempt. On the charge of misuse of a temporary tag, he fined the defendant $66.50 plus court costs, with 10 days if in default of payment. On a charge of not having motor vehicle insurance, the defendant said he had insurance but when the judge asked if he had proof, he said, “It’s not mine, it’s my wife’s car.” The judge fined him for that as well.

562. In another hearing on the calendar, that lasted three minutes, a defendant appeared who had failed to appear on March 7. The judge said, “Take her into custody.” The faultes

575. Mr. Ledet is secretary of the South Lafourche Bank. See Bank, About Us,

586. Mr. Cheramie told our observer: “In this parish, it works good. We have a good system as far as indigent defense. We are all well qualified. We have a good chief who periodically holds meetings. It’s all going well.” He said that in the City Court, he is appointed to represent most prisoners and to discuss cases with other indigent clients. He said, “It’s efficient here. The funding is not adequate, because it’s unpredictable. But it’s a good system. The city court runs smoothly. It’s very efficient.”

587. Mr. Cheramie told our observer the court meets twice a week. If he represents 8 defendants on each calendar, that would be at least 800 clients a year, double the ACCD caseload limit for a full-time attorney. As outlined above, he also has a private practice.

588. I have reviewed the verified complaints of the named plaintiffs from the 17th District.

589. I have reviewed court records from case 553182 against Keith Arcement and his statement. At the time of the petition, Mr. Arcement had been held in the Lafourche Parish Jail and Concordia Parish Detention Center for five months. He was charged with drug, firearm, battery, and damage to property offenses and was facing a minimum of 10 years in prison if convicted. Mr. Arcement alleged that he had been represented by a different attorney at each stage of the proceedings against him. From my reading of the minutes in the file it appears that counsel was George Ledet at arraignment October 12, 2016, Paul Lapeyrouse for pretrial November 9, 2016, and Julie Erny on January 11, 2017. Mr. Arcement asserted that none of the
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help cover the gap between the district's revenues and expenditures. During FY16, 83% of the district's revenues were derived from local funding." Id. at 360.

596. The 18th District reported that, "[i]n the 18th Judicial District, public defense attorneys maintain caseloads less than half the recommended caseload limit for each attorney." Id. at 361. The District's average caseload, .42 of the PDB maximum, is the equivalent of 84 felonies or 189 misdemeanors per full time lawyer per year. The District reported being in restriction of services in 2016. See id. at 365. It identified as an immediate need, "Increased funding to bring PD staff & related compensation back to pre-POS levels." Id.

597. The District reported:

> Contract felony attorneys are assigned to a particular

606. The 19th district public defender's office had one felony-life-without-parole case and 31 other felony cases received during CY16 which were still on the waitlist in January 2017." Id. at 379.

607. Even with restriction of services and putting serious cases on a waitlist, 19th District defenders in 2016 averaged 36% more than the Board maximum caseload. Id. at 379. That means a per-lawyer felony caseload of 272 cases per year and a misdemeanor caseload of 612 per lawyer.

608. Based on numbers from the database, 24 attorneys are handling 3,329 new felony cases a year plus misdemeanors. Id. at 387-391. There were 3,318 pending felony cases on June 30, 2016. Id. at 391. In addition, there were 28 new LWOP cases and 55 pending LWOP cases on June 30, 2016. Id. This is an excessively heavy caseload.

609. The Defender has a low trial rate (less than one percent), but it had some success in its trials in 2016. Id. It won acquittals in 5 of its 16 misdemeanor trials, and in 5 of its 22 non-LWOP felony trials. Id. at 391. I recognize that juries and judges vary by district, but this success indicates that trying more cases can yield positive results for clients.

610. I note that the 19th District opened 4,124 adult misdemeanor cases and 2,897 non-LWOP felony cases in 2016, a 1.42 to 1 ratio of misdemeanor to felony cases. Id. This indicates that, compared to other districts, the defenders more often are representing clients in misdemeanor cases.

611. Because of inadequate funding, the District had to reduce staff:

> Yes, we laid off our entire investigative staff excluding our chief investigator and 1st assistant investigator. 8 attorney positions were not filled covering district and city court. Only four of those positions have been filled to date. Conflict contracts were suspended until FY 2017 began to remain solvent.

Id. at 384.

612. In addition, because of inadequate funding, the Defender has "discontinued online research contract for 2016." Id. at 388.

613. The District did report spending $57,657.01 on investigation in 2016 but nothing on social work or interpreters. Id. at 396.

614. I interviewed the District Defender and Deputy District Defender. They told me that the office has 30 attorneys and that they did a "needs budget" several years ago showing that they would need 63 attorneys to meet national caseload standards. In January 2015, they had 49 attorneys but lost funding. The caseload has gone down only 5 % since then.

615. The District Defender said that his Municipal Court attorneys have about 1,000 cases each a year. Those attorneys are allowed to take private practice cases. I asked about what amount of time they are expected to work. The answer: "The rule is, spend the time it takes to handle the cases." The Defender thinks they spend 2/3 to 3/4 of the time on defender work. I suggested that they would be spending 1 to 1.5 hour on average per case, and the Defender said, "probably".

616. The 19th District staff attorneys told me that they feel that a lot of clients may not be adequately represented because of inadequate funding, and that lawyers may not have time to do more than bare bones representation. They said that private counsel will present everything so that the judge can make informed decisions. "We're not able to do that in every case." And they are only able to do what they can do by using students at minimum wage as intake interviewers.

617. One staff attorney told me in November 2016 that he had just under 100 open-not yet-resolved felony cases and 30 or 40 misdemeanor files. In addition, he had city court cases for possibly 40 clients. Three to four months earlier, he had 126 felony files not including probation or revocation cases. The lawyer said he provides "case level competency." He added, "

618. He recognizes that a client's life can be ruined by long periods in jail. The defenders "try to minimize damage". When I asked whether the lawyers are able to meet the level of representation people are entitled to, the answer was "No."

Id. at 385. Other Districts could emulate these efforts.

626. The 19th District also reports having a strong policy of regular staff meetings: "All Staff have regular meetings. Section Meetings daily or weekly, Full Attorney Staff Meetings bi-weekly." Id. Other Districts should emulate this approach.

627. The 19th District also reports having a more comprehensive and effective approach to avoiding conflicts of interest than some other districts. It reports this conflicts checking policy:

> Check in the state database for conflict of interest regarding witnesses, co-defendants, relatives and other cases you are representing. This can be preformed [sic] using Name search with as much information you have available in the lookup area, next, selecting related people and utilizing the duplicate function. If conflict exist transfer the case to Contract Conflict Attorneys Panel. The office provided Conflict Attorneys and Staff

district to begin accruing a fund balance. LPDB and the 20th district PDO will continue to monitor the office's revenues and expenditures to determine if the office can exit service restriction.

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642. The office provides no insurance or retirement. The office does not pay for Ms. Covington's CLE training. She does not provide training funds for the part-time attorneys.

643. Ms. Covington works about 220 hours per month.

681. The chief defender in the 21st District is Reginald McIntyre. In 2004, he was publically reprimanded by the Louisiana Supreme Court, following a joint petition for consent discipline resulting from an investigation of a complaint that he neglected his client's matter and failed to communicate with his client. *See* In Re: Reginald J. McIntyre, No. 04-B-0943, available at http://www.lasc.org/opinions/2004/04b0943.pc.pdf

T. 22nd District (Washington and

2016 Board Report at 496.

700. The office does not have a sophisticated conflicts tracking system. It described its approach as follows:

> Review initial reports at magistrate bond setting for obvious conflict. Attorneys then self-report conflicts as they arise. If funds are available, outside conflict counsel is retained. If not, Client is put on a waiting list maintained in accordance with ROS standards.

Id. at 496.

701. The office provides no medical benefits to employees. Id. at 498.

- Contract attorney KW: 393 felonies

When a lawyer has 452 felony cases a year, it is impossible to provide effective representation to more than a small percentage of clients.

709. The misdemeanor staff attorneys in the 12th District also have excessive caseloads.

- Staff Attorney 1: 507 misdemeanors
- Staff Attorney 2: 529 misdemeanors
- Staff Attorney 3: 536 misdemeanors
- Staff Attorney 4: 517 misdemeanors
- Staff Attorney 5: 512 misdemeanors
- Staff Attorney 6: 603 misdemeanors

710. The staff attorney caseloads are as much as 34% higher than the Board standard and 50.75% higher than the ACCD standard.

711. Even using the OMB number of 1744 hours per year, a lawyer such as TG handling 452 cases a year can devote only 3.85 hours to each case. Time per case must cover client meetings, negotiating with the prosecutor, reading police reports and other relevant discovery, conducting legal research and factual investigation, preparing for court, writing and presenting motions and memoranda, including motions for pretrial release, discovery, motions to suppress, and sentencing memoranda, and attending court hearings, including trials. Felony jury trials rarely should be completed in less than two days and often can last a week or longer. In addition, the defender needs time for training, reading new appellate cases, and attending meetings at the courthouse or the local bar association related to criminal defense practice.

712. The district defender also has contract attorneys in misdemeanors, including Kammi Whatley who has 438 cases.

713. As a defender, Ms. Whatley's caseload is far more than one lawyer should carry. In 2016 she had a felony caseload of 393 gn4on, th

725. “In the 30th Judicial District, public def

744. In refusing to take the most serious cases when he does not have enough qualified attorneys to handle them, Mr. Bunton is complying with Principle 6 of the ABA Ten Principles:

> Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

American Bar Association, Ten Principles of a Public Defense Delivery System, Principle 6 (2002).

745. As "primary immediate needs" the Defender identified "Increased funding to provide effective representation to the indigent and experienced legal staff." 2016 Board Report at 788.

746. The Orleans Defender reported a total of 4,202 closed felony (non-LWOP) cases in 2016, they had 49 trials, 23 of which resulted in not guilty verdicts, a high acquittal rate of 46.9%. Id. at 796. Of 7,027 misdemeanor cases closed, 129 went to trial, of which 110 resulted in acquittals. Id. This is a high acquittal rate of 85%. The felony trial rate of 1.16 percent and the misdemeanor trial rate of 1.83 percent are low, although they are higher than most Louisiana district offices. The Orleans acquittal rates suggest, by comparison to acquittal rates in other districts, that the relatively lower caseloads carried by Orleans defenders and the relatively higher levels of staff supervision, investigation, training, and expert witness resources that they have, contribute to more successful outcomes for their clients.

747. Even the 41st District, which has arguably better resources than many other districts, reported spending only $40,013.07 on expert witnesses in 2016. It reported 4,907 new felony non-LWOP cases and 55 new LWOP cases. Id. at 796. Dividing the $40, 013.07 only by the new felony assign6 0(a)4 u1( )]TJ 0 Tc 0 Tt

> access to inmates, as inmates in one classification group often cannot be brought to the visitation area while inmates from another classification group are present.

Id. at 785.

752. The Orleans Defender has a number of community engagement programs that could serve as models for other District offices. Id. at 789. It obtained a proclamation from the City Council on Public Defense Day in March. It has an active social media presence that provides information about the office and issues important to its clients. See, e.g., Orleans Public Defenders, https://www.facebook.com/OrleansPublicDefenders (last visited May 1, 2017)

their clients know they don’t have the time and money to mount a rigorous defense at trial, so often decide to take plea deals -- even if they aren’t guilty.”

757. The Orleans Defender has a lower average caseload than almost all of the other district defenders in Louisiana. IIIi