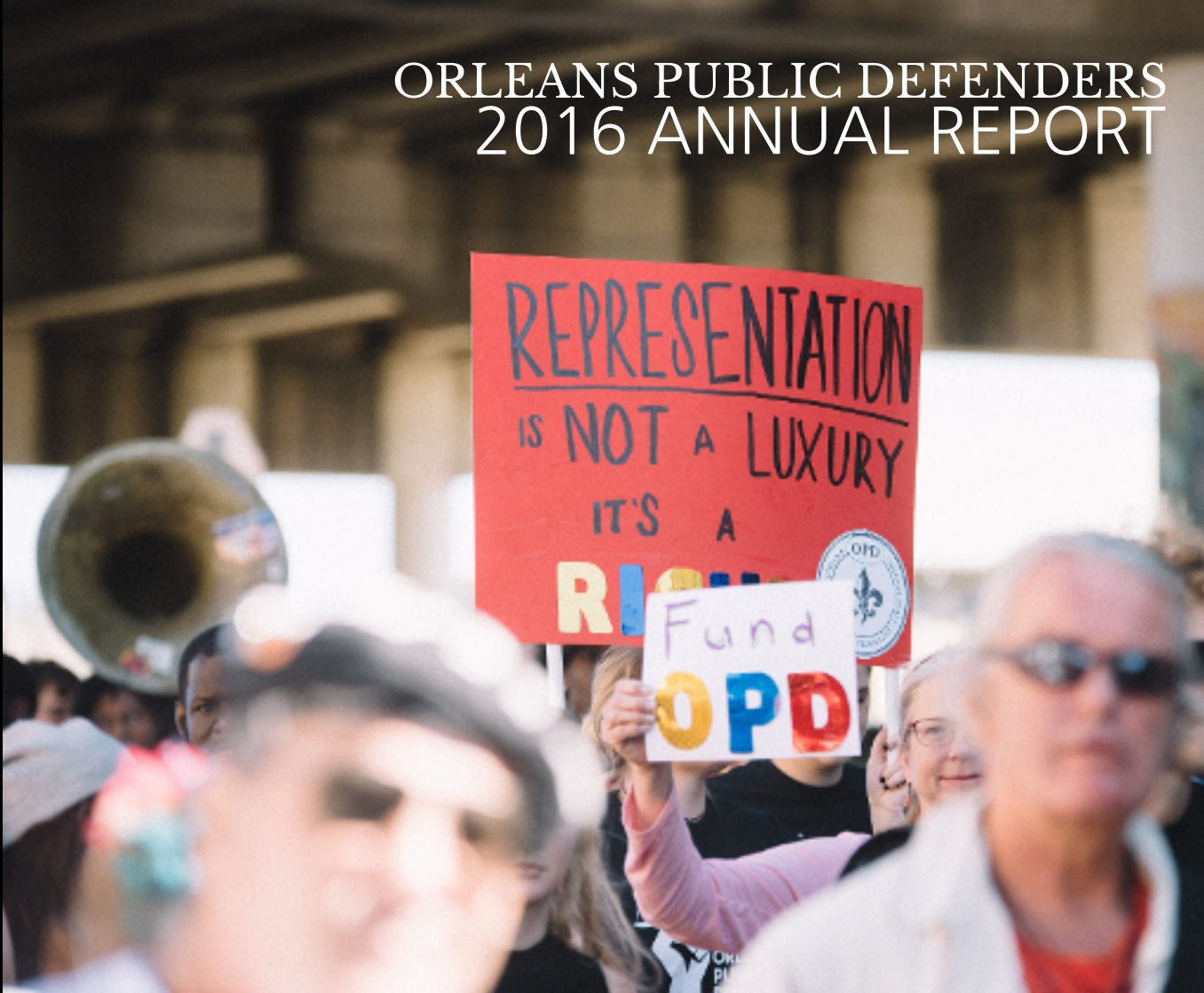


I AM A PUBLIC DEFENDER

# ORLEANS PUBLIC DEFENDERS 2016 ANNUAL REPORT



# WHEN THE PUBLIC DEFENDER SAYS I CAN'T HELP



ON an ordinary day, the Criminal District Court here begins with a parade of handcuffed and shackled defendants being led out from cages behind the judge's bench by sheriff's deputies. They are clad in orange jumpsuits and are almost exclusively African-American men. They rattle and shuffle their way onto benches and into the empty jury box, waiting for the judge.

When their case is called, a lawyer from the public defender's office will rise and say: "Your Honor, we do not have a lawyer for this person at this time."

Eight-five percent of these defendants are unable to afford their own lawyer and will need a public defender to represent them. But in New Orleans, where I am in charge of the public defender's office, we simply don't have enough lawyers to handle the caseload. Last month, we began refusing new cases.

In a state with one of the nation's highest poverty rates, the system to defend the poor is broken.

To understand why, look at the other people in the courtroom sitting on benches set aside for the audience. Most of these people aren't there to watch the proceedings. Many were subpoenaed for failing to pay fines or fees for minor offenses and had to take time from work to appear in court or be charged with contempt. Those fines and fees pay for two-thirds of the Louisiana public defender system. The rest comes from the state.

It is not an exaggeration to say that fines from traffic offenses, which, in Louisiana, can result in jail time, play a big part in determining whether one of those men in the orange jumpsuits receives an adequate defense required by the Sixth Amendment to the Constitution.

Poor people must pay \$40 to apply for representation, and an additional \$45 if they plead guilty or are found guilty. No other states lean so heavily on fines and fees paid mostly by the poor. And there is a reason for that. The system isn't working.

Louisiana spends nearly \$3.5 billion a year to investigate, arrest, prosecute, adjudicate and incarcerate its citizens. Less than 2 percent of that is spent on legal representation for the poor.

It is little wonder that Louisiana has the nation's highest rates of incarceration and exoneration for wrongful convictions.

Last fall, at a hearing ordered by the Criminal District Court in response to this crisis, years of underfunding by the state were chronicled. Public defenders have weathered more than \$5 million in budget cuts over the last five years. For the second time in four years, we have been forced to impose a hiring freeze and, now, have begun turning down cases.

In response, judges are ordering private lawyers to take poor clients. Other poor defendants have been left to represent themselves. And in some cases, judges have threatened public defenders with contempt for refusing to take a case.

James Dixon, the state public defender, and members of my staff and I filed affidavits and testified about how our workloads had reached unmanageable levels. Many public defenders are

unable to visit clients, file motions in a timely manner or conduct the necessary investigations. In fact, our workload is now twice the standard recommended by the American Bar Association.

Ellen Yaroshefsky, a professor at Cardozo Law School in New York City and one of three experts who testified, said it was a misnomer to call the New Orleans court system a "justice system." Professor Yaroshefsky told the judge: "You're not operating a justice system here. You're operating a processing system."

While the situation here may sound extreme, overloaded public defenders are struggling across the country. A 2013 study in Missouri provided a snapshot of the problem. For serious felonies, defenders spent an average of only nine hours preparing their cases; 47 hours were needed. For misdemeanors, they spent two hours when 12 hours were necessary. Similar studies are underway in Colorado, Rhode Island, Tennessee and here in Louisiana.

"The problem of grossly underfunded public defender organizations with grossly excessive caseloads is a systemic, endemic problem going back 50 years," said Stephen F. Hanlon, general counsel for the National Association for Public Defense, who is overseeing the current studies.

In New Orleans, our decision to refuse new cases didn't come easily. No one becomes a public defender to tell a poor person, "No, I can't help you." But the outcome of an arrest in a shooting at

Bunny Friend Park here last November that left 17 people wounded influenced my decision to stop taking cases.

A 32-year-old man was arrested in the case and held on \$1.7 million bond. He had immediately asserted his innocence but the police said a witness had identified him. His family hired a private lawyer who went to Houston to locate video of the suspect shopping with his girlfriend at the time of the shooting. The charges were dropped.

Reading about this case, I realized my office could not have guaranteed the timely retrieval of this important evidence before it would have been routinely erased. That would have left an innocent man to face trial for his life for what was labeled an act of "domestic terrorism" by the mayor of New Orleans.

Louisiana needs fundamentally to reform its system of public defense funding. The state needs to arrange adequate and stable financing based on reasoned projections of the workload. Fines and fees, to the extent they exist at all, should act as a supplemental source of financing.

The role of the public defender is to protect the innocent, defend the Constitution and demand justice and fairness. But when resources are out of balance, as they are in Louisiana, so is the system.

**The poor are the ones who hurt.**

Chief Defender Derwyn Bunton's Op-Ed appeared in the *New York Times*, February 19, 2016

**No one becomes a public defender to tell a poor person,  
No, I can't help you.**



# I AM A PUBLIC DEFENDER

## **rededicating to equal justice**

As the fiscal crisis that began in 2015 was fully realized in 2016, we gathered to declare why we fight, why we remain when the stakes continue to rise and injustice grows large. The answers varied, but the dedication and passion were similar.

We discovered we're each here because we believe in our community, our neighbors, equality, constitutional rights. We confirmed we don't do 'roundabout justice.' We stood firm when attempts to thwart our work were questioned. We refused to be party to a processing system.

We recommitted to equal justice, even when the system said **'NO.'**

PUBLIC DEFENSE IN

2016

# THE PROBLEM

Public defense in New Orleans is in crisis.

UNSTABLE, INADEQUATE FUNDING CAUSES PUBLIC DEFENDER SHORTAGE, PUTTING THOSE WHO ARE ARRESTED AND CAN'T AFFORD AN ATTORNEY IN LEGAL LIMBO.

So long as you're on the public defender waiting list in New Orleans, you're helpless.

Your legal defense erodes along with your **CONSTITUTIONAL RIGHTS**

ACLU of LOUISIANA, 2016

I think we are violating the Constitution and ethics and professional standards if we continue to take cases we don't have the resources to handle.

Chief Defender Derwyn Bunton

**20,245**  
cases

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**48**  
attorneys

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**2**  
awards for individual excellence

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**1** lawsuit

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**1,060**  
cases refused or waitlisted



OUR  
PEOPLE



**48** attorneys

**2** social workers

**10** investigators

**3** client advocates

**1** youth advocate

**5** administrators

**6** court support administrators

volunteer intern hours **42,599**

OUR  
WORKLOAD

2016

**7,173**

adult felonies

**10,561**

misdemeanors

**3** capital

**96** child in need of care

**2,412** revocations

total cases

**20,245**



In Orleans Parish,  
80% of eligible  
juveniles are  
transferred to  
adult court - more  
than anywhere  
else in Louisiana. \*

In 2016, OPD  
represented  
juveniles in  
**49**  
criminal district court

Willie Johnson was one of those teens; charged with a crime he didn't commit. For 2 years, he was held in Orleans Parish Prison, his case ultimately dismissed. Today, he is free, happy and building a new life. But, he'll never regain those two years.

\*Southern Poverty Law Center, 2016



# 743



clients served

# 1,107



services provided

## OUR ADVOCACY

Despite drastically reduced resources and increased reliance on year-long volunteer corps fellows, our Client Services Division made significant strides in clients served, services offered and new initiatives implemented.

**382** referrals for social services, treatment programs, education, housing, employment and benefits

**313** appeals for direct medical and mental health treatment services

**328** re-entry, readiness and other quality of life services

**50+** mitigation advocacies, including alternatives to incarceration, sentencing and re-entry

Our client-centered, community-oriented defense practice addresses the entire person and their unique needs, not simply in the courtroom, but in their everyday life. Our client advocates and social workers advocate and work with our clients every step of the way to ensure their individual success.

# NEW INITIATIVES

in **2016**

## **Miller and Montgomery representation project**

After recent Supreme Court rulings barring juvenile life without parole sentences, OPD represented **18** Montgomery resentencing cases, of which 8 were resentenced to life with parole. OPD also represented 6 pre-trial Miller cases, although dwindling resources will soon make this advocacy increasingly difficult.

## **Child in Need of Care social worker and peer parent advocate**

Parents going through the juvenile court system now have a dedicated social worker and parent advocate to advocate and help navigate the court process.

## **Alternatives to Incarceration pilot program in Municipal Court**

## **Expanded monthly Expungement Hour in collaboration with the Justice and Accountability Center of Louisiana**

To date, hundreds have been helped clean their records for a fresh start.

## **Rising Foundation partnership for parole advocacy and re-entry community clinic**

Driver's licenses, warrants, attachments - they're tackling them all to finally free clients from the criminal justice system.

## **HIV treatment medication in jail**

Although still in its infancy, more than **10** people have received critical medication previously denied while incarcerated.



# NEW ORLEANS RALLIES FOR **second line for equal justice**

On October 22, our community rallied to support full funding of public defense in New Orleans the best way we know how: dancing in the streets. Led by John Calhoun, the Original Big 7 and Nine Times Social Aid and Pleasure Clubs, hundreds gathered to support OPD and call for equal justice.



NEW ORLEANIANS  
FOR A  
FULLY FUNDED PUBLIC DEFENDER

Check out our YouTube page for the video!

# PUBLIC DEFENSE

“ I’ve been reflecting a lot today on our inability and refusal to see and recognize the inherent dignity and humanity of others - both outside of our movements and within it - that allow for police terror and murder, to put people in cages, to deport people, to say that some of us are worthy of things like legal representation and others aren’t. So many of us refuse to recognize the inherent violence in holding transgender people, poor people, undocumented people, and youth behind bars.

**Our public defenders represent an often forgotten, but key part of our movements that recognize this humanity and fight like hell for our dignity, for our families, and for our communities.**

While judges, sheriffs, police - and sometimes even neighbors - are willing to turn our backs on what happens inside these courthouse walls, our public defenders are here every day bearing witness, protecting our legal right to counsel, and often defending our sheer humanity. ”

Wes Ware, Co-Director, BreakOUT!

BECAUSE THE RIGHT TO A LAWYER  
DOESN'T COUNT FOR MUCH IF  
NOBODY'S WILLING TO PAY FOR IT.

**Mother Jones**

Edwin Rios, April 11, 2016

The way the state funds defense for its poor is deeply flawed, criminal justice experts agree. Louisiana is the only state where public defenders rely heavily on income sources that fluctuate significantly.

**2/3** of local budgets  
rely on fines & fees.

WE'RE FUNDING PUBLIC DEFENDERS  
OFFICES OFF THE BACKS OF FOLKS WHO  
CAN'T AFFORD A LAWYER.

Louisiana is an extreme at this moment. How they got to where they are—that tells the story of indigent defense in this country.

Louisiana's **USER-PAY** public defender system remains  
UNSTABLE, UNRELIABLE,

'You can't fund the  
Sixth Amendment on  
traffic violations.'

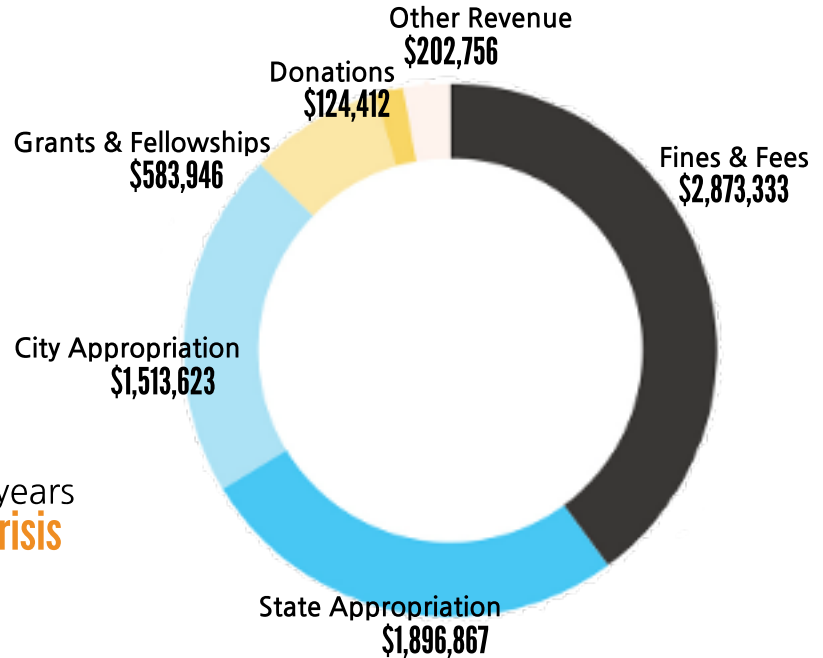
Derwyn Bunton

UNPREDICTABLE

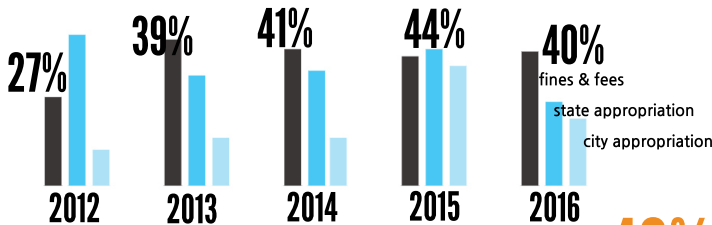
# FUNDING PUBLIC DEFENSE

in FY **2016**

expenditures | revenues  
**\$6,742,430** | **\$7,194,937**



unstable, unreliable, unpredictable  
 budget reliance on fines & fees over the years  
**leading into fiscal crisis**



In 2016, **40%** of our budget consisted of user-pay fines & fees



# OUR VILLAGE

## **fellowships and grants**

While public defense is a fundamental right guaranteed by our Louisiana and U.S. Constitutions, it is clear prioritizing its adequate funding remains low. Budget cuts, continued dependence on fines and fees and growing resource disparities among criminal justice agencies remain the greatest threat to OPD and public defense in New Orleans and Louisiana.

**2016 was no exception.**

However, thanks to the generosity of our donors and funders of multiple grants and fellowships, we were able to continue our fight for equal justice. **Thank you for helping us fight on.**

**Equal justice truly takes a village.**

**American Bar Association  
Southern Poverty Law Center  
Ben Levick Sullivan Investigator  
Fellowship  
John Sullivan & Sandra Levick  
Kendall Vick Public Law Fellowship  
WK Kellogg Foundation  
Stanford Law School  
Yale Law School Fellowship  
NYU Law School Fellowship**





# CLYDE MERRITT AWARD

## 2016 Taryn Blume



Youth Advocate Taryn Blume was honored with the 2016 Clyde Merritt Award for her extraordinary passion and dedication to her clients and the youth of New Orleans.

**Taryn is the epitome of all things OPD. She is strong and dedicated and our clients and practice are better because she's been part.**

Established in 2012 to honor one of the stalwart advocates for public defense, Clyde Merritt, the Clyde Merritt Award recognizes extraordinary commitment and fight for the cause of public defense in New Orleans.

Previous honorees include Willy Boggs, Steve Singer, Emily Beasley and Nicole Heisser, all of whom helped shaped OPD into a zealous community defender.

# DEFENDER DIALOGUES

## community storytelling

On October 19, defenders and community members alike gathered at StudioBE for a storytelling event on public defense, the criminal justice system and the need for reform. The event was hosted by WBOK's Oliver Thomas and featured powerful stories from exoneree Joseph Morgan, re-entry advocate Lawyer Winfield, public defenders from New Orleans, Baton Rouge and St. Tammany Parish, as well as community members affected by the criminal justice system and mass incarceration.

Supervising Attorney Will Snowden told the story of one of his clients and the roundabout identification process that led to his unjust arrest.

When asking the detective during the preliminary hearing how his client was identified, he replied "In a roundabout way."

"Your honor, I ask you to find no probable cause because we don't do roundabout identifications. We don't do roundabout justice. They're trying to take away my client's liberty and we cannot do that in a roundabout way."

**“we don’t do roundabout justice.”**

Will Snowden

# THE DEFENSE NEVER RESTS

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