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Budget Woes Hit Defense Lawyers for the Indigent

By **MONICA DAVEY**



Jared Blacksher was led back to jail in August after a hearing about who would represent him. The public defender's office in Missouri had pleaded with a judge not to be assigned his case.

OZARK, Mo. — Some public defenders in Missouri say the stressed state budget is interfering with their ability to provide poor defendants with their constitutional right to a lawyer.

They say they are so overworked and underfinanced that they have begun trying to reject new cases assigned to them late in the month, when, they say, their workloads are already beyond capacity.

Concerns about a deteriorating, overwhelmed public defender system in this country have been around for decades, but they have ballooned recently as state budgets shrink and more defendants qualify for free legal counsel.

“This has been a problem in good economic times, and now it’s only worse,” said Jo-Ann Wallace, president and chief executive of the [National Legal Aid and Defender Association](#). “What you have is a situation where the eligible pool of clients is increasing, crime rates are potentially increasing, while the resources often for public defenders are going down.”

Missouri’s per capita spending on public defense ranks 49th in the nation (only Mississippi spends less), Ms. Wallace’s group says. State officials say the defenders system, with its 570

employees, is expected to receive more than \$34 million this year. The state public defender's office says a true solution would require 125 more lawyers, 90 more secretaries, 109 more investigators, 130 more legal assistants and more space — all of which would cost about \$21 million a year — a seemingly impossible suggestion, given the fiscal climate.

In the meantime, they say, fiscal constraints are colliding with the requirement set forth in a 1963 Supreme Court decision, *Gideon v. Wainwright*, that poor people accused of serious crimes be provided with lawyers paid for by the government.

Last week, Jared Blacksher found his case sent to the Missouri Supreme Court — not over the accusations that he had stolen prescription pain pills and a blank check, but over the issue of whether the state's public defender system is in such dismal shape that it ought not be forced to represent him.

The public defender's office had pleaded with the judge, repeatedly, not to assign it Mr. Blacksher's case. It was just the latest example of public defenders, charged with representing the poor and indigent, saying they cannot take a case because they have too many already and not enough staff to handle them all. Public defenders in jurisdictions from Florida to Minnesota to Arizona have either sued over their caseloads or refused to take new cases.

The judge in the Blacksher case rejected the public defender's pleas not to be forced to take it. "It flies in the face of our Constitution," Judge John S. Waters told his Christian County courtroom here last month. "It flies in the face of our culture. It flies in the face of the reason we came over here 300 and some-odd years ago to get out of debtors' prison."

"I'm not saying the public defenders aren't overworked," Judge Waters said, but, "I don't know how to move his case and how to provide him what the law of the land provides."

But last Friday, the Missouri Supreme Court issued [an order](#) temporarily rescinding the assignment of public defenders in Mr. Blacksher's case, at least until the court can consider legal briefs on the question of the public defenders' latest demand to refuse cases.

Mr. Blacksher's case, which could now be delayed for several months, has become the center of a debate that long predates it in this state. To some, the signs of stress on the public defender system here have become overwhelming, even frightening: almost all the public defenders' 35 trial division offices lately carried caseloads that would require more than the total number of staff hours available in a month — in some cases, more than two times the hours available, said Cat Kelly, deputy director for the Missouri State Public Defender System.

“Missouri’s public defender system has reached a point where what it provides is often nothing more than the illusion of a lawyer,” an [outside report](#) asked for by [the Missouri Bar](#) concluded last year.

Yet some county prosecutors here are deeply skeptical of the defenders’ complaints. With the state facing \$550 million less in general fund revenues than a year ago, they say, defenders are no more burdened than the next department.

“They say this every year,” said Ron Cleek, the prosecuting attorney in Christian County, which includes Ozark, adding that he wondered whether some at the defenders offices might “want to think about what time they come in and when they go home.”

“We all work hard,” Mr. Cleek said. “They just need to suck it up and get out there and get it done.”

[Missouri’s state auditor](#) has announced her office will examine the public defender system to determine whether it is, indeed, overburdened.

Around the country, the indigent are defended by a hodgepodge of systems and financing sources. In some places, private lawyers are appointed by judges; elsewhere, statewide public defender networks (like Missouri’s) have been created. Other jurisdictions use some combination of methods.

The public defenders in Missouri and elsewhere all ultimately pose a larger question: How far can defenders be stretched before they no longer provide poor people with the legal help ensured by Gideon?

“Is someone in prison who might have been acquitted if we had had more resources?” Rod Hackathorn, the public defender for a three-county district that includes Ozark, asked the other day. “You don’t know. I’m sure that it’s happened, and I don’t know who it has happened to. And that’s the scariest part of this all.”

Mr. Hackathorn’s district is one of two in the state to begin announcing this summer that it was turning down cases, including Mr. Blacksher’s. Nine others are taking steps to do the same.

So far, results for poor defendants are murky. In cases involving those not in custody, some judges have sidestepped the entire question, quietly advising defendants to wait for the start of a new month (and a fresh monthly caseload count) — at which point their cases will be assigned to

a public defender once more. In more serious cases, like Mr. Blacksher's, judges have rejected the public defenders' claims of "unavailability."

Hours after the State Supreme Court's decision in Mr. Blacksher's case, Mr. Blacksher, who is charged with burglary and forgery, seemed oblivious to what had happened and mystified by his brush with the debate over public defenders.

From the Christian County Jail, where he has been held since July, unable to afford bail, Mr. Blacksher, 22, said he had heard nothing of the delay in his case and was still expecting to be called from his cell for a hearing — which had once been set for last Friday — on its merits.

Just a day earlier, he had met with his assistant public defender and had agreed, he said, to plead guilty in exchange for a prison sentence that would most likely run several months. So far as he knew, he said, the public defender was still his lawyer, and his hearing might come any minute.