

One Lawyer, 194 Felony Cases, and No Time

By *RICHARD A. OPPEL JR. and JUGAL K. PATEL* JAN. 31, 2019 *The New York Times*

Mr. Talaska was not outside the norm. Of the public defenders in Louisiana handling felony caseloads at that time, there were two dozen with even more clients. One had 413. The numbers alone might seem to violate the Constitution. Poor defendants in the United States have the right to a competent lawyer, and hundreds of thousands of defendants rest their hopes on someone like Mr. Talaska. But there has never been any guarantee that those lawyers would have enough time to handle their cases.

Right now, courts allow an individual to claim, after they lose, that they received an ineffective defense. But the bar is high. Some judges have ruled that taking illegal drugs, driving to court drunk or briefly falling asleep at the defense table did not make a lawyer inadequate. It is even harder to make the argument that the sheer size of lawyers' caseloads makes it impossible for them to provide what the Constitution requires: a reasonably effective defense. That is partly because there has never been a reliable standard for how much time is enough.

Now, reformers are using data in a novel attempt to create such a standard. The studies they have produced so far, say that public defenders have two to almost five times as many cases as they should. The bottom line: Mr. Talaska would have needed almost 10,000 hours, or five work-years, to handle the 194 active felony cases – including one death penalty case – he had as of that April day, not to mention the dozens more he would be assigned that year. “The workload can be overwhelming even under the best circumstances, and most offices never experience the best circumstances,” said Mr. Talaska, 30, who agreed to talk only because he was no longer working as a public defender. “Most offices don't have paralegals, law clerks, or full-time investigators.” Lawyers are expected to do it all.

In Providence, R.I., the scene in Courtroom 4C is the same on many mornings. The newly arrested — accused of theft, drug possession, drunken driving, battery and other crimes — are taken from local jails, chained at the wrist two-by-two, and brought before a judge or magistrate, who either sets bail or orders them either released or detained in jail until further hearings. Some days there are more than 50 new defendants. But in recent years most of them shared one lawyer: Bob Marro. Handed a thick roster of new defendants just minutes before court started, Mr. Marro, a public defender who recently retired after 33 years, shuffled through stacks of pastel arrest reports, prioritizing cases like a triage doctor. Assisted by social workers, he focused on those most likely to be locked up without bail. The lucky ones got five minutes of his time. Others might have gotten a minute.

This type of system is not the exception in this country. Roughly four out of five criminal defendants are too poor to hire a lawyer and use public defenders or court-appointed lawyers. The contrast between services for those who can pay and for those who cannot was on display in 4C. While Mr. Marro scrambled, a few private lawyers waited comfortably in the gallery for their cases, having had time to focus solely on their clients. Some days the courtroom is so full that defendants overflow into an additional courtroom, where there is no public defender. Those arrestees sometimes agree, without any legal advice, to plea deals that can have a profound impact on their lives[...]

Some public defenders who had tried to set limits on their caseloads were threatened with contempt of court. Another lawyer, who was carrying more than 100 cases and had been repeatedly hospitalized for serious health problems was sanctioned by the State Supreme Court for missing a handful of deadlines. .

The reformers say decriminalizing more offenses related to homelessness, drug addiction and mental illness would also free up public defenders to spend more time on serious cases.

The time shortage also means that public defenders almost never take a case to a trial. Across the country, 94 percent of convictions in state courts are from plea bargains, according to a 2012 Supreme Court ruling that confirmed defendants' rights to be represented by competent counsel not just at trial but also during plea negotiations.

How many did? Only one in 40 [...]